

being a by-law to determine how the cost of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under the Provincial Offences Act.

WHEREAS Paragraph 27 of Section 210 of the Municipal Act provides that a by-law may be passed by the Council of a local municipality for determining how the cost of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under the Provincial Offences Act.

NOW THEREFORE the Council of The Corporation of the City of Oshawa hereby enacts as follows:

1. The definitions appearing in this section apply to the use of those terms for the purpose of this by-law.
  - (a) "Actual cost" means the total cost of the construction, reconstruction, maintenance or repair (as applicable) of a division fence, and includes the value of the material used and the value of the labour performed to complete the work.
  - (b) "Adjoining owner" means the person who owns land adjacent to land on which another land owner seeks to build a division fence.
  - (c) "Basic cost" means the cost of constructing, reconstructing, maintaining or repairing (as applicable) a four (4) foot high steel chain link fence which:
    - (1) has a diamond mesh not greater than 1½ inches;
    - (2) is constructed of galvanized steel wire not less than 12 gauge or minimum 14 gauge steel wire covered with a vinyl forming a total thickness equivalent to 12 gauge galvanized wire; and
    - (3) is supported by at least 1½ inch diameter galvanized steel posts encased in a minimum of three (3) inches of concrete from grade to a minimum of three (3) feet below grade, such posts to be spaced not more than ten (10) feet apart; and
    - (4) top and bottom horizontal rails of 1¼ inch minimum galvanized steel (except that a minimum 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail).
  - (d) "Division fence" means a fence marking the boundary between adjoining parcels of land.
  - (e) "Municipality" means The Corporation of the City of Oshawa.
  - (f) "Owner" means:
    - (i) a registered owner of land; and,
    - (ii) a person managing or receiving the rent for land or premises.

Where more than one person meets the definition of "owner" in this by-law, they shall be considered as a single owner for purposes of cost allocation.
  - (g) In this by-law, unless the contrary intention is indicated, words used in the singular shall include the plural and words used in the male gender shall include the female gender and vice versa.
2. This by-law does not apply to any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by a municipality or other public authority, or to lands that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes.
3. The provisions of this by-law do not apply where an owner has initiated proceedings under the Line Fences Act prior to the date of the passing of this by-law.

4. An owner of land may construct and maintain a division fence.
5. An owner desiring to construct, reconstruct or repair a division fence shall serve or cause to be served upon the adjoining owner, by registered mail, a notice of his intention to do so at least fourteen (14) days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken.
6. Notwithstanding anything in this by-law, owners and adjoining owners may enter into agreements with respect to the sharing of any costs with respect to division fences in any proportion. This by-law applies where no agreement is possible.
7. The cost of construction of a division fence shall be assigned as follows:
  - (a) the adjoining owner shall pay fifty percent (50%) of the basic cost or fifty percent (50%) of the actual cost, whichever is the lesser; and,
  - (b) the owner shall pay the balance of the actual cost.
8. The cost of reconstruction or maintenance of a division fence shall be borne equally by the owner and the adjoining owner.
9. The cost of repairs to a division fence shall be borne by the owner if the damage necessitating the repair was caused by him or his invitees. The cost of repairs to a division fence shall be borne by the adjoining owner if the damage necessitating the repair was caused by him or his invitees. Subject to Section 10, the cost of repairs to a division fence shall be borne equally by the owner and the adjoining owner if the damage necessitating the repair was caused by natural disaster.
10. If a tree is thrown down by accident or otherwise so as to cause damage to a division fence, the owner of the land on which the tree stood shall at his sole expense forthwith remove the tree and repair the fence.
11. Any division fence constructed pursuant to this by-law shall comply with the provisions of By-law 60-94, Section 4.12, as amended, (Zoning By-law), By-law 136-79, Sections 5.9, 9.11 and 9.13, as amended, (Property Standards By-law), and By-law 55-85, as amended, (Swimming Pool By-law), or any successor to such by-laws. Any division fence constructed or repaired within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act is subject to all requirements for obtaining a permit pursuant to such legislation.
12. Where an owner or adjoining owner is in default of his obligations pursuant to this by-law, a person desiring to enforce the provisions of this by-law shall, within ninety days after completion of the construction of the division fence, serve or cause to be served on the defaulting person, a notice by registered mail requiring compliance with this by-law. The notice shall specify that if the default is not rectified within thirty (30) days after service of the notice, the person enforcing this by-law may rectify the default and may take appropriate proceedings under Part IX of the Provincial Offences Act to recover the proportionate share of the cost of the work from the defaulting person.

By-law read a first, second and third time and finally passed this twenty-eighth day of July, 1997.

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## **Line (Division) Fence By-law Procedure For Enforcement**

### **Step 1: Attempt to reach agreement:**

Attempt to come to agreement with your neighbour regarding the type and cost sharing of a division fence. If an agreement is not reached, proceed to Step 2.

### **Step 2: No agreement, proceed per by-law:**

You do not need a lawyer to proceed further, but you may choose to use a lawyer or paralegal to ensure compliance with the by-law. Send a notice (can be a letter) by registered mail to your neighbour, at least 14 days prior to commencing work or signing a contract for the fence, advising of your intention to build (or repair) the division fence. It would be helpful for the notice to include a copy of the by-law and a breakdown of the costs of the fence (including copies of any estimates) and a request for payment calculated as set out in the by-law. Whether or not your neighbour makes payment, you may proceed to build the fence upon the expiration of the 14 day period. You will have to pay the person who builds the fence, and then proceed to Step 3.

### **Step 3: Recovering the costs of building the fence:**

If your neighbour does not pay within 90 days of completion of the fence, you must serve him/her with another notice (again, it can be a letter), by registered mail, requiring your neighbour to comply with the by-law. This notice should again set out the provisions of the by-law, a breakdown of the costs of the fence (including copies of invoices/estimates) and conclude with a request for payment within 30 days of receipt of the notice. The notice must also state that if the payment is not received within 30 days, you may take appropriate proceedings under Part IX of the Provincial Offences Act to recover the proportionate share of the cost of the work from the defaulting person. If payment is received, the matter is at an end. If payment is not received, you may elect to proceed to Step 4.

### **Step 4: No payment, obtaining court order:**

Attend at the court located at 605 Rossland Road East, Whitby, and complete a Statement which you will sign in front of a Justice of the Peace. This Statement will briefly set out the facts. It concludes with a request that the court make an Order that your neighbour pay his/her proportionate share of the cost of the work. The Police will serve the Statement on your neighbour, together with a Summons to appear in court. Proceed to Step 5.

### **Step 5: Your court date:**

On the court date, your neighbour (defaulting person) will be asked if he/she wishes to dispute the making of the Order. If he/she does, a "trial" will be held. You will have to prove that you correctly followed the procedural steps in the by-law. In that event, the Order will be granted and your neighbour (defaulting person) will be given a certain amount of time to pay. There is no "defence" as long as the steps in the by-law are followed. When payment is made, the matter is at an end. If payment is not made, you may elect to proceed to Step 6.

### **Step 6: Enforcing your court order if no payment:**

Other than your time, there are no costs involved in all of the steps leading up to Step 6. In the rare instance when your neighbour continues to default in his/her obligations under the by-law and subsequently defaults in payment pursuant to a court Order, you can enforce the court Order by (for example) garnisheeing wages, or instructing a bailiff to seize assets. To do this, you obtain a "Certificate of Default" from the court at 605 Rossland Road East, Whitby, and file it with the Small Claims Court at 150 Bond Street East, Oshawa. There are small fees involved when embarking on enforcement through the Small Claims Court, however, these costs are added to the debt that is recoverable from your neighbour. The court administrative staff at the Small Claims Court at 150 Bond Street East, Oshawa, cannot give legal advice, but they are very helpful in the event you need procedural assistance with any step in the process.