



THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY

BY-LAW NUMBER 2019-129

Being a By-law to Determine the Appointment of Costs of Division Fence

WHEREAS Section 11 (3) 7 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a lower-tier **Town** may pass by-laws respecting structures, including fences and signs;

AND WHEREAS Section 98 (1) and (2) of the Municipal Act, provides that a by-law may be passed by a municipality stating that the Line Fence Act, R.S.O., Ch. L. 17, as amended does not apply to all or part of the **Town**, subject to the continuing applicability of Section 20 of the Line Fence Act;

AND WHEREAS it is deemed expedient to exclude the Town from the provisions of the Line Fences Act, R.S.O., Ch. L. 17, as amended;

NOW THEREFORE, the Council of the Corporation of the Town of East Gwillimbury enacts as follows:

1.0 DEFINITIONS

1.1 In this by-law:

- (a) “**Act**” means the Line Fences Act, R.S.O. 1990, c. L.17, as amended.
- (b) “**Actual Cost**” means the total of the construction, replacement, maintenance or repair of a **Division Fence** and includes the value of the materials used and the value of the labour performed to complete the work.
- (c) “**Adjoining Owner**” means the person who owns the land abutting the land of an **Owner** who wants to build a **Division Fence**.
- (d) “**Basic Cost**” means the total cost of construction, replacement, maintenance or repair (as applicable) of a four (4) foot high, 1-1/2 inch mesh, steel chain link fence.
- (e) “**Division Fence**” means a fence marking the boundary between adjoining parcels of land.
- (f) “**Town**” means The Corporation of the Town of East Gwillimbury.

(g) "**Owner**" means:

1. the registered **Owner** of the land and/or;
2. 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 the purposes of cost allocation.

(h) "**Public Highway**" means lands owned by the **Town** and designated as a common and **Public Highway**, including any street, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.

(i) "**Public Authority**" means the federal or provincial government, crown agents, school boards and regional municipalities to whom the context can apply but specifically excludes the **Town**.

(j) "**Unopened Road Allowance**" means lands owned by the **Town** but which are not designated as a **Public Highway** by the enactment of a by-law.

2.0 APPLICABILITY

2.1 From and after the date of enactment of this by-law, the provisions of the **Act**, except for Section 20 of the **Act**, shall no longer apply in the **Town**.

2.2 The provisions of this by-law do not apply in the following circumstances:

- a) To any lands that constitute a **Public Highway**, including lands abutting a **Public Highway** that are held as a reserve by a **Town** or other **Public Authority** to separate lands abutting the reserve from the **Public Highway**, or to lands that are being held by a **Town** or other **Public Authority** as an unopened road allowance or for future **Public Highway** purposes; or
- b) Where an **Owner** has initiated proceeding under the **Act**.

3.0 GENERAL PROVISIONS

3.1 An **Owner** of land may construct, replace, repair and maintain a **Division Fence**.

3.2 Where the **Owners** of adjoining lands are in agreement or are able to reach an agreement on the details of construction or maintenance of a **Division Fence**, each of them shall construct or maintain a reasonable portion of the **Division Fence**, or shall bear such proportion of the cost of any work required in connection with the construction or maintenance thereof, as is provided for in an

agreement between the **Owners**, regardless of any provision to the contrary in this by-law.

- 3.3 Where the **Owners** of abutting lands cannot agree or reach an agreement as referred to in Subsection 3.2 of this by-law, the **Owner** desiring to construct or maintain a **Division Fence** may do so subject to the following requirements:
- a) The **Owner** must deliver a Notice of Intent to the **Adjoining Owner** by registered mail, advising of the **Owner's** intent to construct or maintain the **Division Fence**;
 - b) The Notice of Intent must contain at a minimum, the following information:
 - i. A copy of three (3) written quotes for the **Actual Cost** or **Basic Cost** for the fencing work to be undertaken; and
 - ii. A paragraph stating that the construction or maintenance of the **Division Fence** will commence fourteen (14) business days after the date of mailing of the Notice of Intent and the **Owner** may seek a contributory payment for the work to the **Division Fence** from the **Adjoining Owner** in accordance with this by-law; and
 - iii. A further paragraph stating that the **Adjoining Owner** may obtain three (3) additional quotes for presentation to the **Owner** no later than ten (10) business days from the date of mailing of the Notice of Intent; and
 - iv. A complete copy of the by-law must be attached to the Notice of Intent.
- 3.4 Unless otherwise agreed, the **Actual Cost** for the construction of a **Division Fence** shall be paid 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, having considered all the fencing quotes exchanged; and
 - c) the **Owner** desiring to construct or replace the **Division Fence** shall pay the balance of the **Actual Cost**.
- 3.5 Where a declaration has been registered under the Condominium Act, R.S.O. 1990, C.26 as may be amended from time to time, the condominium corporation and not the **Owners** of the individual units shall be deemed to be the **Adjoining Owner** of the land described in the declaration for the purpose of this by-law and,
- a) Any payment that the condominium corporation may be responsible for under this by-law, is a common expense for the purposes of the Condominium Act; and

- b) Any payment to be made to the condominium corporation under this Act is an asset of the condominium corporation.
- 3.6 In cases where the cost of replacement/maintenance/repair of an existing **Division Fence** is in dispute, the cost shall be apportioned 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 lesser, having considered all the fencing quotes exchanged, and
 - b) The **Owner** shall pay the balance of the **Actual Cost**.
- 3.7 Once a fence has been erected, the cost of repairs or maintenance to the **Division Fence** shall be borne equally by the **Owner** and the **Adjoining Owner**, in accordance with Section 3.6, save and except for the following exceptions:
- a) The cost of repairs to a **Division Fence** shall be borne by the **Owner** if the **Owner** invitees caused the damage necessitating the repair.
 - b) The cost of repairs to a **Division Fence** shall be borne by the **Adjoining Owner** if the **Adjoining Owner** or his/her invitees caused the damage necessitating the repair.
 - c) The cost of repairs to the **Division Fence** shall be borne equally by the **Owner** and the **Adjoining Owner** if the damage necessitating the repair was caused by natural disaster or ordinary wear and tear.
 - d) If a tree is displaced by accident, carelessness, negligence, deliberate intent or otherwise, so as to cause damage to a **Division Fence**, the **Owner** of the land on which the tree stood shall, as his/her sole expense, remove the tree and repair the fence.
- 3.8 Where the **Town** is the **Adjoining Owner** of lands other than lands as described in Subsection 2.2 of this by-law, the cost of construction, replacement, repair or maintenance of a **Division Fence** shall be assigned as follows:
- a) The **Owner** shall pay ninety-five (95%) of the cost of work; and
 - b) The **Town** shall pay five (5%) of the cost of the work.
- 3.9 Compliance with this by-law does not exempt an **Owner** or the **Adjoining Owner** from the requirement to comply with the **Town Fence By-law** or **Pool Enclosure By-law**, as amended from time to time.

4.0 ENFORCEMENT

4.1 Any **Owner** desiring to enforce the provisions of this by-law shall, within ninety days (90) after completion of the construction of the **Division Fence**, serve or cause to be served on the **Adjoining Owner** a Notice of Compliance by registered mail requiring that the **Adjoining Owner** comply with this by-law by means of payment of that **Adjoining Owner's** portion of the **Basic Cost** and if such compliance does not take place within thirty (30) days after service of the notice, the **Owner** may take appropriate proceedings under Part IX of the Provincial Offences Act, R.S.O. 1990, c.33, as may be amended from time to time, for an order to recover the proportionate share of the cost of the work from the **Adjoining Owner**.

5.0 SEVERABILITY

5.1 Should any provision of this by-law be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this by-law as a whole or any other part thereof, other than the provision declared to be invalid.

6.0 SHORT TITLE

6.1 This by-law may be cited as the "Division Fence By-law".

7.0 REPEALING SECTION

7.1 By-law No. 99-82 is hereby repealed.

8.0 FORCE AND EFFECT

8.1 That this by-law shall come into force and effect on the date it is passed.

ENACTED AND PASSED this 5th day of November, 2019.

Virginia Hackson, Mayor

Fernando Lamanna, Municipal Clerk

**PROCEDURES FOR
THE DIVISION FENCE BY-LAW
BY-LAW NUMBER 2019-129**

STEP 1: ATTEMPT TO REACH AN AGREEMENT

Attempt to arrive at an agreement with the adjacent owner regarding the type and cost sharing of a division fence. It is suggested that every attempt (more than one contact, and preferably in person) be made prior to proceeding to Step 2.

**STEP 2: NO AGREEMENT – PROCEED AS PER SECTION 3.3 OF BY-LAW
NUMBER 2019-129**

Send a Notice of Intent by registered mail (a sample letter is attached to these procedures). It is suggested that you also send a copy of the Notice of Intent by regular mail or personal delivery to ensure it is received by the adjacent owner at least fourteen (14) business days prior to commencing work or signing a contract. The Notice of Intent must contain, at the minimum, the following information:

1. A copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken; and
2. A paragraph stating that “the construction or maintenance of the division fence will commence fourteen (14) business days after the date of mailing of this Notice of Intent and the owner may seek a contributory payment for the work to the division fence from the adjoining owner in accordance with By-law No. 2019-129; and
3. A further paragraph stating that the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten (10) business days from the date of mailing the Notice of Intent; and
4. A complete copy of the By-Law No. 2019-129.

If the adjacent owner makes no contact and/or does not make payment, you may proceed to build the fence upon the expiration of the fourteen (14) business day period. The fence contractor will have to be paid by you, the owner. You may then proceed to Step 3.

Note: When the cost of construction or maintenance is in dispute, the cost of a division fence shall be apportioned as follows:

- a) The adjoining owner (person to whom the Notice of Intent is sent) shall pay fifty percent (50%) of the basic cost* or fifty percent (50%) of the actual cost, whichever is the lesser, having considered all the fencing quotes exchanged; and

b) The owner desiring to construct or replace the division fence shall pay the balance of the actual cost.

* Basic cost means the total cost of construction, maintenance or repair, as applicable, of a four (4) foot high, 1 1/2 inch mesh, steel chain link fence.

STEP 3: RECOVERING THE COST OF BUILDING THE FENCE (Section 4.1 of By-law Number 2019-129)

If the adjacent owner fails to pay within 90 days of completion of the fence, you must serve him with a Notice of Compliance by registered mail and regular mail or personal delivery, requiring him to comply with the by-law (a sample letter is attached to these procedures). This Notice of Compliance should again set out the provisions of the by-law and a breakdown of the costs of the fence (including copies of invoices/estimates/quotes), and must conclude with a request for payment within thirty (30) days of receipt of the Notice of Compliance.

The Notice of Compliance must also state that if the payment is not received within thirty (30) days, you may 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 proceed to Step 4.

STEP 4: INITIATING A PROSECUTION TO RECOVER PROPORTIONATE SHARE OF COST OF FENCE

If Step 3 is unsuccessful, you may proceed to initiate a prosecution to recover the proportionate share of the cost of the fence. If you are not familiar with the court process and the rules of evidence, then you may consider obtaining legal advice to assist in proceeding with the issuance and prosecution of a charge under the By-Law.

The following is a summary of the process.

1. Compile evidence to support the charge that payment has not been received from the adjacent landowner (Defendant). You will have to prove that you correctly followed the steps set out in By-Law No. 2019-129. Examples of Evidence may include, but are not limited to:
 - a) A certified copy of the Division Fence By-Law 2019-129. You may obtain a copy from the Clerks Department of the Town of East Gwillimbury, located at 19000 Leslie Street, Sharon.
 - b) A copy of the Notice of Intent (Letter #1);
 - c) A copy of the Notice of Compliance (Letter #2);

- d) Quotes obtained for construction of the fence;
 - e) Photographs detailing completion of the work; and
 - f) A certified Tax Assessment Roll (to prove ownership of the property). You may obtain a copy from the Finance Department of the Town of East Gwillimbury, located at 19000 Leslie Street, Sharon.
2. Attend at The Region of York Provincial Offences Court located at the Region of York Provincial Offences Court in the Tannery Mall, 465 Davis Drive, 2nd Floor, Newmarket, Ontario and obtain an Information (charging document) and Summons Package.
 3. Prepare Information and Summons setting out information such as:
 - a) The Defendant's name (name of the adjoining property owner);
 - b) The offence location (address of adjoining property owner) and offence date;
 - c) The by-law number, including the specific sections contravened, and a description of the contravention under the By-Law;
 - d) The Court room and Court Location the summons is returnable to for the first court appearance by the Informant (you) and the Defendant (adjoining property owner).

The charge is to be made returnable to:

Court # T2 at 1:30 p.m.
The Region of York Provincial Offences Court
The Tannery Mall
465 Davis Drive, 2nd Floor
Newmarket, Ontario
On Fridays – Check availability with the court office

4. Attend the Region of York Provincial Offences Court in the Tannery Mall, 465 Davis Drive, 2nd Floor, Newmarket, Ontario and appear before a Justice of the Peace to swear to the contents set out in the Information/Summons.
5. Return the Summons signed by the Justice of the Peace to the Provincial Offences Court in the Tannery Mall, 465 Davis Drive, 2nd Floor, Newmarket, Ontario. Court staff will arrange for York Regional Police to serve the summons on the Defendant, as service of the summons must be done by a Provincial Offences Officer.

6. Attend Court on the date and time noted on the summons (the first court appearance date). You and the defendant (adjoining property owner) will be required to address the Justice of the Peace presiding in court who will make inquiries as to how the Defendant intends to proceed.
7. If the defendant (adjoining property owner) enters a guilty plea, you will be required to provide the court with certain facts of the by-law contravention and submissions as to the penalty (fine amount) you wish the court to impose.
8. If the Defendant (adjoining property owner) intends to plead not guilty, the court will schedule a Date, Time and Court Room for a Pre-trial to be heard. At the Pre-Trial, a Justice of the Peace will make inquiries + of both parties (the Informant and Defendant) to determine:
 - a) The amount of time required to be set aside for the trial;
 - b) The number of witnesses anticipated to testify;
 - c) The length of time required for the trial; and
 - d) The agreed facts and any issues regarding disclosure (information to be provided by the Informant to the Defendant upon request, such as: copies of all relevant evidence on which the Informant intends to reply, including witness statements, photographs, documentary evidence, etc.).

The Justice of the Peace will then set a Trial date, Time and Court Room for the Trail to be heard.

9. On the Trail Date:
 - a) Attend Court with your witnesses (witnesses must attend in person as their evidence CANNOT be introduced via a signed statement) and all other evidence.
 - b) Present your evidence and call your witnesses to testify.
 - c) The defendant has the right to question any witnesses who testify on your behalf.
 - d) After you have presented your evidence, the Defendant has the opportunity to present evidence and witnesses but is not required to do so.
10. After hearing all of the evidence, the Justice of the Peace will ask both the Informant and the Defendant for submissions. This is an opportunity for both parties to summarize their positions and reasons why a conviction should or should not be entered.

11. After hearing all of the submissions, the Justice of the Peace will render a ruling, either a conviction against the Defendant, or dismissing the charge.
12. If a conviction is entered, the Court will ask the Informant and then the Defendant for submissions as to the penalty they feel the court ought to impose.

SAMPLE LETTER #1
LETTER TO ADJOINING PROPERTY OWNER
IN ACCORDANCE WITH DIVISION FENCE BY-LAW
NUMBER 2019-129

NOTICE OF INTENT

Date:

To:

Dear:

RE: Notice of Intent
Proposed Fence Between.....

As you are aware, it is our desire to construct a boundary or division fence between your property and ours. We have expressed this intent to you on several occasions. To date, we have been unable to reach a satisfactory agreement regarding our sharing the cost of the proposed fence.

Notwithstanding the lack of agreement, we would like to go ahead with the construction of the fence in accordance with the Town of East Gwillimbury's Division Fence By-Law Number 2019-129, a copy of which is enclosed for your information. Also enclosed are three quotes for the construction of [describe the type of fence, height, length, etc.] The proposed fence complies with the Town's Zoning By-Law as well as the Fence By-Law Number 2019-130 with respect to height.

The Construction of the fence, in accordance with the lowest quote received, will commence on [insert date – fourteen (14) business days from the date of this notice]. You may also obtain three (3) further quotes and provide us with a copy of them not later than ten (10) business days from the date of this Notice of Intent and we can then discuss all of the quotes before making a decision. If we do not hear from you prior to the expiration of the fourteen (14) business day period, we will go ahead with the construction of the proposed fence.

We look forward to reaching an amicable agreement.

Yours truly,

SAMPLE LETTER #2
LETTER TO ADJOINING PROPERTY OWNER
IN ACCORDANCE WITH DIVISION FENCE BY-LAW
NUMBER 2019-129

NOTICE OF COMPLIANCE

Date:

To:

Dear:

RE: Notice of Compliance with Town of East Gwillimbury's Division Fence By-Law
Number 2019-129

Further to our letter of [insert date], construction of the boundary or division fence between our properties was completed on [insert date].

The Town of East Gwillimbury's Division Fence By-Law Number 2019-129, a copy of which was previously provided to you, requires that the basic cost of a division fence be shared between the property owners.

As appointed out in our previous letter, the fence was constructed in accordance with the lowest of the three (3) quotes received. Enclosed is a copy of the invoice for a total of \$[insert amount]. Your share of the cost is \$[insert amount]. Please provide payment of this amount to us not later than [insert date – 30 days from date of Notice of Compliance]. If payment is not received within this time frame, we will proceed to recover your share of the cost through legal action.

We sincerely hope it will not be necessary to proceed further.

Yours truly,