



## 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 5<sup>th</sup> day of November, 2019.

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Virginia Hackson, Mayor

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Fernando Lamanna, Municipal Clerk