

# Office Consolidation of By-Law 2011-045



The Corporation of the  
Municipality of Clarington

By-Law 2011-045

Being a by-law to provide for the apportionment of costs of Division Fences

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Passed, by Council, on: April 11, 2011

Consolidated as of: July 5, 2016

Amendments:

Amending By-Law	Date	Amendment Details
2016-060	July 4, 2016	Amend Section 6.2(a) regarding basic cost.

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# Office Consolidation of By-Law 2011-045

## THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

### BY-LAW NUMBER 2011-045 AS AMENDED

Being a by-law to provide for the apportionment of costs of Division Fences.

WHEREAS the Municipal Act 2001 S.O 2001 c 25 as amended allows a municipality to pass by-laws with regard to structures including fences and signs;

WHEREAS the Line Fences Act RSO 1990 c L17 exempts a Municipality from the arbitration requirements of the Fence Viewing process where a municipal by-law stipulating a cost sharing mechanism is in place,

Now Therefore the Council of the Corporation of the Municipality of Clarington Enacts as Follows:

## **1.0 Short Title**

This By-law may be cited as the Fence Cost Sharing By-law.

## **2.0 Definitions**

In this by-law:

“Actual Cost” means the total cost of the construction of a Division Fence and includes the cost of the material used and the value of the labour performed to complete the work.

“Adjoining Owner” means the person who owns land adjacent to land of an Owner.

“Agricultural Fence” means fencing constructed along the boundary line of any Agriculturally zoned land, being actively used for agricultural purposes and shall consist of 8 strand page wire fencing 106.7 cm (42 inches) tall.

“Basic Cost” means the cost of constructing:

- i. An Agricultural fence; or
- ii. A residential fence.

“Construct” means to build from new where there was no pre-existing Division Fence.

“Division Fence” means a fence marking the boundary between adjoining parcels of land not under common ownership.

“Municipality” means the Corporation of the Municipality of Clarington.

“Owner” means the owner of land who initiates procedures pursuant to the by-law to install and apportion the costs of a Division Fence and includes the person managing or receiving the rent for the land or premises whether on his own account or as agent or trustee for the Owner.

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“Reconstruct” means to replace an existing Division Fence that is not in a good state of repair using the same materials and building to the style as the existing Division Fence.

“Repair” means to restore an existing Division Fence to its original State of Good Repair.

“Residential Fence” means a 1.2 metre (4 foot) high steel chain link fence erected on Residential property which:

- i has a diamond mesh not greater than 50 mm (2 inches);
- ii is constructed of galvanized steel wire not less than 9 gauge or steel wire covered with vinyl forming a total thickness equivalent to 9 gauge galvanized wire;
- iii is supported by at least 48 mm (1.88 inch) diameter galvanized steel posts encased in a minimum of 50 mm (2 inches) of concrete from grade to a minimum of 1 metre (39 inches) below grade such posts to be spaced not more than 3 metres (10 feet) apart; and
- iv top and bottom horizontal rails of 35 mm (1.37 inches) minimum galvanized steel except that a minimum 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail.

“State of Good Repair” means for the purposes of this By-law:

- i the fence is complete and in a structurally sound condition, plumb and securely anchored;
- ii protected by weather resistant materials;
- iii fence components are not broken, rusted, rotten or in a hazardous condition;
- iv all stained or painted fences are maintained free of peeling; and
- v that the fence does not present an unsightly appearance deleterious to abutting land or to the neighbourhood.

“Upgrade” means to raise an existing Division Fence to a higher standard of greater value or quality of materials.

“Work” means to construct, repair or maintain a Division Fence and shall include all costs for labour and material.

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## **3.0 Exemptions**

3.1 This By-law does not apply to:

- (a) any land that constitutes a public highway including land abutting a public highway that is held as a reserve by the Municipality or other public authority to separate land from the highway or to land that is being held by the Municipality or other public authority as an unopened road allowance or for future public highway purposes;
- (b) an owner wishing to upgrade an existing Division Fence that is in a state of good repair;
- (c) the construction of any fence that is intentionally not constructed on the boundary line of the property; or
- (d) any person that is under a legal requirement either by an Act, Regulation, By-law or any other legislation to erect and maintain a Division Fence.

## **4.0 Right to Construct, Reconstruct Or Repair**

4.1 An Owner of land may construct, reconstruct and repair a Division Fence to mark the boundary of his or her property.

## **5.0 Written Agreement**

5.1 Where the Adjoining Owner has agreed in writing to the construction, reconstruction, repair or upgrade of a Division Fence each owner shall be responsible for fifty(50) percent of the actual cost of the work unless otherwise provided for in the written agreement.

5.2 A written agreement shall be signed by both parties and each party shall retain a copy of the agreement.

## **6.0 No Written Agreement**

6.1 Where the adjoining owner has not agreed in writing to the construction, reconstruction or repair of a Division Fence, the 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 or her 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. The fourteen (14) day notice period shall commence on the date following the day the notice is mailed.

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This notice shall include the following items:

- (a) a date for beginning the work to be undertaken;
- (b) a complete breakdown of the costs of the fence;
- (c) any estimates received for the cost of the fence; and
- (d) a request for payment based on the average cost of three separate quotes for the construction cost.

6.2 Where the Adjoining Owner has not agreed in writing to the construction of a Division Fence, the Basic Cost for the work shall be paid as follows:

- (a) the Adjoining Owner shall pay fifty (50) percent of the cost or fifty (50) percent of the Actual Cost whichever is less, based on the average cost of three separate construction quotes obtained prior to the commencement of construction by either party and presented to both parties; and
- (b) the Owner shall pay the balance of the Actual Cost.

6.3 Where the Adjoining Owner has not agreed in writing to the reconstruction or repair of a Division Fence each owner shall be responsible for

- (a) fifty (50) percent of the actual cost of the work, based on the average cost of three separate quotes construction obtained prior to the commencement of construction obtained by either part and presented to both parties, where both parties have agreed to the height, style and cost of the existing fence; or
- (b) fifty (50) percent of the cost of repairing or reconstructing a Basic Fence, based on the average cost of three separate construction quotes obtained prior to the commencement of construction either party and presented to both parties, where there has been no prior agreement for the construction of the fence.

6.4 Where the Adjoining Owner has not agreed in writing to the upgrade of an existing Division Fence but the owner is under a legal requirement to upgrade the existing Division Fence then the existing Division Fence will be upgraded and all costs shall be borne by the Owner.

## **7.0 General Provisions**

7.1 The provisions of this By-law shall only apply prior to the commencement of any work and cannot be used retroactively for previously completed work.

7.2 Notwithstanding any other provision of the By-law, where either property forms part of an active farming operation on Agriculturally zoned land, the minimum requirement for cost share for the purposes of Section 6 shall be based on the construction of an Agricultural Fence as defined in Section 2 of this By-law.

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- 7.3 Where a non-Agricultural property abuts an Agricultural property the standard for fencing along the common boundary line between the two properties shall be the Agricultural standard. The remainder of the Residential or non-Agricultural property may be fenced to the Residential standard.
- 7.4 Unless otherwise agreed, the cost for the work shall be paid within thirty (30) days of completion of the work.
- 7.5 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 work, 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 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 and additional costs of rectifying the default from the defaulting person.
- 7.6 Any Division Fence constructed, reconstructed or repaired pursuant to the provisions of this By-law shall comply with the provisions of the Municipality's Fencing By-laws.
- 7.7 Except as provided in section 3.1 this By-law shall bind the Municipality.
- 7.8 Where an Owner wishes to construct, reconstruct or repair a Division Fence on property bordering Municipally owned lands, other than those listed in section 3.1, the Director of Operations shall represent the Municipality's interests in the matter.
- 7.9 Unless specifically agreed to by both parties, only new material shall be used in the construction or reconstruction of a Division Fence.
- 7.10 The provisions of this By-law shall not supersede any fencing restrictions or conditions as set out in a Site Plan Agreement or Development Agreement.

### **8.0 Heritage Properties**

- 8.1 Any Division Fence constructed, reconstructed or repaired within an area designated as a Heritage Conservation District pursuant to Part V or for a heritage property pursuant to Part IV of the Ontario Heritage Act is subject to the requirements outlined in the designating by-law.

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## **9.0 Validity**

- 9.1 If a Court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of the By law shall be valid and shall remain in force.
- 9.2 This By-law shall come into full force and effect upon the date of its passage.

NOTE: Original by-law signed.