

THE CORPORATION OF THE TOWN OF AJAX

BY-LAW NUMBER 126-2006

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.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AJAX HEREBY ENACTS AS FOLLOWS:

1. SHORT TITLE

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

2. DEFINITIONS

2.1 In this by-law:

- (a) "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.
- (b) "Adjoining Owner" means the person who owns land adjacent to land of an Owner.
- (c) "basic cost" means the cost of constructing 1.2 metre (4 foot) high steel chain link fence which:
 - (i) "has a diamond mesh not greater than 38mm (1 ½ inches);
 - (ii) is constructed of galvanized steel wire not less than 11 gauge or steel wire covered with vinyl forming a total thickness equivalent to 11 gauge galvanized wire;
 - (iii) is supported by at least 38mm (1 ½ inch) diameter galvanized steel posts encased in a minimum of 50mm (2 inches) of concrete from grade to a minimum of .6 metres(2 feet) below grade; such posts to be spaced not more than 3 metres(10 feet) apart; and
 - (iv) top and bottom horizontal rails of 32mm (1 ¼ inch) minimum galvanized steel (except that a minimum 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail).
- (d) "construct" means to build from new where no existing division fence was existing;
- (e) "division fence" means a fence marking the boundary between adjoining parcels of land, not under common ownership.
- (f) "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.

- (g) “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;
- (h) “repair” means to restore an existing division fence to its original state of good repair;
- (i) “state of good repair” means for the purposes of this by-law:
 - (i) the fence is complete and in a structurally sound condition and 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.
- (j) “Town” means The Corporation of the Town of Ajax.
- (k) “upgrade” means to raise an existing division fence to a higher standard, greater value, or quality of materials; and
- (l) “work” means to construct a division fence.

3. 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 Town or other public authority to separate land from the highway, or to land that is being held by the Town or other public authority as an unopened road allowance or for future public highway purposes;
- (b) any lands in the Town zoned Agricultural as defined by Zoning By-laws of the municipality;
- (c) an owner wishing to upgrade an existing division fence that is in a state of good repair; and
- (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. RIGHT TO CONSTRUCT, RECONSTRUCT OR REPAIR

4.1 An Owner of land may construct, reconstruct, and repair a division fence.

5. 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 percent of the actual cost of the work, unless otherwise provided for in the written agreement.

6. 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. This notice may include items such as;
- (a) a copy of the Cost Sharing By-law;
 - (b) a date for beginning the work to be undertaken
 - (c) A complete breakdown of the costs of the fence;
 - (d) Any estimates received for the cost of the fence; and
 - (e) A request for payment calculated as set out in the by-law.
- 6.2 Where the Adjoining Owner has not agreed in writing, to the construction of a division fence, the cost for the work 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 less; 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 fifty percent of the actual cost of the work.
- 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.

7. GENERAL PROVISIONS

- 7.1 Unless otherwise agreed, the cost for the work shall be paid within 30 days of completion of the work.
- 7.2 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 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 and additional costs of rectifying the default from the defaulting person.
- 7.3 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-law(s).

8. HERITAGE CONSERVATION DISTRICT

- 8.1 Any division fence constructed, reconstructed 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 of obtaining a permit pursuant to such legislation.

9. 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.

10. REPEAL OF BY-LAW

- 10.1 By-law Number 42-2000 is hereby repealed.

Read a first and second time this
Twenty Fifth day of September, 2006

Read a third time and passed this
Twenty Fifth day of September, 2006.

Mayor

Clerk