



THE CORPORATION OF THE TOWN OF ERIN

By-Law # 19 – 14

A By-law to determine cost-sharing for division fences

Whereas, pursuant to Subsection 98(1) of the Municipal Act, 2001, a local municipality may provide that the Line Fences Act does not apply to all or any part of the municipality; and

And Whereas, paragraph 7 of Subsection 11(3) of the Municipal Act, 2001 provides that a lower-tier municipality may enact by-laws respecting structures, including fences;

The Council of the Corporation of the Town of Erin 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:

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*.

basic cost means the cost of constructing a 1.2 metre (4 foot) high steel chain link fence which:

- a. has a diamond mesh not greater than 38mm (1 ½ inches);
- b. 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;
- c. 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 1.2 metres (4 feet) below grade; such posts to be spaced not more than 3 metres (10 feet) apart; and
- d. top and bottom horizontal rails of 32mm (1 1/4 inch) minimum galvanized steel (except that a minimum 9 gauge galvanized steel wire may be substituted for the bottom horizontal steel rail).

construct means to build from new where no existing *division fence* was existing;

division fence means a *fence* marking the boundary between adjoining parcels of land, not under common ownership;

expense means the cost of carrying out the *work* to be done pursuant to section 7.4, including the cost of hiring the services of a security company and/or Police Services (if required), and an administration charge as outlined in the *Town Fees and Charges By-law*;

fence includes but not limited to a railing, wall, hedge, line of posts, shrubs, wire, gate, boards or other similar items, used to enclose or divide in whole or in part a yard or other land or to establish a property boundary, but does not include a privacy screen;

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;

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 same style as the existing *division fence*;

repair means to restore an existing *division fence* to its original *state of good repair*;

state of good repair means for the purposes of this By-law:

- a. the *fence* is complete and in a structurally sound condition, plumb and securely anchored;
- b. protected by weather-resistant materials;
- c. *fence* components are not broken, rusted, rotten or in a hazardous condition;
- d. all stained or painted *fences* are maintained free of peeling; and
- e. the *fence* does not present an unsightly appearance that is out of character to abutting land or to the neighbourhood

Town means The Corporation of the *Town* of Erin;

upgrade means to raise an existing *division fence* to a higher standard, greater value, or quality of materials; and

work means to *construct a division fence*.

3. References to Legislation

3.1. In this By-law, reference to any Act, regulation or By-law is reference to that Act, regulation or By-law as it is amended or re-enacted from time to time.

4. Exemptions

4.1. This By-law does not apply to:

- a. the construction of any fence that is intentionally not constructed on the boundary line of the property;
- b. 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;
- c. any lands in the *Town* zoned Agricultural as defined by Zoning By-laws of the *Town* that are equal to or larger than 1 hectare;
- 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;
- e. an *owner* wishing to *upgrade* an existing *Division Fence* that is in a state of good repair; or
- f. any noise barriers located on public lands.

5. Right to Construct, Reconstruct, Repair or Upgrade

5.1. An *Owner* of land may *construct, reconstruct, repair* or *upgrade a division fence* in accordance with an Act, Regulation, By-law, or any other legislation regarding *fence construction* in the *Town*.

6. Written Agreement

6.1. 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.

7. No Written Agreement

- 7.1. 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 this by-law.
- 7.2. 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*.
- 7.3. 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.
- 7.4. Where the *adjoining owner* has not agreed in writing, to the *upgrade* of an existing *division fence*, but the *owner* still proceeds with the upgrade, the entire cost of the *upgrade* shall be at the *expense* of the *owner*.
- 7.5. Where the *adjoining owner* has not agreed in writing to the *upgrade or repair* of an existing *division fence* but the *owner* is under a legal requirement to *upgrade or repair* the existing *division fence* then the existing *division fence* will be *upgraded or repaired* and all costs shall be borne by the *owner*.

8. General Provision

- 8.1. 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 unless agreed upon in writing between the *owner* and *adjoining owner*.
- 8.2. Unless otherwise agreed, the cost for the *work* shall be paid within 30 days of completion of the work.
- 8.3. Any *division fence* constructed, *reconstructed* or repaired pursuant to the provisions of this by-law shall comply with the provisions of any Act, Regulation, By-law, or any other legislation regarding *fence construction* in the *Town*.
- 8.4. Where an *Owner* and *Adjoining Owner* are in default of their obligations pursuant to the *Town's Property Standards By-law*, the *Town* may cause the *fence* to be repaired and/or replaced accordingly. The *Town* shall be entitled to recover the *expense* incurred from completing the required *work* by placing fifty percent (50%) of the entire *expense* as municipal real property taxes on both the properties of the *Owner* and *Adjoining Owner*.
- 8.5. The provision of this By-law shall not supersede any fencing restrictions, requirements or condition as set out in a Site Plan Agreement, Condominium, Subdivision and or Development Agreement.

9. Heritage Properties

9.1. Any division fence constructed, reconstructed or repaired on a property pursuant to Part IV of the Ontario Heritage Act is subject to the requirements outlined in the designated By-law.

10. Enforcement

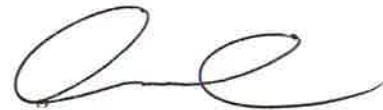
10.1. Where an *owner* or *adjoining owner* is in default of their obligations under this By-law, the person desiring to enforce the provision of this By-law shall, within ninety (90) days after the completion of the *construction* of the *division fence*, serve or cause to be served on the defaulting person a notice by registered mail requiring compliance with this By-law, and if such compliance does not take place within thirty (30) days after service of the notice, the person serving the notice may make appropriate proceedings under the Provincial Offences Act to recover the proportionate share of the cost of the work from the defaulting person.

11. Validity

11.1. 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.

11.2. This By-law shall come into full force and effect upon the date of its passage.

Passed in open Council on March 5, 2019.



Mayor, Allan Alls



Deputy Clerk, Lisa Campion