

# THE CORPORATION OF THE CITY OF PICKERING

## BY-LAW NO. 6944/09

Being 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

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; and

WHEREAS the Council of The Corporation of the City of Pickering considers it desirable to pass a by-law to provide for the cost sharing of division fences.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF PICKERING HEREBY ENACTS AS FOLLOWS:

### PART I - INTERPRETATION

#### Definitions

1. In this by-law,

- (a) "actual cost" means the total cost to construct, re-construct, repair or maintain a division fence and includes the value of the materials used and the labour performed to complete the work;
- (b) "adjoining owner" means the person who owns land adjacent to land on which an owner seeks to construct, re-construct, repair or maintain a division fence;
- (c) "basic cost" means the cost to construct a four foot high steel chain link fence that has,
  - (i) 1 ½ inch diamond mesh;
  - (ii) No. 12 gauge galvanized steel wire;
  - (iii) 1 ½ inch diameter galvanized steel support posts encased in 2 inches of concrete above grade to a depth of two feet below grade spaced ten feet apart; and
  - (iv) 1 ¼ inch diameter top and bottom horizontal rails.

- (d) "City" means the geographical area of the City of Pickering or The Corporation of the City of Pickering, as the context requires;
- (e) "construct" means erect, install or locate, and/or cause or permit to be erected, installed or located;
- (f) "division fence" means a fence marking the boundary between adjoining properties;
- (g) "owner" means the person identified in the most recent tax rolls as the owner of a property;
- (h) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (i) "re-construct" means to replace an existing division fence that is not in a state of good repair; and
- (j) "state of good repair" means complete and maintained in a structurally sound condition and securely anchored with components that are not broken, rusted, rotten or in a hazardous condition.

#### References to Legislation

2. 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.

#### Word Usage

3. This by-law shall be read with all changes in gender or number as the context may require.
4. A grammatical variation of a word or expression defined has a corresponding meaning.

#### Construction

5. Unless otherwise specified, reference in this by-law to sections and schedules are to sections and schedules in this by-law.

#### Severability

6. Each section of this by-law is an independent section, and the holding of any section or part of any section of this by-law to be void or ineffective for any

reason shall not be deemed to affect the validity of any other section or parts of sections of this by-law.

## PART II – APPLICATION

### General Application

7. Subject to Section 8, this by-law shall apply to all lands within the City.

### Exemptions

8. This by-law shall not apply to,

- (a) any highway as defined in subsection 1(1) of the *Highway Traffic Act*, including unopened and unassumed road allowances;
- (b) any lands that the City has zoned "Agricultural";
- (c) adjoining owners who have agreed in writing on the apportionment of actual costs;
- (d) an owner who has initiated proceedings under the *Line Fences Act* prior to the date of the passing of this by-law;
- (e) an owner wishing to upgrade an existing fence that is in a state of good repair; or
- (f) any person that is under a legal requirement to erect or maintain a division fence.

9. The *Line Fences Act* shall not apply to any property in the City.

## PART III – COST SHARING

### Right to Construct a Division Fence

10. An owner may construct, re-construct, repair and maintain a division fence to mark the boundary between his property and adjoining properties.

### Construction Cost Sharing

11. Unless otherwise agreed, an adjoining owner shall be responsible for fifty percent of the basic cost or fifty percent of the actual cost, whichever is less, of the

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construction of a division fence, and the owner shall be responsible for the balance of the actual cost.

12. Unless otherwise agreed, an adjoining owner shall be responsible for fifty percent of the actual cost of re-constructing a division fence.

#### Notice of Proposed Construction or Re-Construction

13. (1) An owner desiring to construct a division fence shall first serve or cause to be served upon the adjoining owner a notice of an intention to undertake the work that includes,
- (a) a copy of this by-law;
  - (b) the date the work to be undertaken is planned to commence;
  - (c) copies of three estimates received for the cost of the proposed fence;
  - (d) an estimate of the basic cost of the proposed fence; and
  - (e) a request for payment from the adjoining owner calculated in accordance with this by-law.
- (2) An owner desiring to re-construct a division fence shall first serve or cause to be served upon the adjoining owner a notice of an intention to undertake the work that includes,
- (a) a copy of this by-law;
  - (b) the date the work to be undertaken is planned to commence;
  - (c) copies of three estimates received for the cost of the proposed fence;
  - (d) a request for payment from the adjoining owner calculated in accordance with this by-law.
- (2) Notice under this section shall be served at least fourteen days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken.

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### Repairs and Maintenance

14. Subject to sections 15, 16 and 17, an owner and an adjoining owner shall share equally in the actual cost of repairing and maintaining a division fence such that it is in a state of good repair.
15. An owner shall be responsible for the actual cost of repairs to a division fence if the damage necessitating the repair was caused by the owner or any person for whom the owner is in law responsible.
16. An adjoining owner shall be responsible for the actual cost of repairs to a division fence if the damage necessitating the repair was caused by the adjoining owner or any person for whom the adjoining owner is in law responsible.
17. If a tree is thrown down by accident or otherwise so as to cause damage to a division fence, the owner of the land on which the tree stood shall, at his sole expense, forthwith remove the tree and repair the fence.

### PART IV - ENFORCEMENT

18. Unless otherwise agreed, any amounts owed under this by-law shall be paid within 30 days of completion of the work.
19.
  - (1) Where a person is in default of any obligation under this by-law, an owner may initiate proceedings under Part IX of the *Provincial Offences Act* to recover any monies owed or to obtain an order that the work be undertaken.
  - (2) Prior to initiating proceedings under Part IX of the *Provincial Offences Act*, an owner shall serve or cause to be served on the defaulting owner a notice setting out the particulars of the default and stating that if the default is not rectified within thirty days after service of the notice, proceedings may be initiated under Part IX of the *Provincial Offences Act*.
  - (3) A notice under subsection (2) shall be served within ninety days of the completion of the construction, re-construction, repair or maintenance of the division fence or other event that gave rise to the default.

### PART V - GENERAL

#### Manner of Notice

20.
  - (1) Notice under either section 13 or 19 may be served by,

- (a) personally delivering it to the adjoining owner; or
  - (b) sending it by registered mail to the adjoining owner at the address of the adjoining owner shown on the last revised assessment roll for the property or the last known address of the adjoining owner.
- (2) Notice shall be deemed to have been effected on the date that the notice is delivered personally or three days after it was mailed, as the case may be.

Fence Construction

- 21. Any division fence constructed or re-constructed shall comply with the provisions of the City's Fence By-law.
- 22. Any division fence constructed or re-constructed within an area designated as a Heritage Conservation District pursuant to Part V of the *Ontario Heritage Act*, is subject to all requirements for obtaining approval pursuant to such Act.

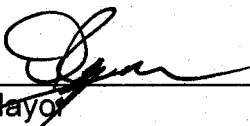
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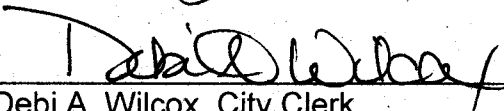
- 23. This by-law may be referred to as the Fence Cost Sharing By-law.

Effective Date

- 24. This by-law shall come into force on the day of its passing.

BY-LAW read a first, second and third time and finally passed this 20<sup>th</sup> day of April, 2009.

  
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David Ryan, Mayor

  
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Debi A. Wilcox, City Clerk