

The Corporation of the Town of Ajax
By-Law Number 37-2017

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) "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 of Ajax Fee By-law;
- (g) "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.
- (h) "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.

- (i) “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;
- (j) “repair” means to restore an existing division fence to its original state of good repair;
- (k) “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 that is out of character to abutting land or to the neighbourhood.
- (l) “Town” means The Corporation of the Town of Ajax.
- (m) “upgrade” means to raise an existing division fence to a higher standard, greater value, or quality of materials; and
- (n) “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) any person that is under a legal requirement, either by an Act, Regulation, Bylaw, or any other legislation, to erect and maintain a division fence.
 - (i) With regard to swimming pool enclosures, section 3.1 (c) shall only apply to the original construction of a swimming pool enclosure.
 - (ii) With regard to the repair or reconstruction of the swimming pool enclosure section 6.3 shall apply.

4. Right To Construct, Reconstruct, Repair, or Upgrade

4.1. An Owner of land may construct, reconstruct, repair or upgrade 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; an
 - (e) a request for payment calculated as set out in this 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 still proceeds with the upgrade, the entire cost of the upgrade shall be at the expense of the Owner.

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 their 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).
- 7.4. 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. Heritage Conservation District

8.1. Any division fence constructed, reconstructed repaired or upgraded 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.

8.2. Any division fence constructed, reconstructed repaired or upgraded on a property designated under Part IV of the Ontario Heritage Act, is subject to all requirements of obtaining permission 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 Bylaw 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 126-2006 is hereby repealed.

Read a first and second time
this Fifteenth day of May, 2017

Read a third time and passed
this Fifteenth day of May, 2017

Steve Parish
Mayor

Alexander Harras
D-Clerk