

CITY OF WATERLOO

BY-LAW NO. 09- 009

Being a by-law to apportion the cost of division fences

WHEREAS section 11(3) 7 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the "Act"), provides that a municipality may pass by-laws respecting structures, including fences and signs;

AND WHEREAS section 98(1) of the Act states that a by-law may be passed providing that the *Line Fences Act*, R.S.O. 1990, c. L.17, as amended (the "*Line Fences Act*"), does not apply to all or any part of the municipality;

AND WHEREAS section 98(2) of the Act states that, despite a by-law passed under section 98(1) of the Act, s. 20 of the *Line Fences Act* continues to apply throughout the municipality;

AND WHEREAS section 26 of the *Line Fences Act* states that the *Line Fences Act*, except section 20, does not apply to land in an area that is subject to a by-law for apportioning the costs of line fences passed under the Act;

NOW THEREFORE the Council of The Corporation of the City of Waterloo enacts as follows:

Definitions

1. In this by-law:
 - (a) "actual cost" means the total cost of the construction, replication, maintenance or repair of a division fence and includes the value of the material used, plus applicable taxes, and the value of the labour performed to complete the work, plus applicable taxes;
 - (b) "adjoining owner" means an owner whose parcel of land abuts a parcel of land whose owner is seeking to construct, replace, maintain or repair a division fence;
 - (c) "basic cost" means the cost of constructing, replacing, maintaining or repairing a four (4) foot high, 1-1/2 inch mesh, steel chain link fence;
 - (d) "City" means The Corporation of the City of Waterloo;
 - (e) "division fence" means a fence marking the boundary between adjoining parcels of land;

- (f) "owner" means:
- (i) the registered owner of the land; or
 - (ii) a person managing or receiving rent for the land;
- and where more than one person is an owner, they shall be considered to be a single owner for the purposes of this by-law.
- (g) "Zoning By-Law" means the relevant Zoning By-Law of the City, as amended.

Application

2. From and after the date this by-law comes into force, the *Line Fences Act*, except for section 20 of the *Line Fences Act*, does not apply to all or any part of the City.
3. This by-law does not apply to:
- (a) any lands that constitute a public highway, including lands abutting a public highway, that are held as a reserve by the City or any other public authority;
 - (b) lands that are being held by the City or any other public authority as an unopened road allowance or for future public highway purposes;
 - (c) swimming pool fences;
 - (d) noise barriers required as part of the development approvals process;
 - (e) fences required at construction sites; and,
 - (f) owners who have initiated proceedings under the *Line Fences Act*, prior to this by-law coming into force.

General Provisions

4. Where an owner is seeking to construct, repair, replace or maintain a division fence and the adjoining owner agrees on the construction, repairs, replacement or maintenance, then the construction, repairs, replacement or maintenance of the division fence, including the apportionment of the cost, may take place as agreed, notwithstanding any provision of this by-law.

5. Where an owner seeking to construct, repair, replace or maintain a division fence and the adjoining owner cannot agree on the construction, repairs, replacement or maintenance, then the owner may construct, repair, replace or maintain the division fence provided that they deliver a notice to the adjoining owner by registered mail advising them of the owner's intent. The notice must include:
- (a) copies of at least three (3) written quotes for the actual cost and the basic cost of constructing, repairing, replacing or maintaining the division fence;
 - (b) when the construction, repairs, replacement or maintenance of the division fence will commence and the estimate time until completion;
 - (c) a statement that the owner may seek a percentage of the costs for the construction, repairs, replacement or maintenance of the division fence from the adjoining owner in accordance with this by-law;
 - (d) a statement that the adjoining owner may obtain additional quotes for the actual cost or the basic cost of constructing, repairing, replacing or maintaining the division fence, which shall be provided to the owner within fourteen (14) days of the adjoining owner receiving the notice; and,
 - (e) a copy of this by-law.

Construction or Replacement

6. Where an owner seeking to construct or replace a division fence has delivered a notice to the adjoining owner, as required by s. 5 of this by-law, the cost of the construction or replacement shall be apportioned as follows:
- (a) where the owner and adjoining owner agree to the apportionment of costs, each owner shall pay in accordance with that agreement; or,
 - (b) where the owner and the adjoining owner do not agree to the apportionment of costs:
 - (i) the adjoining owner shall pay fifty percent (50%) of the basic cost or fifty percent (50%) of the actual cost, whichever is less; and,

- (ii) the owner shall pay the actual cost, less the amount paid by the adjoining owner pursuant to section 6(a)(i) above.

Repair and Maintenance

7. Where an owner seeking to repair or maintain a division fence has delivered a notice to the adjoining owner, as required by s. 5 of this by-law, the cost of the repairs or maintenance shall be apportioned as follows:
 - (a) where the owner and adjoining owner agree to the apportionment of costs, each owner shall pay in accordance with that agreement; or,
 - (b) where the owner and adjoining owner do not agree to the apportionment of costs, the owner and the adjoining owner shall each pay fifty per cent (50%) of the cost of the repairs or maintenance.

Where City the Adjoining Owner

8. Where the City is the adjoining owner, pursuant to sections 6 and 7 of this by-law, the cost of the construction, repairs, replacement or maintenance shall be apportioned as follows:
 - (a) where the owner and the City agree to the apportionment of costs, each shall pay in accordance with that agreement; or,
 - (b) where the owner and City do not agree to the apportionment of costs, the City shall pay five percent (5%) of the basic cost or five percent (5%) of the actual cost, whichever is less, and the owner shall pay the actual cost, less the amount paid by the City.

Fencing Regulations

9. All division fences shall comply with the provisions of the Zoning-By-Law as well as all other applicable laws, including statutes, regulations or other by-laws.
10. Notwithstanding any other provision of this by-law, where an owner is required to construct, repair, replace or maintain a division fence under any other applicable law, including a statute, regulation or by-law, the owner shall pay the entire cost of the construction, repairs, replacement or maintenance.

Offence & Penalties

11. Every person who contravenes any of the provisions of this by-law is guilty of an offence and, on conviction, is liable to a fine pursuant to the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.
12. When a person has been convicted of an offence under this by-law, any Court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting continuation or repetition of the offence or the doing of any act or thing by the person convicted directly toward the continuation or repetition of the offence.


Severability

13. 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 this by-law shall be valid and shall remain in full force and effect.

Coming Into Force

14. This by-law shall come into force on the date of its passage by Council.

Passed this 26th day of Jan., 2009



Brenda Halloran, Mayor



Susan Greatrix, City Clerk

| Approval | Date | Authorized By | Initials |
|-----------|----------|---------------|----------|
| PS/BL | Jan 8/09 | Jim Barry | JB |
| Legal | Jan 9/09 | G. Davis | GD |
| Financial | Jan 8/09 | N/A | ST |