



## OFFICE CONSOLIDATION

### BY-LAW 172-2006

**A by-law to provide that the *Line Fences Act*, R.S.O. Ch. L17 does not apply to all or any part of the municipality (The Division Fence By-law), and to repeal By-laws 9-74, 115-82 and 190-2004**

WHEREAS paragraph 11(1) 7 of the *Municipal Act*, 2001 S.O. 2001, c.25, as amended (hereinafter the "*Municipal Act*") provides that a municipality may pass by-laws within the sphere of jurisdiction entitled Structures, including fences and signs;

AND WHEREAS subsections 98(1) and (2) of the *Municipal Act* provide that a by-law may be passed by a municipality stating that the *Line Fences Act*, R.S.O. Ch. L. 17 does not apply to all or any part of the municipality, subject to the continuing applicability of section 20 of the *Line Fences Act*.

NOW THEREFORE the Council of the Corporation of the City of Brampton ENACTS as follows:

#### **SHORT TITLE**

1. This by-law shall be known and may be cited as the "Division Fence By-law".

## **DEFINITIONS**

2. In this by-law,

- (a) “act” or “Act” means the *Line Fences Act, R.S.O. Ch. L.17* as amended;
  - (b) “actual cost” means the total cost of the construction, replacement, maintenance or repair (as applicable) of a division fence, other than a fence described in subsection 2(d), and includes taxes, the value of the material used and the value of the labour performed to complete the work.
  - (c) “adjoining owner” means the person who owns the land adjacent to land of another land owner seeking to build a division fence;
  - (d) “basic cost” means the total cost of construction, replacement, maintenance or repair (as applicable) of a four (4) foot high, 1-1/2 inch mesh, steel chain link fence;
  - (e) “division fences” means a fence marking the boundary between adjoining parcels of land;
  - (f) “municipality” means The Corporation of the City of Brampton;
  - (g) “owner” means:
    - (i) a registered owner of land and/or
    - (ii) a person managing or receiving the rent for land or premises
- Where more than one person meets the definition of “owner” in this by-law, they shall be considered as a single owner for the purposes of cost allocation.
- (h) “public highway” means lands owned by the municipality and designated as a common and public highway, including any street, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;
  - (i) “public authority” means the federal or provincial government, Crown agents, school boards and regional municipalities to whom the context can apply but specifically excludes the municipality;
  - (j) “unopened road allowance” means lands owned by the municipality but which have yet to be designated as a public highway by the enactment of a by-law.

## **APPLICABILITY**

3. From and after the date of enactment of this by-law, the provisions of the Act, except for section 20 of the Act, shall no longer apply in the municipality.
4. The provisions of this by-law do not apply in the following circumstances:
  - (a) to any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by a municipality or other public authority, or to lands that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes.
  - (b) Where an owner has initiated proceedings under the Act prior to the date of enactment of this by-law.

## **PROVISIONS**

5. An owner of land may construct, replace, repair and maintain a division fence, subject to compliance with the provisions relating to fences in Zoning By-law 270-2004.
6. Where the owners of adjoining lands are in agreement or are able to reach agreement on the details of construction or replacement of a division fence, each of them shall construct or replace a reasonable proportion of the division fence, or shall bear a reasonable and just proportion of the cost of any work required to do so, in accordance with the agreement reached between the owners, regardless of any provision to the contrary in this by-law.
7. Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 6 above, an owner desiring to construct or replace a division fence may do so subject to complying with the following requirements:
  - (a) the owner must deliver a notice (the "Notice of Intent") to the adjoining owner by registered mail, advising of his or her intent to construct or replace a division fence,
  - (b) the Notice of Intent must contain the following minimum information:
    - (i) a copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken;

- (ii) a paragraph stating that “the construction or replacement of the division fence will commence fourteen (14) business days after the date of mailing of this Notice of Intent and the owner may seek a contributory payment for the work to the division fence from the adjoining owner in accordance with the applicable by-law”;
  - (iii) a further paragraph stating that “the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten (10) business days from the date of mailing of the Notice of Intent”;
  - (iv) a complete copy of this by-law must be attached to the Notice of Intent.
- 8. In cases where the cost of construction or replacement of a division fence is in dispute, the cost shall be apportioned 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 the lesser, having considered all the fencing quotes exchanged, and
  - (b) the owner shall pay the balance of the actual cost.
- 9. Subject to Sections 10 and 11, once a fence has been erected, the cost of repairs or maintenance to a division fence shall be borne equally by the owner and the adjoining owner.
- 10.
  - (a) The cost of repairs to a division fence shall be borne by the owner if he or his invitees caused the damage necessitating the repair;
  - (b) The cost of repairs to a division fence shall be borne by the adjoining owner if her or his invitees caused the damage necessitating the repair.
  - (c) Subject to Section 11, the cost of repairs to a division fence shall be borne equally by the owner and the adjoining owner if the damage necessitating the repair was caused by natural disaster.
- 11. If a tree causes damage to a division fence, whether by accident, or one or more persons carelessness, negligence, deliberate intent or otherwise, the owner of the land on which the tree stood shall, at his sole, expense, forthwith remove the tree and repair the fence.
- 12. Where the municipality is the adjoining owner of lands other than lands as described in subsection 4(a), the cost of construction, replacement, repair or maintenance of a division fence shall be assigned as follows:

- (a) the owner shall pay ninety five percent (95%) of the cost of the work
  - (b) the municipality shall pay five percent (5%) of the cost of the work.
13. Compliance with this by-law does not exempt an owner or the adjoining owner from the requirement to comply with Zoning By-law 270-2004.
14. Any division fence constructed, replaced, repaired or maintained within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act, R.S.O 1990, O.18, as amended, is subject to all requirements for obtaining a permit pursuant to such legislation.

### **ENFORCEMENT**

15. Every person who contravenes any of the provisions of this by-law is guilty of an offence and on conviction is liable to pay a fine, exclusive of costs, and such other penalties as may be provided for or imposed under the Provincial Offences Act, R.S.O. c.P.33, as amended.

### **PROHIBITION ORDER**

16. When a person has been convicted of an offence under this by-law, the court may, in addition to any other penalty imposed on the person convicted,
- (a) issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence; and/or
  - (b) as a condition in any probation order, prescribe that the person convicted pay compensation or make restitution.

### **REPEAL**

17. By-laws 9-74, 115-82 and 190-2004 are hereby repealed.

### **GENERAL**

18. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

## **SEVERABILITY**

19. Where a court of competent jurisdiction declares any section or part of a section of this by-law invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

READ A FIRST, SECOND AND THIRD TIME and PASSED in OPEN COUNCIL this 12<sup>th</sup> day of June 2006.

THE CORPORATION OF THE CITY OF BRAMPTON

Original Signed by: Susan Fennell, Mayor

Original Signed by: Kathryn Zammit, City Clerk

**PROCEDURES**  
under  
**BY-LAW 172-06 “The Division Fence By-law”**

**STEP 1: ATTEMPT TO REACH AN AGREEMENT**

Attempt to arrive at an agreement\* with the adjacent owner regarding the type and cost sharing of a division fence. It is suggested that every attempt (more than one contact, and preferably in person) is made prior to proceeding to Step 2.

\* If you need some assistance in resolving this matter with the abutting owner (your neighbour), you may also wish to contact **Peel Community Mediation Service – a free** community mediation service. Please contact 905-273-4884, extension 204 for further information.

**STEP 2: NO AGREEMENT – PROCEED AS PER BY-LAW (Section 7)**

Send a Notice of Intent (letter) by registered mail (provide sample letter). It is suggested you also send a copy of the Notice of Intent by regular mail or personal delivery to ensure it is received by the adjacent owner at least 14 days prior to commencing work or signing a contract. The Notice of Intent must contain the following minimum information:

1. a copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken;
2. a paragraph stating that “the construction or replacement of the division fence will commence fourteen (14) business days after the date of mailing of this Notice of Intent and the owner may seek a contributory payment for the work to the division fence from the adjoining owner in accordance with By-law # 172-2006.
3. a further paragraph stating that “the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten (10) business days from the date of mailing of the Notice of Intent”; and
4. a complete copy of By-law # 172-2006 (attach to letter).

If the adjacent owner makes no contact and does not make payment, you may proceed to build the fence upon the expiration of the fourteen (14) business day period. The fence contractor will have to be paid by you, the owner, and then proceed to STEP 3.

Note: When the cost of construction or replacement is in dispute, the cost of a division fence shall be apportioned as follows:

- (a) the adjoining owner (person to whom the Notice of Intent is sent) shall pay fifty percent (50%) of the basic\* cost or fifty percent (50%) of the actual cost, whichever is the lesser, having considered all the fencing quotes exchanged; and
- (b) the owner shall pay the balance of the actual cost.

\*Basic cost means the total cost of construction, replacement, maintenance or repair, as applicable, of a four (4) foot high, 1-1/2" mesh, steel chain link fence.

### **STEP 3: RECOVERING THE COST OF BUILDING THE FENCE (Section 15)**

If the adjacent owner fails to pay within 90 days of completion of the fence, you must serve him/her with another notice (letter) by registered mail (and regular mail or personal delivery), requiring the adjacent owner to comply with the by-law (provide sample letter). This notice should again set out the provisions of the by-law, a breakdown of the costs of the fence (including copies of invoices/estimates/quotes) and conclude with a request for payment within thirty (30) days of receipt of the notice.

The notice must also state that if the payment is not received within thirty (30) days, you may recover the proportionate share of the cost of the work from the defaulting person. If payment is received, the matter is at an end. If payment is not received, you may proceed to STEP 4.

### **STEP 4: INITIATING A PROSECUTION TO RECOVER PROPORTIONATE SHARE OF COST OF FENCE**

If step 3 is unsuccessful, you may proceed to initiate a prosecution to recover the proportionate share of the cost of the fence. If you are not familiar with the court process and the rules of evidence, then you may consider obtaining legal advice to assist in proceeding with the issuance and prosecution of a charge under the By-law.

## Steps:

1. Compile evidence to support the charge that payment has not been received from the adjoining landowner (defendant). You will have to prove that you correctly followed the steps set out in the by-law. Examples of evidence may include, but are not limited to:
  - Certified copy of Division Fence By-law 172-2006 (may be obtained from the City Clerk's Department located on the main floor of Brampton City Hall).
  - Copy of Notice of Intent (letter #1) and Notice of Completion (letter #2)
  - Quotes obtained for construction of the fence
  - Photographs detailing completion of the work
  - Certified Tax Assessment Roll (to prove ownership of property)
  
2. Attend at City of Brampton Provincial Offences Court located at 5 Ray Lawson Boulevard, Brampton, Ontario and obtain an Information (charging document) and Summons Package.
  
3. Prepare Information and Summons setting out information such as:
  - Defendant's (adjoining property owner's name)
  - The offence location (address of adjoining property owner) and offence date
  - The by-law number, including the specific section contravened, and a description of the contravention under the By-law
  - Reference to the penalty section of the By-law (section 15)
  - The Court room and Court location the summons is returnable to for the first court appearance by the Informant (you) and the Defendant (adjoining property owner)

The charge is to be made returnable to:

Brampton Provincial Offences Court  
Court # at (time)  
Brampton, Ontario  
On a (day, i.e., Friday)

4. Attend A. Grenville and William Davis Courthouse, 7755 Hurontario Street, Brampton, Ontario and appear before a Justice of the Peace to swear to the contents set out in the Information/Summons.

5. Return the Summons signed by the Justice of the Peace to Brampton Provincial Offences Court, Ray Lawson Boulevard, Administration Office. Court staff will arrange for Peel Regional Police to serve the summons on the defendant as service of the summons must be done by a Provincial Offences Officer.
6. Attend Court on the date and time noted on the summons (the first court appearance date). You and the defendant (adjoining property owner) will be required to address the Justice of the Peace presiding in court who will make inquiries as to how the defendant intends to proceed.
7. If the defendant (adjoining property owner) enters a guilty plea, you will be required to provide the court with certain facts of the by-law contravention and submissions as to the penalty (fine amount) you wish the court to impose.

If the defendant (adjoining property owner) intends to plead not guilty, the court will schedule a Date, Time and Court Room for a Pre-trial to be heard. At the Pre-Trial, a Justice of the Peace will make inquiries with both parties (the informant and defendant) to determine:

- The amount of time required to be set aside for the trial
- The number of witnesses anticipated to testify
- Length of time required for the trial
- Agreed facts and any issues regarding disclosure (information to be provided by the informant to the defendant upon request, such as: copies of all relevant evidence on which the informant intends to rely such as witness statements, photographs, documentary evidence, etc.). The Justice of the Peace will then set a Trial date, Time and Court Room for the trial to be heard.

8. On the Trial Date,

- Attend court with your witnesses (witnesses must attend in person as their evidence CANNOT be introduced via a signed statement) and all other evidence
- Present your evidence and call your witnesses to testify
- The defendant has the right to question any witness who testifies on your behalf
- After you have presented your evidence, the defendant has the opportunity to present evidence and witnesses but is not required to do so

9. After the hearing of all of the evidence, the Justice of the Peace will ask both the Informant and Defendant for submissions (this is an opportunity for both parties to summarize their position and reasons why a conviction should or should not be entered).
10. After hearing all of the evidence and submissions (if any), the Justice of the Peace will render a ruling, either entering a conviction against the defendant, or dismissing the charge.
11. If a conviction is entered, the court will ask the Informant and then the Defendant for submissions as to the penalty they wish the Court to impose.

**SAMPLE LETTER # 1 TO ADJACENT OWNER IN ACCORDANCE WITH  
DIVISION FENCE BY-LAW 172-06**

Date:

To:

Dear ?

Re: Notice of Intent  
Proposed Fence Between

As you are aware, it is our desire to construct a boundary (division) fence between your property and ours, as we have expressed to you on several occasions. To date, we have been unable to reach a satisfactory agreement regarding the cost share of the proposed fence.

Notwithstanding the lack of agreement, we would like to go ahead with the construction of the fence in accordance with the City of Brampton By-law 172-2006, a copy of which is enclosed for your information. Also enclosed are three quotes for the construction of (describe the type of fence, height, length etc.). The proposed fence complies with City of Brampton Zoning By-law 270-2004 with respect to height.

The construction of the fence, in accordance with the lowest quote received, will commence on (date – fourteen (14) business days from the date of this notice). You may also obtain three (3) further quotes and provide us with a copy of them not later than ten (10) business days from the date of this notice and we can then discuss all of the quotes before making a decision. If we do not hear from you prior to the expiration of the fourteen (14) business day period, we will go ahead with the construction of the proposed fence.

We look forward to reaching an amicable agreement.

Yours truly,

**SAMPLE LETTER # 2 TO ADJACENT OWNER IN ACCORDANCE WITH  
DIVISION FENCE BY-LAW 172-06**

Date:

To:

Dear ?

Re: Compliance with City of Brampton Division Fence By-law

Further to our letter of (date), construction of the division fence between our properties was completed on (date).

City of Brampton By-law 172-2006, a copy of which was previously provided to you, requires that the cost of a division fence be shared between the property owners.

As pointed out in our previous letter, the fence was constructed according to the lowest of three (3) quotes received. Enclosed is a copy of the invoice for a total of \$ . Your share of the cost is \$ . Please provide payment of this amount to us not later than (date 30 days after notice). If payment is not received within this time frame, we will proceed to recover your share of the cost through legal action. We sincerely hope it will not be necessary to proceed further.

Yours truly,