



# MISSISSAUGA

## THE CORPORATION OF THE CITY OF MISSISSAUGA DIVISION FENCE BY-LAW 0075-2004

(amended by 0120-2004,0232-2004)

**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 Mississauga 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 fence**" means a fence marking the boundary between adjoining parcels of land;
  - (f) "**municipality**" means the Corporation of the City of Mississauga;

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(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:(0232-2004)
  - (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.

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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 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 business days from the date of mailing of the Notice of Intent"; and
    - (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.

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9. Subject to Section 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. (0232-2004)
  - (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 is thrown down by accident, carelessness, negligence, deliberate intent 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.
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 99% of the cost of the work;
  - (b) the municipality shall pay 1% 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 By-law 397-78, as amended (the "Fence By-law").
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.

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**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.(0120-2004)

**REPEAL**

17. By-law 181-98 and By-law 61-83, as amended by By-law 280-83, be and 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.

ENACTED and PASSED this 25th day of February, 2004.  
Signed by Hazel McCallion, Mayor and Crystal Greer, City Clerk