

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 24 -2003

A By-law to determine how the cost of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under the *Provincial Offences Act*
File: 740-01 (CC-38-03)

WHEREAS Section 11(1) of the *Municipal Act*, 2001, c. 25, as amended, provides that the Council of a local municipality may pass by-laws respecting matters within the spheres of jurisdiction;

AND WHEREAS structures including fences and signs are one of the named spheres of jurisdiction over which single-tier municipalities have exclusive authority;

AND WHEREAS a by-law may be passed for determining how the cost of division fences shall be apportioned, and for providing that any amount so apportioned shall be recoverable under the *Provincial Offences Act*;

NOW THEREFORE the Council of the Corporation of the City of Burlington hereby enacts as follows:

1. a) “Actual cost” means the total cost of the construction, reconstruction, maintenance and/or repair of a division fence, and includes the value 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 on which another land owner seeks to build a division fence.
- c) “Basic cost” means the cost of constructing, reconstructing, maintaining or repairing (as applicable) a four (4) foot high, 1-1/2 inch mesh, steel chain link fence.
- d) “Division fence” means a fence marking the boundary between adjoining parcels of land.
- e) “Municipality” means the Corporation of the City of Burlington.

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- f) “Owner” means:
- (i) a registered owner of land;
 - (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 purposes of cost allocation.

- g) Words used in the singular shall include the plural and words used in the male gender shall include the female gender and vice versa.

2. This by-law does not apply 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.

3. An owner of land may construct and maintain a division fence.

4. Where the owners of adjoining lands are in agreement or are able to reach agreement on the details of construction, repair or replacement of a division fence, each of them shall construct, repair, replace or maintain 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.

5. Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section 4, on the details of construction, repair or replacement of a division fence, an adjoining owner desiring to construct, reconstruct or repair a division fence may do so subject to complying with the following requirements:

- (a) the owner must serve the adjoining owner(s) with a notice of intent to construct, repair or replace (“the notice of intent”), by registered mail, of his or her intention to construct a division fence,
- (b) the notice of intent must contain the following information:
 - (i) the owner must provide the adjoining owner with 3 written quotes for the actual or basic costs for fencing work to be undertaken;

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- (ii) “the construction, repair or replacement of the division fence located at” (address) “will commence after fourteen (14) days of the mailing of this notice of intent and the owner may seek payment of a contribution for the construction of the division fence, from the adjoining owner(s) in accordance with the formula set out in section(s) 6, 7, 8 and 9 of this by-law.”
 - (iii) the adjoining owner may obtain additional quotes to be presented not later than ten (10) business days from the date of the Notice of Intent, sent by registered mail.
 - (iv) a copy of this By-law must be attached to the Notice of Intent.
6. In cases where the cost of construction of a division fence is in dispute, costs shall be assigned 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 of all of the fencing quotes submitted, and
 - (b) the owner shall pay the balance of the actual cost.
7. The cost of reconstruction or maintenance of a division fence shall be borne equally by the owner and the adjoining owner.
8. 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. The cost of repairs to a division fence shall be borne by the adjoining owner if he or his invitees caused the damage necessitating the repair. Subject to Section 9, 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.
9. 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.
10. This by-law does not apply to fences erected pursuant to By-law Number 53-1991 (Pool Fence By-law), as amended, or any other by-laws of the city.

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11. Where an owner or adjoining owner is in default of his 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 construction of the division fence, 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 by making an application to the Ontario Court of Justice and may take appropriate proceedings under Part IX of the *Provincial Offences Act* for an order to recover the proportionate share of the cost of the work from the defaulting person.
12. Notwithstanding any other provision in this By-law, if an owner proceeds under section 6 and fails to adhere to the requirements set out in that section, the provisions in section 11 do not apply to that owner.
13. By-law 18-2000 and By-law 23-2001 are hereby repealed.

ENACTED AND PASSED this 17th day of March, 2003.

Robert S. MacIsaac

MAYOR

John Bolognone

A/ DEPUTY CITY CLERK