

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 2008-42

**BEING A BY-LAW TO PROVIDE FOR THE APPORTIONMENT
OF COSTS OF DIVISION FENCES**

WHEREAS section 11.(3)(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 with regard to structures, including fences and signs;

AND WHEREAS sections 98.(1) and (2) of the *Municipal Act* provides 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*;

AND WHEREAS by Resolution No. 2008-32 passed on the 21st day of January, 2008, Council approved a by-law to exempt the municipality from the *Line Fences Act* as well as a by-law to provide for the apportionment of costs of division fences where abutting owners cannot agree on the apportionment;

AND WHEREAS the purpose of this by-law is to provide for the apportionment of costs of division fences when abutting owners cannot agree;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF
NORTH BAY HEREBY ENACTS AS FOLLOWS:**

SHORT TITLE

1. This by-law 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, reconstruction, replacement, maintenance or repair (as applicable) of a division fence, other than a fence described in section 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 is the registered owner of 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 (1.2 m) high chain link fence which shall:
 - (i) be of not greater than 1-1/2 inch (38 mm) diamond mesh;
 - (ii) be constructed of galvanized steel wire not less than No. 12 gauge or minimum 14 gauge steel wire covered with a vinyl forming a total thickness equivalent of No. 12 gauge galvanized wire;
 - (iii) be supported by a least 1-1/2 inch (38 mm) diameter galvanized steel posts encased in a minimum of 3 inches (76 mm) of concrete from grade to a minimum of three (3) feet (0.9 m) below grade, such posts to be spaced not more than ten (10) (3.048 m) apart; and

- (iv) be provided with top and bottom horizontal rails with a minimum 1-1/4 inch (31.8 mm) diameter (it being understood that galvanized steel tension rods may be substituted for the bottom horizontal steel rails).
- (e) "division fence" means a fence marking the boundary between adjoining parcels of land, not under common ownership;
- (f) "municipality" means The Corporation of the City of North Bay;
- (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) "reconstruct" or "replace" means to replace an existing division fence that is not in a good state of repair, using the same materials and building to the style as the existing division fence;
- (i) "repair" means to restore an existing division fence to its original state of good repair;
- (j) "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;
- (k) "public authority" means the federal or provincial government, Crown agents and school boards to whom the context can apply but specifically excludes the municipality.
- (l) "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) the fence is protected by weather-resistant materials;
 - (iii) the fence components are not broken, rusted, rotted or in a hazardous condition;
 - (iv) all stained or painted fences are maintained free of peeling; and
 - (v) the fence does not present an unsightly appearance deleterious to abutting land or to the neighbourhood.
- (m) "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;
- (n) "upgrade" means to raise an existing division fence to a higher standard, greater value or quality of materials; and
- (o) "work" means to construct a division fence.

APPLICABILITY

3. From and after the date of enactment of this by-law, the provisions of the *Line Fences Act*, R.S.O. Ch.L.17 as amended, except for section 20 of the Act, shall not apply in the City of North Bay.

EXEMPTIONS

4. This by-law shall apply to all lands within the City of North Bay, excluding the following:
 - (a) any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by the municipality or other public authority, or lands that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes;
 - (b) an owner wishing to update an existing division fence that is in a state of good repair; and
 - (c) any person who is under a legal requirement, whether by an Act, Regulation, By-law or any other legislation to erect and maintain a division fence.

ZONING

5. An owner of land may construct, replace, repair and maintain a division fence, subject to compliance with the provisions relating to fences in the municipality's Zoning By-law No. 28-80, as amended, and Fence By-law No. 2002-105.

CONSENT

6. Where the owners of adjoining lands are in agreement or are able to reach agreement, in writing, 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 in this by-law.

OWNERS CANNOT AGREE

7. Where the owners of adjoining lands cannot agree or reach an agreement, in writing, as referred to in section 6 above, the owner desiring to construct or replace a division fence may do so subject to complying with the following requirements:
 - (a) The owner shall deliver a notice (the "Notice of Intent") to the adjoining owner by registered mail, advising of his/her intent to construct or replace a division fence.
 - (b) The Notice of Intent shall 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 "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 shall be attached to the Notice of Intent.

APPORTIONMENT

8. In cases where the cost of construction or replacement of a division fence is in dispute, the costs 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 less, 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 of a division fence shall be borne equally by the owner and the adjoining owner.

REPAIRS

10.
 - (a) The costs of repairs to a division fence shall be borne by the owner if he/she or his/her invitees caused the damage necessitating the repair;
 - (b) The costs of repair to a division fence shall be borne by the adjoining owner if he/she or his/her invitees caused the damage necessitating the repair;
 - (c) Subject to Section 11, the costs of repair 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.

TREE DAMAGE

11. If a tree causes damage to a division fence, whether by accident, or one or more person's 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.

CONDOMINIUMS

12. Where a declaration has been registered under the *Condominium Act*, R.S.O. 1990, c.C.26, as may be amended from time to time, the condominium corporation and not the owners of the individual units shall be deemed to be the owner of the land described in the declaration of this by-law, and
 - (a) any payments that the condominium corporation may be responsible for under this by-law are a common expense for the purposes of the *Condominium Act*; and
 - (b) any payments to be made to the condominium corporation under this Act are assets of the condominium corporation.

MUNICIPAL LANDS

13. Where the municipality is the adjoining owner of lands other than lands 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-nine percent (99%) of the cost of the work; and
 - (b) the municipality shall pay one percent (1%) of the cost of the work.

HERITAGE LANDS

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. Any Owner desiring to enforce the provisions of this by-law shall, within ninety (90) days after completion of the division fence, serve or cause to be served on the adjoining owner, a notice by registered mail requiring compliance with this by-law by means of payment of that adjoining owner's portion of the basic cost. If compliance does not occur within thirty (30) days after service of the notice, the owner may take appropriate proceedings by way of a Certificate of Default under the *Provincial Offences Act* to recover the proportionate share of the cost of the work from the adjoining owner if all steps required hereunder have been taken.

SEVERABILITY

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

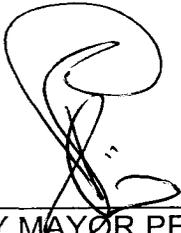
GENERAL

17. 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.
18. This by-law comes into force and effect upon being passed.

READ A FIRST TIME IN OPEN COUNCIL THIS 4TH DAY OF FEBRUARY, 2008.

READ A SECOND TIME IN OPEN COUNCIL THIS 4TH DAY OF FEBRUARY, 2008.

READ A THIRD TIME IN OPEN COUNCIL AND ENACTED AND PASSED THIS 4TH DAY OF FEBRUARY, 2008.



DEPUTY MAYOR PETER CHIRICO



CITY CLERK CATHERINE CONRAD