

Authority: Item 5, Audit and Administration
Committee Report 08-006
CM: May 14, 2008

Bill No. 108

CITY OF HAMILTON

BY-LAW NO. 08- 108

Respecting the Apportioning of Costs of Division Fences in the City of Hamilton

WHEREAS Council desires to provide for the apportioning of costs of division fences within the urban boundary of the City of Hamilton;

AND WHEREAS sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular paragraph 10 of subsection 10(2) authorizes by-laws respecting fences;

AND WHEREAS subsection 98(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to provide that the *Line Fences Act*, R.S.O. 1990, c. L.17, with the exception of section 20, does not apply to all or any part of the municipality;

AND WHEREAS section 26 of the *Line Fences Act*, R.S.O. 1990, c. L.17, provides that Act, with the exception of section 20, does not apply to land subject to a by-law for apportioning the costs of division fences passed under the *Municipal Act, 2001*, S.O. 2001, c. 25;

AND WHEREAS the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Sched. C, did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton and The Corporation of the City of Stoney Creek; and the successor to the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Sched. C, provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

- (a) “actual cost” means the total cost of constructing a new division fence or replacing an existing division fence with a new 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, but does not include the City of Hamilton or any other public authority;
- (c) “basic cost” means the cost of constructing a new division fence or replacing an existing division fence with a new division fence that is a chain-link fence:
 - (i) 122 centimetres high;
 - (ii) made of not less than No. 12 gauge galvanized steel mesh which is not greater than 5.7 centimetres in size;
 - (iii) supported by not less than 6 centimetre diameter galvanized steel terminal posts and 3.8 centimetre diameter galvanized steel line posts set in concrete footings that are below the frost line and spaced not more than 304 centimetres apart; and
 - (iv) provided with not less than 3.4 centimetre diameter top galvanized steel top rails and No. 9 gauge galvanized steel bottom wires.

and includes the value of the material used plus applicable taxes but does not include the value of the labour performed to complete the work plus applicable taxes;

- (d) "City" means the municipality of the City of Hamilton or the geographic area of the City of Hamilton, as the context requires;
- (e) "division fence" means a fence marking the boundary between adjoining parcels of land; and
- (f) "owner" means:
 - (i) a registered owner of land; or
 - (ii) a person managing or receiving rent for 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.

Application

- 2. From and after the date this By-law comes into force:
 - (a) the *Line Fences Act*, except for section 20 of that Act, shall not apply to land located within the urban boundary of the City as defined in its Official Plans; and
 - (b) this By-law shall apply to land located with the urban boundary of the City as defined in its Official Plans.
- 3. This By-law does not apply to any lands that constitute a public highway, including lands abutting a public highway that are held in reserve by the City or any other public authority to separate lands abutting the reserve from the public highway.

Construction or Replacement

- 4. Where an owner seeking to construct or replace a division fence and an adjoining owner agree on the construction or replacement, then the construction or replacement of the division fence, including the apportionment of the cost, may take place as agreed on notwithstanding any provision to the contrary in this By-law.
- 5. Where an owner seeking to construct or replace a division fence and an adjoining owner cannot agree on the construction or replacement, then the owner may construct or replace the division fence provided that they deliver a notice to the adjoining owner by registered mail advising them of the owner's intent to construct or replace the division fence. The notice shall include:

- (a) a copy of at least three written quotes from reputable fencing businesses for the actual cost and the basic cost of the division fence;
 - (b) a statement of a date, not earlier than twenty-one days after the date of mailing the notice, that the construction or replacement of the division fence will commence;
 - (c) a statement that the owner may seek a percentage of the costs for the construction or replacement of the division fence from the adjoining owner in accordance with the Hamilton Division Fences By-law;
 - (d) a statement that the adjoining owner may obtain additional quotes from reputable fencing businesses for the actual cost or the basic cost of the division fence for delivery to the owner no later than fourteen days after the date of mailing of the notice; and
 - (e) a copy of the Hamilton Division Fences By-law.
6. Where an owner seeking to construct or replace a division fence has delivered a notice to the adjoining owner under section 5, the cost of the construction or replacement, having regard to all of the quotes exchanged under section 5, shall be apportioned as follows:
- (a) where the owner and adjoining owner agree to the apportionment of the cost, 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 of the basic cost or fifty percent of the actual cost, whichever is less; and
 - (ii) the owner shall pay the actual cost less the amount paid by the adjoining owner under paragraph (i).

Maintenance or Repair

7. Where an owner seeking to maintain or repair a division fence and an adjoining owner agree on the maintenance or repair, then the maintenance or repair of the division fence, including the apportionment of the cost, may take place as agreed on notwithstanding any provision to the contrary in this By-law.
8. Where an owner seeking to maintain or repair a division fence and an adjoining owner cannot agree on the maintenance or repair, then the owner may maintain or repair the

division fence provided that they deliver a notice to the adjoining owner by registered mail advising them of the owner's intent to maintain or repair the division fence. The notice shall include:

- (a) a copy of at least three written quotes from reputable fencing businesses for the cost of maintaining or repairing the division fence;
- (b) a statement of a date, not earlier than twenty-one days after the date of mailing the notice, that the maintenance or repair of the division fence will commence;
- (c) a statement that the owner may seek all or a percentage of the costs for the maintenance or repair of the division fence from the adjoining owner in accordance with the Hamilton Division Fences By-law;
- (d) a statement that the adjoining owner may obtain additional quotes from reputable fencing businesses for the cost of maintaining or repairing the division fence for delivery to the owner no later than fourteen days after the date of mailing of the notice; and
- (e) a copy of the Hamilton Division Fences By-law.

9. Where an owner seeking to maintain or repair a division fence has delivered a notice to the adjoining owner under section 8, the cost of the maintenance or repair, having considered all of the quotes exchanged under section 8, shall be apportioned as follows:

- (a) where the owner and adjoining owner agree to the apportionment of the cost, 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 and:
 - (i) where the owner, their invitees or a tree or structure on the owner's land caused the damage necessitating the repair, the owner shall pay the entire cost of the repair;
 - (ii) where the adjoining owner, their invitees or a tree or structure on the adjoining owner's land caused the damage necessitating the repair, the adjoining owner shall pay the entire cost of the repair; or
 - (iii) where neither paragraphs (i) nor (ii) apply, the owner and the adjoining owner shall each pay fifty percent of the cost of the maintenance or repair.

General Provisions

10. Where an owner seeking to construct, replace, maintain or repair a division fence or an adjoining owner fails to pay a cost in accordance with the provisions of this By-law, then the cost may be recovered by means of a legal proceeding.
11. Compliance with the provisions of this By-law does not exempt any owner seeking to construct, replace, maintain or repair a division fence or any adjoining owner from compliance with any applicable law, including any other statute, regulation or by-law.
12. Notwithstanding any of the provisions of this By-law, where an owner is required to construct, replace, maintain or repair a fence under any other applicable law, including any other statute, regulation or by-law, they shall pay the entire cost of the construction, replacement, maintenance or repair.

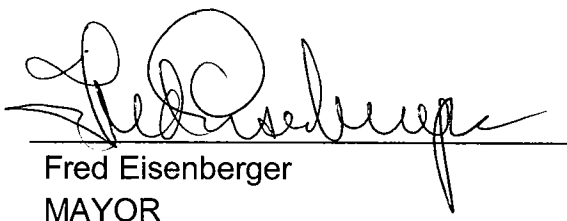
Administration

13. This By-law may be cited as the "Hamilton Division Fences By-law".
14. If a court declares any provision of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

Repeals and Enactment

15. (1) The Corporation of the City of Hamilton By-law No. 79-175, as amended, is repealed.
- (2) The Corporation of the Town of Stoney Creek By-law No. 4054-94, as amended, is amended by deleting the third recital, subsections 1(a), (b), (e) and (x) and sections 15 and 19.
16. This By-law comes into force on the day it is passed and enacted.

PASSED and ENACTED this 14th day of May, 2008 .


Fred Eisenberger
MAYOR


Kevin C. Christenson
CLERK