

# THE CORPORATION OF THE TOWN OF CALEDON

## BY-LAW NO. 2020-xx

A By-law to provide for the apportionment of costs for division fences constructed, replaced, repaired or maintained within the Town of Caledon

WHEREAS Subsections 8 (3), 11 (2) and 11 (3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, confer the powers for a municipality to pass By-laws to regulate, prohibit and require persons to do things respecting structures, including fences, in relation to the well-being of persons and the social well-being of the municipality;

AND WHEREAS Subsections 8 (1) and (2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provide that the powers of a municipality shall be interpreted broadly to enable it to govern its affairs and respond to municipal issues and that ambiguity as to whether a municipality has authority to pass a By-law shall be resolved to include powers the municipality had on the day before the aforesaid Act came into force;

AND WHEREAS Subsection 210 (27) of the *Municipal Act*, R.S.O. 1990, c. M.45, as repealed, provides that a By-law may be passed by a local municipality for determining how the cost of division fences shall be apportioned and providing that any amount so apportioned shall be recoverable under the *Provincial Offences Act*;

AND WHEREAS Section 98 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a local municipality to provide that the *Line Fences Act*, R.S.O. 1990, c. L.17, as amended, with the exception of Section 20, does not apply within any part of the municipality;

AND WHEREAS the Council of the Corporation of the Town of Caledon deems it necessary to regulate the apportionment of costs for division fences constructed, replaced, repaired or maintained within the Town of Caledon;

NOW THEREFORE the Council of The Corporation of the Town of Caledon ENACTS AS FOLLOWS:

### **Short Title**

This By-law shall be known as the "Division Fence By-law".

### **Part 1 – Definitions**

1.1 In this By-law:

"*Adjoining owner*" means an *owner* of a parcel of land which abuts another parcel of land whose *owner* is seeking to *construct, replace, repair or maintain a division fence* between their respective properties;

"*Agricultural fence*" means a 122 centimetre high 9 strand page wire fence;

"*Basic fence*" means a *residential fence* or, where involving a property that is zoned agricultural, pursuant to the applicable *Town Zoning By-law*, and actively used for agricultural purposes a basic fence may include an *agricultural fence*;

"*Construct*" means to build an entirely new *division fence* where there was no pre-existing such fence;

"*Division fence*" means any fence, including a *basic fence*, which is placed or is intended to be placed on a property line which separates adjoining parcels of land;

"*Highway*" means a public thoroughfare under the jurisdiction of a *public authority* and includes but is not limited to any street, trail, pathway, boulevard, sidewalk, bridge, trestle, viaduct or other structure forming part of the thoroughfare but does not include a private lane, a private right-of-way or a private road;

"*Maintain*" means to upkeep an existing non-dilapidated *division fence* for purposes including but not limited to proactively preventing deterioration or upgrading the quality or value of such fence;

“*Municipal boundary*” means the geographic boundary encompassing the Town of Caledon;

“*Owner*” means a *person* holding registered title to a parcel of land, any *person* on behalf thereof authorized to manage the land and where more than one *person* is an owner in respect of the same parcel of land, for the purposes of this By-law the *persons* shall be considered as a single owner;

“*Person*” means an individual, association, firm, partnership, corporation, trust, incorporated company, organization and includes the directors and officers of a corporation, a corporation created under the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended, and the trustees, agents, heirs, executors or other legal representatives of a person to whom the context can apply according to law;

“*Provincial Offences Act*” means the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended;

“*Public authority*” means the Government of Canada, Province of Ontario, Region of Peel, the *Town*, conservation authorities or other governmental body including any appointed agency thereof;

“*Quote*” means a professional estimate of the total cost of the *construction, replacement, repair or maintenance* of a *division fence* including but not limited to the value of the material used, the value of the labour performed to complete the work and any related taxes;

“*Repair*” means to renovate a dilapidated or damaged existing *division fence* towards a state of good repair which may include but is not limited to it being structurally sound, upheld in a vertical position and free of graffiti, broken, rusted or rotten materials;

“*Replace*” means to build an entirely new *division fence* by fully replacing an existing such fence;

“*Residential fence*” means a 122 centimetre high steel chain link fence with maximum 38 millimetre mesh made of at least 9 gauge wire, which may be vinyl covered, supported by steel posts, being a minimum of 48 millimetres in diameter, each set in a concrete base and spaced no more than 3 metres apart from one another with a horizontal 35 millimetre diameter steel top rail and a bottom rail of the same specification or a 9 gauge steel wire replacing the bottom rail;

“*Town*” means The Corporation of the Town of Caledon.

## **Part 2 – Application**

- 2.1 Except where specified otherwise in this By-law, the provisions contained herein shall apply within the entirety of the *municipal boundary*.
- 2.2 With the exception of Section 20 thereof, the *Line Fences Act*, R.S.O. 1990, c. L.17, as amended, shall not apply within any part of the *municipal boundary*.
- 2.3 The provisions of this By-law shall not apply to or be used in respect of any lands for which a *public authority* is the *owner* including but not limited to any lands which are:
  - (1) part of a *highway*;
  - (2) abutting a *highway* that are held as a reserve by a *public authority*;
  - (3) being held by a *public authority* as an unopened road allowance; or
  - (4) being held by a *public authority* for future *highway* purposes.
- 2.4 Nothing in this By-law shall constitute an exemption from the requirements of any site plan agreement, subdivision agreement or other development agreements and applications approved by the *Town*, any other by-law in effect, applicable legislation or regulations thereto, including but not limited to the applicable *Town Fence By-law* and *Zoning By-law*, the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended, and the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended.

## **Part 3 – Agreement or Disagreement**

### **Agreement**

- 3.1 Notwithstanding any other Section of this By-law, where the *owners* of adjoining lands are in agreement or have reached an agreement about the *construction, replacement, repair or maintenance* of a *division fence* between their properties, each shall be responsible to either:
- (1) *construct, replace, repair or maintain*, as applicable, their agreed upon portion of the *division fence*; or
  - (2) bear their agreed upon portion of the cost of any work required for the *construction, replacement, repair or maintenance* of the *division fence*.

### **Notification Upon Disagreement**

- 3.2 Where the *owners* of adjoining lands cannot agree and have not reached an agreement pursuant to Section 3.1, an *owner* seeking to *construct, replace, repair or maintain* a *division fence* may do so subject to complying with the following requirements:
- (1) the *owner* shall deliver a notification package to the *adjoining owner* by registered mail to advise that they intend to *construct, replace, repair or maintain* a *division fence* between their properties and such package shall include the following minimum information:
    - (a) a letter which:
      - (i) clearly sets out whether the intent is to *construct, replace, repair or maintain* a *division fence*;
      - (ii) states that “As the adjoining owner, you may obtain and provide me with 3 additional quotes to be considered for the proposed work not later than 20 business days from the date on which this notification package was mailed.”; and
      - (iii) advises that “The work with respect to the division fence will commence after 20 business days have passed starting from the day following the date of mailing this notification package and, in accordance with the Town of Caledon Division Fence By-law 2020-xx, I may seek a contributory payment for the work to the division fence from you, the adjoining owner.”;
    - (b) copies of 3 separate written *quotes* for the work to be done in respect of the *division fence*;
    - (c) a complete copy of this By-law; and
    - (d) a copy of a land survey that shows the property line which separates the adjoining parcels of land and the proposed or existing location of the *division fence*;
  - (2) to provide 5 days for receipt of the notification package by the *adjoining owner* and at least 15 days for them to produce additional *quotes* if desired, the *owner* seeking to *construct, replace, repair or maintain* the *division fence* shall not permit any work to begin until after 20 business days have passed starting on the day following the date the notification package was sent by registered mail.
- 3.3 The *owner* seeking to *construct, replace, repair or maintain* a *division fence* shall decide which *quote* will be used and, subject to *quotes* obtained pursuant to Section 4.2, is only required to consider those which were exchanged within the 20 business day period from the date the notification package was sent by registered mail.

## **Part 4 – Cost Apportionment**

### **Construction or Replacement**

- 4.1 Where the *owner* seeking to *construct or replace* a *division fence* has fully complied with Subsections 3.2 (1) and (2), cost shall be apportioned as follows:
- (1) the *adjoining owner* shall pay:

- (a) if the *adjoining owner* did not submit any *quotes*, 50% of the lowest cost *quote* considered or 50% of the cost of a *basic fence*, whichever is lesser; or
  - (b) where the *adjoining owner* did provide *quotes*, 50% of the lowest cost *quote* considered but which shall not be less than 50% of the cost of a *basic fence*; and
- (2) the *owner* shall pay the balance of the remaining cost in respect of the *construction* or *replacement* of the *division fence*.
- 4.2 For the purposes of Section 4.1 (1), if the cost of a *basic fence* is unknown or in dispute:
- (1) both the *owner* seeking to *construct* or *replace* a *division fence* and the *adjoining owner* may each obtain 1 additional *quote* for a *basic fence*; and
  - (2) the lowest cost *quote* obtained for a *basic fence* shall prevail based on all those exchanged.

### **Repairs or Maintenance**

- 4.3 Subject to Sections 4.4 through 4.6, where the *owner* seeking to *repair* or *maintain* a *division fence* has fully complied with Subsections 3.2 (1) and (2), cost shall be apportioned as follows:
- (1) the *adjoining owner* shall pay 50% of the lowest *quote* considered; and
  - (2) the *owner* shall pay the balance of the remaining cost in respect of the *repair* or *maintenance* of the *division fence*.

### **Damage**

- 4.4 Where an existing *division fence* is damaged by an *owner* or a *person* permitted on their property, such *owner* shall be entirely responsible for the cost of the *repairs*.
- 4.5 The *owners* of adjoining lands with a *division fence* between their properties shall equally bear the cost of *repairs* to such *division fence* if the damage necessitating the *repair* was caused by natural disaster.
- 4.6 Notwithstanding Section 4.5, where a tree causes damage to a *division fence*, the *owner* of the land on which the tree is or was located shall be responsible for the cost of the *repairs* to the *division fence* and the cost of removing the tree if it was thrown down or otherwise damaged so as to create an unsafe condition.

### **Part 5 – Enforcement**

- 5.1 Where an *owner* desires to enforce any provision regarding cost apportionment within Part 4 of this By-law, such *owner* shall, within 90 days after completion of the *construction*, *replacement*, *repair* or *maintenance* of the *division fence*, deliver to the *adjoining owner* a letter by registered mail requiring compliance with the applicable Section within Part 4 by means of the *adjoining owner* providing payment of their portion of cost related to the *division fence* and providing notice that if the *adjoining owner* does not comply within 30 calendar days after the date the letter is sent, the *owner* may take a proceeding before the Ontario Court of Justice for an order, including an order for the payment of money, in accordance with Section 161 of the *Provincial Offences Act*.
- 5.2 Any amount of cost so apportioned in accordance with Part 4 of this By-law shall be recoverable under the *Provincial Offences Act*.
- 5.3 Every *person* who contravenes any provision of this By-law is guilty of an offence and upon conviction the court may, in addition to any other penalty, order the *person* convicted to make compensation or restitution in accordance with Section 5.2.
- 5.4 If any provision of this By-law is contravened and a conviction entered, in addition to any other remedy or penalty imposed by this By-law, the court may make an order prohibiting the continuation or repetition of the offence by the *person* convicted.

**Part 6 – Severability**

6.1 Should any provision of this By-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-law as a whole or the remaining provisions thereof.

**Part 7 – Transition**

7.1 This By-law shall come into full force and effect on the date of enactment.

**Enacted by the Town of Caledon Council this    day of            , 2020.**

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Allan Thompson, Mayor

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Laura Hall, Town Clerk

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