

**THE CORPORATION OF THE MUNICIPALITY  
OF HASTINGS HIGHLANDS**

**BY-LAW 2016-057**

**Being a bylaw to exempt the Municipality of Hastings Highlands  
From the Line Fence Act with Apportioning Costs of Division Fences**

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**WHEREAS** the Council of the Corporation of the Municipality of Hastings Highlands deems it desirable to pass a Bylaw to provide for the exemption from the Line Fence Act and to provide for the apportioning of costs of division fences.

**AND WHEREAS** the Municipal Act, 2001, S.O. 2001 c. 25, as amended provides that a lower-tier municipality may pass bylaws respecting matters within the sphere of jurisdiction described in the Municipal Act, 2001 and subject to certain provision as outlined in the Municipal Act 2001;

**AND WHEREAS** Subsection 98(1) and (2) of the Municipal Act, 2001 provides that a Bylaw may be passed by a municipality stating that the Line Fence Act, R.S.O., Ch. L. 17 ("Line Fence Act") does not apply to all or part of municipality, subject to the continuing applicability of Section 20 of the Line Fence Act;

**AND WHEREAS** sections 8, 9 and 10 of the Municipal Act, 2001, S.O. 2001, c. 25, authorizes the Municipality of Hastings Highlands to pass bylaws necessary or desirable for municipal purposes, and in particular paragraph 10 of subsection 10(2) authorizes bylaws respecting fences;

**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 bylaw for apportioning the costs of division fences passed under the Municipal Act, 2001, S.O. 2001, c. 25;

**AND THEREFORE** the Council of the Corporation of the Municipality of Hastings Highlands enacts as follows:

**This Bylaw may be cited as the "Exempt from Line Fences Act with the Apportioning of Cost of Division Fence Bylaw".**

**1. DEFINITIONS**

1.1 "Actual Cost" means the total cost of construction of a new fence, replacement of an existing division fence with a new division fence, maintenance or repair of a 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

1.2 "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 Municipality of Hastings Highlands or any other public authority.

1.3 "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 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.
- v. 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;

1.4 “Construct” means to build from new where no division fence was existing.

1.5 “Reconstruct” means to replace an existing division fence that is not in a state of good repair, using the same standards and quality of materials and building to the style as the existing division fence.

1.6 “Repair” means to restore an existing division fence to its original state of good repair.

1.7 “State of Good Repair” shall mean;

- i. The division fence is complete and in a structurally sound condition and plumb and securely anchored;
- ii. Protected by weather-resistant materials;
- iii. Division fence components are not broken, rusted, rotten or in a hazardous condition;
- iv. All stained or painted division fences are maintained free of peeling paint or stain; and
- v. That the division fence does not present or have an inferior appearance or quality on that side of the fence which faces the adjoining property.

1.8 “Upgrade” means to replace an existing division fence using standards and quality of materials and building to a style superior to the existing division fence.

1.9 “Work” means to construct a division fence.

1.10 “Division fence” means a fence marking a boundary between adjoining parcels of land not under common ownership.

1.11 “Municipality” means The Municipality of Hastings Highlands or the geographic area of the Municipality of Hastings Highlands, as the context requires;

1.10 “Owner” means;

- i. A registered owner of land; or
- ii. A person managing or receiving rent for land
- iii. And where more than one person is an owner, they shall be considered to be a single owner for the purposes of this bylaw.

## **2. APPLICATION**

2.1 From and after the date of passing of this Bylaw, the provisions of the Line Fence Act, except for Section 20 of the Line Fence Act, shall no longer apply in the municipality.

2.2 The provisions of this Bylaw do not apply to;

a) 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 a land that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes;

- i. former railway lands governed by Section 20 of the Fence Line Act;
- ii. fences that are not division fences; or,
- iii. Property line or property boundary's in dispute.
- iv. Fences that are intended to be, or act as a pool enclosures.

### **3. PROVISIONS OF CONSTRUCTION OR REPLACEMENT**

3.1 An owner of land may construct, replace, repair and maintain a division fence.

3.2 Where the owners of adjoining lands are in agreement or are able to reach agreement on the details of construction, replacement, and repair or maintains of a division fence, each of them shall meet their obligations within the agreement reached between the owners, regardless of any provisions to the contrary in this Bylaw.

3.3 Where the owners of adjoining lands cannot agree or reach an agreement as referred to in section above, an owner desiring to construct, replace, repair or maintain a division fence may do so subject to complying with the following requirements;

- i. the fence to be constructed as a division fence must be a 1.22 metres (4 feet) chain link fence, with galvanised metal post, galvanized metal top rail and bottom support wire;
- ii. the property line must be agreed upon by the owner and the adjoining owner; and,
- iii. the owner must deliver a notice labelled "Notice of Intent" to the adjoining land owner by registered mail, including a copy of 3 written quotes for the cost of building the division fence, a letter detailing the work to be conducted, notice of the intent to collect 50% of the lowest quoted cost from the adjoining owner upon completion of the work, a paragraph informing the adjacent land owner that they can get 3 quotes for the detailed work as well and submit that to the owner within 21 days of the date of mailing of the "Notice of Intent", and included a copy of this Bylaw.

3.4 Where the cost of, construct, replace, repair and maintain of a division fence described in 3.3 is in dispute, the cost allocation shall be;

- i. adjoining owner shall pay fifty percent (50%) of the lowest exchanged quote, or fifty percent (50%) of the actual build cost, whichever is lower;
- ii. owner shall pay the balance of cost; and
- iii. collection if disputed shall be done through section 5.1

3.5 Where a tree causes damage to a division fence, whether by accident, carelessness, negligence, deliberate intent or otherwise, the owner of the land on which the tree stood shall, at their sole expense, forthwith remove the tree and repair the fence.

3.6 Where the municipality is the adjoining owner of lands other than lands described in 3.2 a), the cost of construction, replacement repair or maintained of a division fence shall be the sole

responsibility of the owner, unless an agreement is made in writing prior to the construction, replacement, repair or maintains of the division fence prior to starting work.

3.7 Notwithstanding anything in this Bylaw, owners and adjoining owners may enter into agreements with respect to the sharing of any costs with respect to division fences in any proportion. This Bylaw applies where no agreement can be reached.

3.8 Division fences can be removed when the owner and adjoining owner are in agreement.

#### **4. ENFORCEMENT**

4.1 Where an owner or adjoining owner is in default of their obligations under this Bylaw, a person desiring to enforce the provisions of this Bylaw may take enforcement actions using any legal means available to them, including the initiation of proceedings under Part IX of the Provincial Offences Act, R.S.O. C.P. 33.

#### **5. SEVERABILITY**

5.1 If any section or sections of this Bylaw or part thereof, is found in any court of law to be illegal or beyond the power of the Municipality to enact, such section or sections or part thereof shall be deemed to be severable and all other section or parts of the Bylaw shall be deemed to be separate and independent thereof and to be enacted as such.

#### **6. FORCE AND EFFECT**

1. This Bylaw shall come into force and take effect immediately upon the passing there of.
2. **READ** a First, Second and Third time and finally passed this 5th day of October, 2016.

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Vivian Bloom, Mayor

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Robyn Rogers, Clerk