

TORONTO STAFF REPORT

April 11, 2001

To: Planning and Transportation Committee
From: Commissioner, Urban Development Services
Subject: Harmonization of the Division Fence By-law

Purpose:

To report further on the harmonization of the Division Fence By-law.

Financial Implications and Impact Statement:

In 1999, the City received a total of \$7,610.00 in application fees related to fence viewing. In 2000, the total revenue derived from application fees was \$1,920.00. The programme options are intended to be revenue neutral, provided that in the case of fence viewers the schedule of fees as set out in Table 3 is adopted.

Based on last year's figures, there would be a revenue loss of \$1,920.00 resulting from implementation of a division fence by-law. The loss would be totally offset by the savings realized in not having to administer the procedure outlined in the Line Fences Act throughout the City. Staff involvement with respect to a division fence by-law would only involve answering the odd question on procedure. In addition, it would no longer be necessary for fence viewers to attend as a result of a request for arbitration. The cost of providing an information package as proposed in this report, would be collected by way of a nominal fee.

If the Committee adopts the procedure outlined under the Line Fences Act, there would be no financial implication, as the programme would be designed to be revenue neutral.

Recommendations:

It is recommended that the Committee:

1. adopt the attached draft Division Fence By-law, along with the fee proposed for the information package, and that the City Solicitor be directed to prepare and submit the necessary bill(s) to Council; or

2. adopt the procedure as outlined in the Line Fences Act and that the necessary bill(s) be prepared by the City Solicitor to implement the procedure and the fees recommended in this report and to appoint members of the Property Standards Committee as fence viewers for the purposes of the Act. In addition, it is recommended that the bill provide that no fence viewing will take place between the 1st day of November and the 31st day of March in the next following year, as provided for in the Act and;
3. receive the balance of this report for information.

Background:

At its meeting held on July 4, 5 and 6, 2000, Council considered Clause No. 2 contained in Report No. 6 of The Planning and Transportation Committee, headed "Harmonization of the Division Fence By-law". Council directed that this Clause be struck out and referred back to Planning and Transportation Committee for further consideration on the impact of the proposed amendments by Council. The report is to address, in particular, the financial implications relative to a motion to delete Clause No. (5), headed "Public Highway", from the proposed Division Fence By-law.

Comments:

Division Fence By-law:

Under the proposed Division Fence By-law, an application to the City for fence viewers along with the applicable administration fees would not be required.

The proposed Division Fence By-law is designed to ensure that all property owners are treated fairly. Under the by-law, where an owner wishes to recover the costs associated with the construction, repair or replacement of a division fence, he or she would send a registered letter giving notice to the adjoining owner at least fourteen (14) days prior to commencement of the work.

In the case of a new fence, the adjoining property owner would be required to pay the lesser of fifty (50) percent of the actual cost of the work completed or fifty (50) percent of the cost of a basic 1.2 metre chain link fence. In the case of a repair to a fence, the owner would be required to pay fifty (50) percent of the actual cost of the repair.

In the event that a neighbour fails to pay its fair share of the cost of a division fence, a property owner wishing to recover a portion of the cost of a division fence would commence proceedings at the Ontario Court of Justice for an order acknowledging the debt. If the debt remains unpaid, a certificate of default from the Ontario Court of Justice can be entered as a judgement through the Small Claims Court.

To assist residents of the City, staff will develop an information guide which will explain the new procedure. We are suggesting a cost recovery fee of \$20.00 for the information package.

The draft Division Fence By-law is similar to that which has been adopted by the City of Vaughan and the Town of Markham. In both cases, the procedure of appointing fence viewers under the Line Fences Act has been discontinued in favour of a by-law that would predetermine the apportionment of costs under the authority of the Municipal Act.

Impact of Section 5 of the Draft By-law:

It was moved:

“That the clause be amended:

- (1) to provide that Section 5 of the proposed Division Fence By-law apply to front fences only; and
- (2) by adding thereto the following:

‘It is further recommended that the Commissioner of Urban Development Services be requested to submit a report to Planning and Transportation Committee on the cost implications to the City if the City is held responsible for paying one-half of the cost of basic front or back yard fences.’ ”

It was further moved:

“That the Clause be amended to provide that Clause No. (5), entitled ‘Public Highway’, be deleted from the proposed Division Fence By-law.”

The total linear frontage of all properties in the City is estimated to be approximately 11,000,000 metres. This does not include properties with rear yards that back onto City roadways, laneways or properties which abut parklands.

It would be impossible to estimate the cost to the City in any given year, if property owners were automatically awarded one-half the cost of the installation or maintenance of fences located in the front or back yards.

A survey of fencing contractors has put the cost of erecting a basic 1.2 metre chain link fence at approximately \$26.00 per linear metre. If the City were required to pay one-half of the cost of a basic fence for all properties fronting on City roadways and, if the number of claims filed in any given year amounted to only ten percent of the total street frontage in the City, the cost to the City would be approximately \$14,300,000.

Section 5 of the draft by-law, which exempts the public highways, is similar to that contained in Section 25 of the Line Fences Act which reads as follows:

“Act does not apply to public highways

25.--(1) Despite sections 23 and 24, this Act 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 to separate lands abutting the reserve from the public highway.”

It would be financially prohibitive to provide monetary assistance to residents constructing a fence abutting public highways.

Fence Viewers:

It was moved:

“That the Clause be amended:

(1) to provide that the by-law be amended to maintain the current provisions of the former City of Toronto by-law within the boundaries of the former City; and

(2) by adding thereto the following:

It is further recommended that the Commissioner of Urban Development Services be requested to submit a report to the Planning and Transportation Committee in one year’s time on the operation of this system and whether methods to facilitate dispute resolution are required in the former Cities of Etobicoke, Scarborough, East York and North York, and how and whether the City of Toronto should apply for the required special legislation.

It was further moved:

“That Part (1) of the first motion noted be amended by adding, thereto, the following words:

‘on the condition that fees be increased in order to pay as fully as possible for the cost of fence viewing/arbitration.’ ”

The suggestions by the Councillors that the by-law be amended to maintain the current provisions enjoyed by the former City of Toronto within the boundaries of the former City, would not permit a single harmonized option for the entire City and in our opinion, would only lead to confusion. In addition, in order to expand the process presently in place in the former City of Toronto throughout the new City, it would be necessary to apply for special legislation from the Province.

It was moved:

“That the clause be amended by adding thereto the following:

‘It is further recommended that the Commissioner of Works and Emergency Services be requested to appoint as many members of existing staff as he deems appropriate as Fence Arbitrators, and that the Fence Arbitrators be granted the authority to make a final decision in the event of fence disputes, and that the by-law be amended accordingly.’ ”

It was further moved:

“That Part (1) of the first motion be amended to provide that fence viewers be continued and expanded in all former municipalities, and further, that the

Commissioner of Urban Development Services be requested to submit a report to the Planning and Transportation Committee on how this could be accomplished.”

Councillors have suggested that we adopt the approach of appointing fence viewers to decide how much each person should pay for the erection or maintenance of a fence.

Fence viewers can be appointed under the existing authority of the Line Fences Act; however, as indicated in our report dated March 1, 2000, the number of applications being considered have been decreasing. Table 1 illustrates the decline in the number of applications over the past three years.

Table 1

Former Municipality	Process	Applications 1998	Applications 1999	Applications 2000
Toronto	Chapter 182	109	65	0
North York	By-law 29830	Not required	Not required	Not required
York	<i>Line Fences Act</i>	2	0	0
Scarborough	<i>Line Fences Act</i>	8	1	7
Etobicoke	<i>Line Fences Act</i>	2	6	3
East York	<i>Line Fences Act</i>	0	0	0

Given the decline in the number of applications and the related administrative costs in providing a revenue neutral programme, an elaborate procedure as outlined in the Line Fences Act or Chapter 182 of the former City of Toronto, as outlined in Appendix “A” attached, is not justified.

Fees:

Table 2 reflects the existing fees relating to fence viewing under the Line Fences Act and Chapter 182 of the former City of Toronto.

Table 2

Former Municipality	Process	Application Fee	Fence-Viewer Fee	Surveyor Fee
Toronto	Chapter 182	\$100	None	As required
North York	By-law 29830	Not required	Not required	Not required
York	Line Fences Act	None	\$20 hr. x 3	As required
Scarborough	Line Fences Act	\$60	\$50 x 3	As required
Etobicoke	Line Fences Act	\$30	\$40 x 3	As required
East York	Line Fences Act	\$50	\$20 x 3	As required

The recommended schedule of fees outlined in Table 3 reflects the fees required to make a fence viewing programme under the Line Fences Act cost neutral.

Table 3

RECOMMENDED SCHEDULE OF FEES

Service	Fee	Justification
Basic Application Fee	\$200	Costs related to staff time and other costs relating to the administration of the programme.
Registered Letter	\$5 each	Cost of registration of letter. \$4.46
Fence Viewers	\$30 per hour (min. 3 hrs) x 3 viewers	The fee for special inspections under Chapter 363, Building Construction and Demolition, is \$60.00 per hour.
Certificate of Award	\$20	Similar to existing Clerk's fee for certification of material.
Registry	\$25 per registration	Similar to existing registration fees in place in Clerk's Office.
Default Collection (tax roll)	\$75	Fee suggested by Finance Dept. to reflect cost recovery.

Should the Committee find it desirable to adopt a process by which fence viewers would decide the apportionment of costs associated with a division fence, we would recommend that the process contained in the Line Fences Act be adopted along with the fees recommended in Table 3 of this report and that a by-law be enacted appointing all members of the Property Standards Committee as fence viewers for the purposes of the Act. In addition, we would recommend that fence viewing not take place between November 1st and March 31st of the following year, due to the weather conditions.

We have attempted to consult with existing members of Property Standards Committee and have found that those contacted would have no objection to acting as fence viewers.

Conclusions:

The number of applications being considered has been decreasing over the past three years. Such being the case, an elaborate procedure under the Line Fences Act and all the costs associated with the programme are not justified.

The proposed Division Fence By-law is designed to ensure that all property owners are treated fairly. In the case of a new fence, the adjoining property owner would be required to pay the lesser of fifty (50) percent of the actual cost of the work completed or fifty (50) percent of the cost of a basic 1.2 metre chain link fence. In the case of a repair to a fence, the owner would be required to pay fifty (50) percent of the actual cost of the repair.

In the event that a neighbour fails to pay their fair share of the cost of a division fence, a property owner wishing to recover a portion of the cost of a division fence would commence proceedings at the Ontario Court of Justice for an order acknowledging the debt. If the debt remains unpaid, a certificate of default from the Ontario Court of Justice can be entered as a judgement through the Small Claims Court.

In order to assist residents of the City, staff will develop an information guide which will explain the new procedure. We are suggesting a cost recovery fee of \$20.00 for the information package.

We recommend that the Committee adopt the attached draft Division Fence By-law along with the nominal fee for the information package which will be provided to interested parties.

In the alternative, if the Committee finds it desirable to adopt the procedure outlined in the Line Fences Act, along with the fees recommended in this report, we recommend that a by-law be enacted appointing all members of the Property Standards Committee as fence viewers for the purposes of the Act. In addition, we would recommend that fence viewing not take place between November 1st and March 31st due to the weather conditions.

It is suggested that the City Solicitor, in consultation with the Commissioner of Urban Development Services, be authorized to prepare and introduce in Council the necessary bill(s) to give effect to the decision of the Committee.

It would be financially prohibitive to provide monetary assistance to residents constructing a fence abutting public highways.

This report has been reviewed by Legal Services.

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List of Attachments:

Appendix "A"--Comparison Chart, Line Fences Act/Former City of Toronto By-law
Appendix "B"--Division Fence By-law

Appendix “A” - Fence Viewer Process

Item	Line Fences Act, R.S.O 1990	Former Toronto Municipal C
1.	Council appoints Fence Viewers and sets fees payable to fence viewers. Fee may be fixed on hourly or daily rate. s.2	Board of Arbitrators consists of City Sur representative from each owner. If any o Surveyor of the name of their representa Surveyor may act with any arbitrator wh S. 182-8
2.	An owner of property may make a request with the City Clerk for fence viewers to view and arbitrate as to what portion of the fence each owner shall construct, reconstruct or repair and maintain and keep up. s.4(1)	Property owner notified Surveyor of arbitrated. s. 182-8
3.	The Clerk notifies the owner and adjoining owner by registered mail of date when 3 fence viewers will attend. s.4(2)	Surveyor notifies of time and date of arb
4.	Notice of postponement due to weather or soil conditions. s. 5	
5.	Fence viewers inspect property and may hear evidence under oath. s. 7	Arbitrators inspect property and may hea 182-9
6.	Fence-viewers make award. s. 8	Arbitrators make award. S. 182-9. In the of opinion between the members of the the decision of the Surveyor prevails. S.
7.	Fence-viewer may employ a surveyor at cost to owners. S. 8 (5) & (6)	
8.	Certified copy of award to be sent to owners by registered mail. s. 9	Certified copy of award to be sent to ow s. 182-10
9.	Copy must be held by the Clerk. s. 9	Copy must be held by the Clerk. s. 182-
Item	Line Fences Act, R.S.O. 1990	Former Toronto Municipal C
10.	Either owner may appeal the award within 15 days to the referee for the appeals division in which the land is situated by serving the owner of the adjoining land and the City Clerk. S. 10	The provisions of the Line Fence enforcement of and appeal from the av viewers under the Act, apply with nec the enforcement of and appeal from a Arbitrators. S. 182-11
11.	The Clerk must notify the referee of the appeal. S. 10(3)	As per Line Fences
12.	Referee notifies Clerk of time and date of appeal. s. 10(3)	As per Line Fences
13.	Clerk must notify owners of the time and place of the appeal hearing. s. 10(4)	As per Line Fences

14.	Referee may set aside, alter or affirm the award. s. 10(5)	As per Line Fences
15.	Clerk must send copy of referee's decision by registered mail to parties and Minister. s. 10(9)	As per Line Fences
16.	Where an adjoining owner fails to obey the order, action may be commenced to recover costs by filing notice with the Clerk to have fence viewers re-attend to certify adjoining owner in default. s. 11(7)	As per Line Fences
17.	New notice to owners and fence viewers of date for return of fence-viewers. s.11(8)	As per Line Fences
18.	Fence-viewer to certify any default including the value of the work and the costs of the proceedings. s. 12(1)	As per Line Fences
19.	Fence-viewers file certificate with Clerk. s. 12(4)	As per Line Fences
20.	Clerk must enter amount on tax roll and may collect in the same manner as taxes. s.12(5)	As per Line Fences
21.	Instead of being collected by City Clerk, the owner entitled to the award may file a copy of the certificate of default and of the award with the clerk of the Small Claims Court. s. 12(9)	As per Line Fences

APPENDIX "B"

Authority:
Adopted by Council:

CITY OF TORONTO

BY-LAW No. -2001

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*.

WHEREAS Council has the authority under paragraph 27 of section 210 of the *Municipal Act, R.S.O.1990, c.M.45*, to pass this by-law;

Now therefore, the Council of the City of Toronto HEREBY ENACTS as follows:

1. General

- (1) In this by-law,
 - (a) "Basic Cost" means the cost of installing a 1.2 metre high steel chain link fence as a division fence;
 - (b) "City" means the City of Toronto;
 - (c) "Division Fence" means a fence marking or substantially marking the boundary between adjoining parcels of land;
 - (d) "Install" includes the construction or replacement of a Division Fence;
 - (e) "Owner" means the registered owner of land and includes the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on his or her own account or as agent or trustee of any other person, or who would so receive the rent if such land or premises were leased, and shall include a lessee or occupant of the property who, under the terms of a lease, is required to install, repair or maintain the division fence.

2. Apportionment of Costs

- (1) Subject to section 3, an Owner wishing to recover the costs associated with the construction, repair or replacement of a Division Fence shall send by registered mail a written notice of his or her intention to the Owner of the adjoining lands at

least fourteen (14) days prior to the commencement of any work or the execution of any contract in relation to the work to be undertaken.

(2) Where an Owner lawfully installs a Division Fence, the Owner of adjoining lands shall be required to pay the lesser of:

(a) fifty percent (50%) of the actual cost of the work completed; and

(b) fifty percent (50%) of the Basic Cost,

provided that, in the case of the replacement of a fence, the replacement is reasonably necessary to comply with City by-laws.

(3) Where an Owner lawfully repairs an existing Division Fence, the Owner of the adjoining lands shall be required to pay fifty percent (50%) of the actual cost of the repair.

(4) Where an Owner repairs a Division Fence so as to comply with a notice or order issued by the City, the Owner of the adjoining lands shall be required to pay fifty percent (50%) of the actual cost of the repair.

(5) An Owner is not required to comply with subsection (1) before undertaking repairs to a Division Fence where the City has issued a notice or order to the Owner requiring that the repairs be carried out.

3. Agreement between Owners of Adjoining Lands

Section 2 does not apply where the Owners of adjoining lands have entered into a written agreement with respect to the apportionment of the cost of constructing, repairing or replacing a Division Fence.

4. Enforcement

An Owner desiring to recover amounts owing under this by-law shall serve or cause to be served on the Owner of the adjoining lands a notice by registered mail requiring compliance with the By-law and if such compliance does not take place within thirty (30) days after service of the notice, the Owner serving the notice may initiate appropriate proceedings under the *Provincial Offences Act* to recover the amount owing from the Owner of the adjoining lands.

5. Public Highway

This by-law does not apply to an Owner of lands that constitute a public highway.

6. Condominium Corporations

Where a declaration has been registered under the *Condominium Act*, 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 for the purposes of this by-law and,

- (1) any payments the condominium corporation may be responsible for under this by-law, including the costs of any proceeding, are common expenses for the purposes of the *Condominium Act*; and
- (2) any payments to be made to the condominium corporation under this by-law are assets of the condominium corporation.

7. Repeal and Transition

- (1) Subject to subsection 7(2), the following are repealed:
 - (a) By-law No. 29830 of the former City of North York.
 - (b) Sections 182-1 through 182-12 inclusive and sections 182-16 and 182-17 of Article I of Chapter 182, Fences, of the Municipal Code of the former City of Toronto.
- (2) Despite subsection (1),:
 - (a) By-law No. 29830 of the former City of North York continues to apply to properties affected by a notice given in accordance with section 3 of By-law No. 29830 prior to the date of enactment of this by-law until the matters in dispute have been conclusively resolved; and
 - (b) Sections 182-1 through 182-12 inclusive and sections 182-16 and 182-17 of Article I of Chapter 182, Fences, of the Municipal Code of the former City of Toronto continue to apply to properties affected by a notice given in accordance with section 182-8A(1) of that Chapter prior to the date of enactment of this by-law until the matters in dispute have been conclusively resolved.

ENACTED AND PASSED this day of , 2001.

Mayor

Clerk