Draft

Corporation of the Town of Newmarket

By-law 2019-XX

A By-law to Determine the Appointment of Costs of Division Fence.

Whereas section 11(1) 7 of the Municipal Act, 2001, S.O. 2001, c.25, as amended (the Act") provides that a lower-tier **Municipality** may pass by-laws respecting structures, including fences and signs;

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 section 26 of the Line Fences Act states that the Line Fences Act, except section 20, does not apply to land in an area that is subject to a by-law for apportioning the costs of line fences passed under the Act;

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1.0 Definitions

1.1 The following words shall have the following meanings in this By-law:

"**Act**" means the Line Fences Act, R.S.O., Ch. L.17, as amended from time to time;

"Actual Cost" means the total cost of the construction, replacement, maintenance or repair of a **Division Fence** and includes the value of the materials used and the value of the labour performed to complete the work;

"Adjoining Owner" means the person who owns the land adjacent to land of another land **Owner** seeking to build a **Division Fence**;

"Basic Cost" means the total cost of construction, replacement, maintenance or repair (as applicable) of a four (4) foot high, 1-1/2 inch mesh, steel chain link fence;

"Division Fence" means a fence marking the boundary between adjoining parcels of land;

"Municipality" means The Corporation of the Town of Newmarket;

"Owner" means:

I. the registered **Owner** of the 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.

"**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;

"**Public Authority**" means the federal or provincial government, Crown

agents, school boards and regional municipalities to whom the context can apply but specifically excludes the **Municipality**;

"**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.

2.0 APPLICABILITY

2.1 From and after the date of enactment of this by-law, the provisions of the Act, except for section 20 of the Act, shall no longer apply in the **Municipality**.

2.2 The provisions of this By-law do not apply in the following circumstances:

a) 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 highway, or to lands that are being held by a **Municipality** or other **Public Authority** as an unopened road allowance or for future **Public Highway** purposes.

b) Where the **Owner** of any land has initiated proceedings under the Line Fences Act, R.S.O. 1990, c. L.17, prior to the date of the passing of this By-law.

2.3 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. The converse of the foregoing shall also apply where the context so requires.

3.0 PROVISIONS

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 an agreement on the details of construction or maintenance of the said **Division Fence**, each of them shall construct or maintain a reasonable portion of a **Division Fence**, or shall bear such proportion of the cost of any work required in connection with the construction or maintenance thereof, as is provided for in the agreement reached between the **Owners**, regardless of any provision to the contrary in this By-law.

3.3 Where the **Owners** of adjoining land cannot agree or reach an agreement as referred to in Subsection 3.2 of this By-law, an **Owner** desiring to construct or maintain a **Division Fence** may do so subject to complying with the following requirements:

a) The **Owner** must deliver a Notice of Intent to the **Adjoining Owner** by registered mail, advising of his intent to construct or maintain the **Division Fence**;

b) The Notice of Intent must contain at a minimum, the following information:

i. A copy of (3) written quotes for the **Actual Cost** or **Basic Cost** for the fencing work to be undertaken; and
ii. A paragraph stating that the construction or maintenance of the **Division Fence** will commence fourteen (14) business days after the date of mailing of the 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 this By-law; and
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; and
iv. A complete copy of the Fence By-law must be attached to the Notice of Intent.

3.4 Unless otherwise agreed, the **Actual Cost** for the construction of a **Division Fence** shall be paid 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 the lesser, having considered all the fencing quotes exchanged; and

(b) the **Owner** desiring to construct or replace the **Division fence** shall pay the balance of the **Actual Cost**.

3.5 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 **Adjoining Owner** of the land described in the declaration for the purposes of this By-law and,

(a) any payment that the condominium corporation may be responsible for under this By-law is a common expense for the purposes of the Condominium Act; and,

(b) any payment to be made to the condominium corporation under this **Act** is an asset of the condominium corporation.

3.6 In cases where the cost of replacement/maintenance/repair of an existing **Division Fence** is in dispute, the cost 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 lesser, having considered all the fencing quotes exchanged, and

b) The **Owner** shall pay the balance of the **Actual Cost**.

3.7. Once a fence has been erected, the cost of repairs or maintenance to the **Division Fence** shall be borne equally by the **Owner** and the **Adjoining Owner**, in accordance with Section 3.6, save and except for the following exceptions:

a) The cost of repairs to a **Division Fence** shall be borne by the **Owner** if his/her invitees caused the damage necessitating the repair.

b) The cost of repairs to a **Division Fence** shall be borne by the **Adjoining Owner** if his/her invitees caused the damage necessitating the repair.

c) The cost of repairs to the **Division Fence** shall be borne equally by the **Owner** and the **Adjoining Owner** if the damage necessitating the repair was caused by natural disaster,

d) If a tree is displaced by accident, carelessness, negligence, deliberate intent or otherwise, so as to cause damage to a **Division Fence**, the **Owner** of the land on which the tree stood shall, as his sole expense, remove the tree and repair the fence.

3.8. Where the **Municipality** is the **Adjoining Owner** of lands other than lands as described in in Subsection 2.2 of this By-law, the cost of construction, replacement, repair or maintenance of a **Division Fence** shall be assigned as follows:

a) The **Owner** shall pay 95% of the cost of work; and/or

b) The **Municipality** shall pay 5% of the cost of the work.

3.9 Compliance with this by-law does not exempt an **Owner** or the **Adjoining Owner** from the requirement to comply with By-law 2019-XX (the “Fence By-law”) or By-law 2008 –18, as amended (Pool Enclosure By-law) from time to time.

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3.10 Any **Division Fence** constructed or repaired within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act, R.S.O. 1990, c O.18, as may be amended from time to time, is subject to all the requirements for obtaining a permit pursuant to such legislation.

4.0 Enforcement

4.1 Any **Owner** desiring to enforce the provisions this By-law shall, within ninety days (90) after completion of the construction 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** and if such compliance does not take place within thirty (30) days after service of the notice, the **Owner** may take appropriate proceedings under Part IX of the Provincial Offences Act, R.S.O. 1990, c. P.33, as may be amended from time to time, for an order to recover the proportionate share of the cost of the work from the **Adjoining Owner**.

5.0 Severability

5.1 Should any provision of this By-law be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this By-law as a whole or any other part thereof, other than the provision declared to be invalid.

6.0 Short Title

6.1 This By-law shall be referred to as the "Division Fence By-law";

Enacted this xxx day of xxx, 2019.

John Taylor, Mayor

Lisa Lyons Town Clerk