

TOWN OF MARKHAM

ONTARIO



BY-LAW 277-97

A BY-LAW FOR PRESCRIBING THE HEIGHT AND DESCRIPTION OF LAWFUL FENCES IN THE TOWN OF MARKHAM AND FOR DETERMINING HOW THE COST OF DIVISION FENCES SHALL BE APPORTIONED

This By-law is printed under and
by authority of the Council of
the Town of Markham

(Consolidated for convenience only
to May 29, 2012)

(Schedule/Attachment Included)

AMENDED BY:

By-law No. 2002-239 - October 29, 2002

By-law No. 2003-260 – July 8, 2003

By-law No. 2005-89 – March 29, 2005

By-law 2008-123 – June 24, 2008

By-law 2012- 118 – May 29, 2012

277-97

A by-law for prescribing the height and description of lawful fences in the Town of Markham and for determining how the cost of division fences shall be apportioned.

WHEREAS the Municipal Act R.S.O. 1990, c.M45, Section 210, Paragraphs 25 authorizes the passing of a by-law for prescribing the height and description of lawful fences:

AND WHEREAS, the Municipal Act R.S.O. 1990, c.M45, Section 210, Paragraph 27, authorizes the passing of a by-law for determining how the costs of division fences shall be apportioned; and for providing that any amount so apportioned shall be recoverable under the Provincial Offences Act.

NOW THEREFORE, the Town Council of The Corporation of the Town of Markham, hereby ENACTS AS FOLLOWS:

SECTION 1.0 TITLE AND SCOPE

- 1.1 This By-law may be cited as the Fence By-law.
- 1.2 Schedules 'A' and 'B' be added as part of this by-law.

(Amended by By-law 2002-239)

SECTION 2.0 DEFINITIONS

In this By-law:

- 2.1 Fence includes a railing, wall, line of posts, wire, gate, boards, pickets, or other similar material, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary, and or to provide privacy.

(Amended by By-law 2008-123)

- 2.2 Deleted

(Amended by By-law 2008-123)

- 2.3 Height means the vertical distance measured between the finished grade at the base of the fence and the highest point of the fence. In the case of a fence located on top of a retaining wall height means the vertical distance between the top of the retaining wall and the highest point of the fence.
- 2.4 Lot means a parcel of land that abuts a public street that is registered as a legally conveyable parcel of land in the Registry Office.
- 2.5 Lot, Corner means a lot, the street line of which is composed of two (2) or more straight lines, or of one (1) or more curves, or of any combination of a straight line or straight lines and a curve or curves, such that the interior angle contained at the intersection of two (2) straight lines produced from the two (2) extremities of the street line and coincident with or tangent to such street line as such extremities is not greater than one hundred and thirty-five (135) degrees. The corner of a corner lot shall be deemed to be the point on the street line nearest to the above mentioned point of intersection.
- 2.6 Lot, Interior means a lot situated between adjacent lots and having access to one (1) street.
- 2.7 Lot Line means any boundary line of a lot.
- 2.8 Lot Line Exterior/ Flankage means a side lot line which abuts the street on a corner lot or reversed corner lot.
- 2.9 Lot Line Front means, except in the case of a corner lot, the line dividing the lot from the street; in the case of a corner lot the shorter boundary line abutting the street shall be deemed the front lot line and the longer boundary line abutting the street shall be deemed the side lot line. In case each of such lot lines shall be of equal length the front lot line shall be deemed to be the front lot line as established in the block by prior construction. In the case of a through lot, the longer boundary dividing the lot from the street shall be deemed to be the front lot line and the opposite, shorter boundary shall be deemed to be the rear lot line. In case each of such lot lines shall be of equal length, the front lot line shall be deemed to be the front lot line as established in the block by prior construction.
- 2.10 Lot Line, Rear means the lot line farthest from or opposite the front lot line. In the case of lots abutting streets on more than two (2) sides, rear lot line shall mean the rear lot line as established by prior construction.
- 2.11 Lot Line, Side means a lot line other than a front or rear lot line.

2.12 Lot, Through means a lot bounded on two (2) opposite sides by streets, provided however, that if any lot qualifies as being both a Corner Lot and a Through Lot as hereinbefore defined, such lot shall be deemed to be a Corner Lot for the purpose of this by-law.

2.12.1 Manager means the Manger, By-law Enforcement & Licensing or his/her designate.

(Amended by By-law 2012-118)

2.13 Non Residential Property means a property used for uses other than residential or multiple residential uses and includes schools and other institutional used but does not include public highways or walkways.

2.13.1 Officer means a person designated by Council to enforce by-laws of the municipality and includes members of York Regional Police.

(Amended by By-law 2012-118)

2.14 Owner means an owner, lessee, tenant, mortgagee in possession and the person in charge of any property.

2.15 Privacy Screen means a visual barrier used to shield any part of a yard from view from any adjacent parcel or highway.

(Amended by By-law 2008-123)

2.16 Residential Property means a property that is being used or is intended to be used for residential purposes.

2.16.1 Unsafe Condition is a descriptive phrase for structures or materials, that are in a condition or state of repair that causes a hazard to life, limb or health of any person authorized or expected to be on or near the land in question.

(Amended by By-law 2012-118)

2.17 Yard means an open, uncovered space on a lot appurtenant to the building (except as a court) and unoccupied by buildings or structures except as specifically permitted elsewhere in this by-law. In determining yard measurements the minimum horizontal distance from the respective lot lines shall be used. Where a daylighting triangle is provided for a corner lot, the minimum yard requirement from the hypotenuse of the daylighting triangle shall be the lesser of the yards required along the exterior lot lines (street lines) of the lot.

- 2.18 Yard, Exterior Flankage means the side yard of a corner lot or reversed corner lot which side yard extends from the front yard to the rear yard between the flankage lot line and the nearest main wall of the main building or structure.
- 2.19 Yard, Front means a yard extending across the full width of a lot between the front lot line and the nearest main wall of any building or structure on the lot.
- 2.20 Yard, Rear means a yard extending across the full width of a lot between the rear lot line and the nearest main wall of any building or structure on the lot.
- 2.21 Yard, Side means a yard extending from the front yard to the rear yard of a lot between a side lot line and the nearest main wall of any building or structure on the lot.

PART 1 - ALL FENCES

SECTION 3.0

- 3.1 Part 1 of this by-law applies to all fences and privacy screens in the Town of Markham, including division fences save and except that agricultural properties are exempt.
(Amended by By-law 2008-123)
- 3.2 Deleted
(Amended by By-law 2008-123)
- 3.3 Where one property abuts another such that the provisions of this by-law provide for 2 different height requirements, the higher of the two requirements shall apply.

SECTION 4.0 FENCES IN RESIDENTIAL ZONES

A. REQUIREMENTS FOR FENCES ON CORNER LOTS

- 4.1 The maximum HEIGHT of a fence in the FRONT YARD shall be 1.20 metres (4 feet).
- 4.2 The maximum HEIGHT of a fence in an interior SIDE YARD shall be 1.80 metres (6 feet).
- 4.3 The maximum HEIGHT of a fence in an EXTERIOR/FLANKAGE YARD shall be 1.2 metres (4 feet).

Amended by By-law No. 2003-260

4.3.1 The maximum HEIGHT of a fence in a REAR YARD shall be 1.8 metres (6 feet). The fence shall consist of a maximum 1.8m of open lattice work OR a maximum 1.52m (5 feet) of solid panel, commencing from the ground, with a maximum .3m (1 foot) of open lattice work at the top of the fence.

Amended by By-law 2003-260

B. REQUIREMENTS FOR FENCES ON INTERIOR LOTS

4.6 The maximum HEIGHT of a fence on an interior lot shall be 1.20 metres (4 feet) except that the maximum HEIGHT of a fence located in a SIDE YARD or REAR YARD shall be 1.80 metres (6 feet).

4.7 If the fence is located in the interior side yard between two properties, the subject fence shall not exceed 1.80 metres (6 feet) in height and may be erected to a point opposite the front corner of the building nearer the road.

C. EXEMPTIONS FROM HEIGHT RESTRICTION

4.8 a) Notwithstanding anything in this Section, a fence located in a rear lot exceeding 4.5 metres (15 feet) in height shall be permitted when such a fence is normally required as part of a private outdoor recreation facility provided such fence shall not be permitted within 2.40 metres (8 feet) of a property boundary.

b) Council may, upon application by any owner of land, enact a resolution to grant an exemption from the height restrictions set out in this by-law subject to any conditions imposed by Council.

D. REQUIREMENTS FOR PRIVACY SCREENS

4.9 (1) Except as provided in Subsection (2) of this Section, no person shall erect, or cause to be erected, a privacy screen on any land lawfully used for residential or commercial purposes.

(2) A privacy screen may be erected in a side yard or rear yard, if:

(a) it is more than 4.6 metres (15 feet) from the street line;

- (b) it is more than 1.8 metres (6 feet) from any side lot line, provided, however, that where the privacy screen is located so as to provide a visual barrier between dwelling units divided by a common wall, such screen may be placed closer to any side lot line.
- (c) it is more than 1.8 metres (6 feet) from the rear lot line
- (d) it is no more than 9.7 metres (32 feet) in total length, and no single individual length is longer than 4.9 metres (16 feet).
- (e) it is no more than 2.4 metres (8 feet) above ground level or 1.8 metres (6 feet) in height if constructed on a deck or elevated platform.

(Section 4.9 added by By-law 2008-123)

E. REQUIREMENTS FOR GATES, ARCHWAYS, DECORATIVE CAPS

Notwithstanding the maximum height requirements for fences in Section 4.0:

- 4.10 Gates may exceed the height restrictions prescribed in by-law 277-97 by a maximum of 30 centimetres (1 foot);

(Amended by By-law 2008-123)

- 4.11 Archways forming part of an entrance may exceed the height restrictions to a maximum of 2.4 metres (8 feet);

(Amended by By-law 2008-123)

- 4.12 Decorative caps on structural posts may exceed the height restrictions to a maximum of 15 centimetres (6 inches)

(Amended by By-law 2008-123)

SECTION 5.0 FENCES IN NON RESIDENTIAL PROPERTIES

- 5.1 No fence erected in a commercial, industrial or institutional property shall exceed 3.04 metres (10 feet) in height in the rear yard or interior side yard.

- 5.2 Fencing in the front yard and exterior/flankage side yard shall not exceed 1.2 metres (4 feet) except where such property is lawfully used for the purposes of open storage, the maximum height shall be 2.4 metres (8 feet).

- 5.3 Where a Residential property is adjacent to a commercial, industrial or institutional property, a fence may be permitted to a maximum height of 3.04 metres (10 feet) in a rear or side yard.

SECTION 6.0 RESTRICTIONS ON FENCES

- 6.1 No person shall use any barbed wire or other barbed or sharp materials in the construction of, or in connection with, any fence in the Town of Markham, except where such a fence is

located within an industrial zone and provided that such materials are used at a height of at least 1.80 metres (6 feet) above the finished grade.

- 6.2 No person shall permit a fence or any attachment to a fence to be used as a conductor of an electrical current.
- 6.3 No person shall construct a fence over a drainage easement or watercourse without constructing a watergate sufficient to ensure adequate drainage. All watergates on fences shall at all times be kept free from obstructions.
- 6.4 No person shall erect, cause to erect, have or maintain a fence that creates an *unsafe condition*. (Amended by By-law 2012-118)
- 6.5 No person shall erect, cause to erect, have or maintain a fence which, by reason of location or design, obstructs the vision of drivers, either when leaving a roadway or when entering a roadway from another roadway or driveway, or which obstructs or detracts from the visibility, or effectiveness, of any traffic sign or control device on a public street or which, for any other reason, constitutes a hazard. (Amended by By-law 2012-118)

SECTION 7.0 CONSTRUCTION AND MAINTENANCE

- 7.1 All surfaces that have been previously painted, stained, varnished or which have received other similar protective finishes shall be maintained without visible deterioration.
- 7.2 Every fence shall be maintained in a structurally sound condition and in good repair.

SECTION 8.0 EXEMPTIONS AND EXCEPTIONS

(Amended in entirety by By-law 2012-118)

- 8.1 (1) Any property owner or agent authorized by a property owner may apply for an exemption from the provisions contained in Part 1 of this by-law.
- (2) Every application for an exemption shall be in writing and may contain the following supporting documentation:
- (a) a property survey;
 - (b) a site plan;
 - (c) specifications pertaining to the description of the fence;

- (d) specifications pertaining to the construction and installation of the fence;
 - (e) consent from the abutting neighbours to the exemption request; and,
 - (f) the application fee.
- (3) An application for an exemption shall include:
- (a) the name, address and telephone number of the applicant;
 - (b) reference to the section of the by-law from which the exemption is being sought;
 - (c) a statement whether the proposed fence or privacy screen will be temporary or permanent; and,
 - (d) reasons why the exemption is being sought.
- (4) An application for an exemption, completed in accordance with section 8(2) and 8(3), shall be delivered to the *Manager*.
- (5) The *Manager* may grant an exemption in whole or in part, with terms and conditions, subject to the provisions of this By-law.
- (6) In considering the completed application for an exemption, the *Manager* shall take into account the following:
- (a) any special circumstances or conditions applying to the fence or privacy screen referred to in the application;
 - (b) whether strict application of the provisions of this by-law would result in practical difficulties or unnecessary hardship to the applicant; and,
 - (c) whether the fence or privacy screen may affect surrounding sight lines and create, or potentially create, a hazardous condition for persons or vehicles.
- (7) Notwithstanding that the authority to grant an exemption is delegated to the *Manager*, and that he or she may have already exercised the delegated power, Council shall retain the right to exercise the authority to grant or deny an exemption in accordance with the conditions set out in section 8(5) and 8(6) of the By-law if an appeal of the *Manager*'s decision is received by the Clerk within 10 days of the decision.

8.2 This by-law shall not apply to municipally approved noise attenuation fences, walls or barriers, or railway fences, walls or barriers.

- 8.3 Notwithstanding the provisions of this by-law, any fence that was lawfully existing prior to the date of the enactment of this by-law shall be deemed to comply with this by-law and may be maintained or reconstructed to the same height and dimensions as previously existed.
- 8.4 The following provisions shall apply to the lands shown on Schedules 'A' and 'B' hereto:
- (a) Notwithstanding the provisions of Section 2.0 (r) the FRONT YARD means the YARD between the nearest main wall of any building or structure on the lot and the west lot line.
 - (b) Notwithstanding the provisions of Section 2.0 (s) the REAR YARD means the YARD between the nearest main wall of any building or structure on the lot and the east lot line
 - (c) Notwithstanding the provisions of Section 4.4, the maximum height of a fence located in the REAR YARD shall be 1.50 meters (5 feet) except that the maximum height of a fence in a REAR YARD shall be 1.80 meters (6 feet) where a detached garage is located within the REAR YARD.

PART 2 DIVISION FENCES

SECTION 9.0 APPLICATION

- 9.1 Part 2 of this by-law applies only to division fences.
- 9.2 Part 2 of this by-law shall not apply to division fences abutting municipal, provincial or federal property.
- 9.3 This by-law does 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 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; or
 - b) any park, or open space land owned by the municipality.

SECTION 10.0 DEFINITIONS

- 10.1 In this part, “adjoining Owner” includes all those persons referred to in Section 10.5 of this by-law who own or manage a parcel of land abutting the parcel of the owner.
- 10.2 “basic cost” means the cost of constructing, reconstructing or repairing a division fence of any kind that is an amount of money equal to the cost of the construction, reconstruction or repair of a four (4) foot high steel chain link fence shall:
- a) be of not greater than 1-1/2 inch diamond mesh;
 - b) be constructed of galvanized steel wire not less than No. 12 gauge or minimum 14 gauge steel wire covered with a vinyl forming a total thickness equivalent to No. 12 gauge galvanized wire; and
 - c) be supported by at least 1-1/2 inch diameter galvanize steel posts encased in a minimum of two (2) inches of concrete from grade to a minimum of two (2) feet below grade, such posts to be spaced not more than ten (10) feet apart. Top and bottom horizontal rails shall be provided at 1-1/4 inch minimum diameter galvanized steel tension rod may be substituted for the bottom horizontal steel rail.
- 10.3 “actual cost” means the total cost of the construction, reconstruction or repair of a division fence, and includes the value of the material used and the value of the labour performed to complete the work.
- 10.4 “division fence” means a fence marking the boundary between adjoining parcels of land.
- 10.5 “owner” means the registered owner of the land and includes the person managing or receiving the rent for the land or premises whether on his own account or as agent or trustee for the owner.

SECTION 11.0 DIVISION FENCES

- 11.1 An owner of land may construct and maintain a division fence to mark the boundary between his or her land and the adjoining lands.
- 11.2 No person shall construct a division fence that is greater than 20 centimetres (8 inches) wide.

SECTION 12.0 DETERMINATION OF COSTS

- 12.1 An owner desiring to construct, reconstruct or repair a division fence shall serve or cause to be served upon the adjoining owner, by registered mail, a notice of his intention to do so at least fourteen (14) days prior to the commencement of any work or execution of any contract in relation to the work to be undertaken.
- 12.2 Where owners of adjoining land have agreed, in writing to the construction, reconstruction or repair of a division fence, each owner shall construct, reconstruct or repair fifty percent (50%) of the division fence and pay fifty percent (50%) of the actual cost for such construction, reconstruction or repair unless otherwise provided for in the written agreement.
- 12.3 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; and
 - b) the owner shall pay the balance of the actual cost.
- 12.4 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,
- a) any payments of 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.

SECTION 13.0 HERITAGE AREAS

- 13.1 Any division fence constructed or repaired within an area designated as a heritage conservation district pursuant to Part V of the Ontario Heritage Act is subject to all requirements for obtaining a permit pursuant to such legislation.

SECTION 14.0 ENFORCEMENT OF COSTS

14.1 An owner desiring to enforce the provisions of this by-law shall serve or cause to be served on the adjoining owner, a notice by registered mail requiring compliance with this by-law and if such compliance does not take place within thirty (30) days after service of the notice, the owner may take appropriate proceedings under the Provincial Offences Act to recover the proportionate share of the costs of the work from the adjoining owner.

PART 3 PENALTY AND REPEALS

SECTION 15.0 ADMINISTRATION AND ENFORCEMENT

(Amended in entirety by By-law 2012-118)

- 15.1 The Manager and his/her delegate is responsible for the administration and enforcement of this by-law.
- 15.2 For the purpose of conducting an inspection to determine compliance with this by-law, an Order, a permit or any condition of a permit, an Officer may, upon producing appropriate identification when requested, at any reasonable time, enter and inspect any lands or property, to determine whether the provisions of this by-law, an Order issued under this by-law or a permit or condition of a permit issued under this by-law, have been complied with.
- 15.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a by-law passed under this Act. Or under a by-law passed under this Act. 2006, c. 32, Sched. A, s. 184.

SECTION 16.0 POWERS OF ENTRY

(Amended in entirety by By-law 2012-118)

- 16.1 The Town may enter on lands at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are complied with:
- (a) the provisions of this by-law;
 - (b) an Order issued under this by-law.
- 16.2 Where an inspection is conducted by the Town, the person conducting the inspection may,

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection including their name, address, phone number and identification; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purpose of the inspection

16.3 The Town may undertake an inspection pursuant to an order issued under s.438 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended.

16.4 The Town's Power of Entry may be exercised by an employee, officer or agent of the Town or by members of York Regional Police.

SECTION 17.0 ORDERS AND REMEDIAL ACTION

(Added in entirety by By-law 2012-118)

17.1 If a person contravenes any of the provisions of this by-law, the Town may issue an Order to Discontinue to the person who contravened or permitted the contravention of this by-law. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the order. The order may be served in accordance with the service provisions contained in this by-law.

17.2 If a person has contravened a provision of this by-law, the Town may issue a Work Order to the person who contravened or permitted the contravention of this by-law, as well as to the owner of the lot on which the contravention occurred, to do work to correct the contravention. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the order. The order may also provide that if the person or owner fails to correct the contravention, the Town may do the work to correct the contravention, including the removal of the fence, at the

expense of the owner. The order may be served in accordance with the service provisions contained in this by-law.

- 17.3 If the Town has issued an order directing or requiring a person or an owner to do a matter or thing to correct a contravention of this by-law, and the person or the owner has failed to correct the contravention, the Town may enter upon the lot between the hours of 6:00 a.m. and 9:00 p.m. Monday to Friday to do all work necessary to correct the contravention. The Town may recover the cost of doing the necessary work from the person directed or required to do it by action or by adding the costs to the tax roll of the owner and collecting them in the same manner as property taxes.
- 17.4 An order issued under this by-law may be served personally or may be served by registered mail sent to the last known mailing address of the person indicated on the Town's assessment roll. If an order is served on a person by registered mail, it shall be deemed to have been served on the person on the 5th day after mailing of the order, which deemed service may be rebutted by the person proving, on a balance of probabilities, that they did not receive the order.

SECTION 18.0 PENALTY PROVISIONS

(Added in entirety by By-law 2012-118)

- 18.1 Every person who contravenes a provision of this by-law, including an order issued under this by-law, is guilty of an offence and upon conviction pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33, is liable to the maximum fine pursuant to the said Act.

SECTION 19.0 SEVERABILITY

(Added in entirety by By-law 2012-118)

- 19.1 If a court or tribunal of competent jurisdiction declares any provision, provisions or part of a provision of this by-law to be illegal or unenforceable for any reason, such provision, provisions or part of a provision shall be severed and all other provisions of this by-law shall be deemed to be separate and independent therefrom and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 20.0

(Amended in entirety by By-law 2012-118)

20.1 That By-law Nos. 84-80 and 112-90 as amended are hereby repealed.

20.2 This By-law shall come into force and take effect on the date it is passed.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 28TH DAY OF
OCTOBER, 1997.


“Bob Panizza”

BOB PANIZZA, TOWN CLERK

“Don Cousens”

DON COUSENS, MAYOR



 BOUNDARY OF AREA SUBJECT TO THE
PROVISION OF SECTION 8.3



THIS IS SCHEDULE 21 TO BY-LAW 277-97
PASSED THIS 29TH DAY OF OCT., 2002

[Signature] MAYOR
[Signature] CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
2) REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK

SCALE 1:2000

11/29/2002 04:12:45 PM