

The Corporation of the Municipality of Brockton



By-Law 2024-077

Being a By-Law to Establish a Process for the Application of the Line Fences Act and to Set a Reasonable Administrative Fee and Fence Viewer Fee for Fence Viewings

Whereas Section 17(1) of the Line Fences Act, R.S.O. 1990, c. L. 17, as amended, provides that the Council of every local municipality may By-Law fix its reasonable administrative fees to be paid to the Municipality in relation to proceedings under the Act;

And Whereas Section 5(2) of the Line Fences Act, R.S.O. 1990, c. L. 17, as amended, provides that Council may provide by By-Law that no arbitration or other proceedings requiring the attendance or re-attendance of fence viewers shall be scheduled between the 1st day of November and the 31st day of March in the next following year;

And Whereas Section 2 of the Line Fences Act, R.S.O. 1990, c. L. 17, as amended, provides that the Council of every local municipality shall by By-Law appoint such number of fence viewers as are required to be paid for the fence viewing and the remuneration may be fixed on an hourly or daily rate, or a rate for each attendance or re-attendance by the fence viewers;

And Whereas the Council of the Corporation of the Municipality of Brockton previously appointed individuals to act as fence viewers for the Municipality of Brockton as per By-Law 2017-010 on January 23, 2017;

And Whereas the Council for The Corporation of the Municipality of Brockton deems it expedient to establish a process for the application of the Line Fences Act, and amend the appointment process for fence viewers serving the Municipality of Brockton;

Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

Section 1: Definitions

1.1 For the purposes of this By-Law,

- a) **Adjoining Owner** means the registered owner of land that adjoins the Applicant's land and that is subject to proceedings under Section 4 of the Line Fences Act;
- b) **Applicant** means the registered owner of land who notifies the Clerk that they desire Fence Viewers to view and arbitrate as to what portion of the fence they and the Adjoining Land Owner shall construct, reconstruct or repair and maintain and keep up under Section 4 of the Line Fences Act;
- c) **Clerk** means the Director of Legislative and Legal Services (Clerk) for the Corporation of the Municipality of Brockton;
- d) **Council** means the Council of the Corporation of the Municipality of Brockton;
- e) **Fence Viewer(s)** means the individuals appointed by the Council of the Municipality of Brockton pursuant to the provisions of the Line Fences Act to govern the arbitration process when neighbours cannot agree on the construction, reconstruction or maintenance of a line fence.
- f) **Municipality** means the Corporation of the Municipality of Brockton;

Section 2: Fence Viewers

- 2.1 The Municipality shall appoint, by By-Law, a minimum of three (3) Fence Viewers and a maximum of five (5) Fence Viewers pursuant to the provisions of the Line Fences Act.
- 2.2 If a Fence Viewer wishes to resign their appointment, the resignation must be in writing to the Clerk.
- 2.3 The Fence Viewers shall be appointed for the term of Council, but shall continue until such time as new members are appointed by a new Council following an Election. Members may be re-appointed at the discretion of Council.
- 2.4 Recognizing that vacancies may arise, Council may request submissions from the public and appoint citizens to fill such vacancies.
- 2.5 Fence Viewers shall be paid remuneration in accordance with Section 3 of this By-Law.
- 2.6 Fence Viewers shall work within the scope of their responsibilities under the Line Fences Act, including the following responsibilities:
 - 2.6.1 Pursuant to Section 4 of the Line Fences Act, if a dispute arises between owners of adjoining lands respecting the construction of a fence to mark the boundary between those lands, a request can be made to the Municipality to have Fence Viewers attend. On the date and time appointed, three (3) Fence Viewers will examine the land in question and hear submissions from the adjoining owners and/or their witnesses. All notices under the Act are distributed by the Clerk's Office.
 - 2.6.2 Pursuant to Section 8 of the Line Fences Act, the Fence Viewers shall make an award in the prescribed form, signed by two (2) Fence Viewers, describing what the Applicant and Adjoining Owner must do and/or pay. The award will specify:
 - a) The location of the fence that the Applicant and/or Adjoining Owner shall construct, reconstruct, or repair and maintain;
 - b) The date the work is to commence and be completed;
 - c) The costs of the proceedings and how the work is to be apportioned to the Applicant and/or Adjoining Owner;
 - 2.6.3 In making the award, the Fence Viewers must take into account the suitability of the fence to the needs of the Applicant and Adjoining Owner, the benefit received by the Applicant and Adjoining Owner, and the type of fence in use in the area.
 - 2.6.4 Pursuant to Section 10 of the Line Fences Act, if any of the parties are not satisfied with an award, they can lodge an appeal to a Provincial Referee within 15 days of receiving the copy of the award, and an appeal hearing will be held. At the hearing, the Clerk and their designate will attend to take minutes of the hearing, and the Fence Viewers shall be required to attend the appeal hearing.
- 2.7 The Municipal Act, 2001, S.O. 2001, c. 25, as amended, shall bind the Fence Viewers as it relates to confidentiality, conflict of interest, closed sessions, and any other requirements under the Act which pertain to the conduct of officials.
- 2.8 All Fence Viewers should reflect appropriate conduct when attending Fence Viewings and/or representing the Municipality.
- 2.9 All Fence Viewers will abide by the Municipality's Council and Committee Code of Conduct and any other applicable Municipality policies.

Section 3: Remuneration and Administrative Fee

- 3.1 The remuneration to be paid by the Municipality to the Fence Viewers shall be at a rate of seventy-five dollars (\$75.00) plus H.S.T. per hour for each Fence Viewer, plus mileage, at the Municipality’s Mileage Allowance Policy rate of the day from the Fence Viewer’s place of residence to the location of the Fence Viewing and any other required location and return.
- 3.2 The non-refundable administrative fee for initiating proceedings under the Line Fences Act shall be one hundred dollars (\$100.00) for each Fence Viewing.
- 3.3 The cost of remuneration paid to the Fence Viewers and any other associated costs under the Line Fences Act shall be recovered from either the Applicant or the Adjoining Owner as the Fence Viewers deem appropriate, or by both in such proportions as the Fence Viewers deem appropriate.

Section 4: Administration and Enforcement

- 4.1 The Clerk shall be responsible for the administration and enforcement of the By-Law, with the ability to appoint designates as required.
- 4.2 This By-Law shall not be construed or reduce or mitigate any restrictions or regulations lawfully imposed by the Municipality or by any governmental authority having jurisdiction to make such restrictions or regulations.
- 4.3 If there is a conflict between a provision in this By-Law and a provision in any other Municipal By-Law, the provision that establishes the highest stand to protect the health, safety and welfare of the general public shall apply.

Section 5: Severability

- 5.1 In the event that any part or provision of this By-Law is held invalid, the remainder of the By-law shall continue in force.

Section 6: General Provisions

- 6.1 There shall be no arbitration or other proceedings requiring the attendance or re-attendance of Fence Viewers scheduled between the 1st day of November in any year and the 31st day of March in the following year.
- 6.2 That this By-Law shall come into effect as of January 1, 2025 and at such time By-Law 2017-010 shall be rescinded.
- 6.3 This By-Law may be cited as the “Line Fences Act Fence Viewing By-Law”.

Read, Enacted, Signed and Sealed this 10th day of September, 2024.

Mayor – Chris Peabody

Director of Legislative and Legal Services (Clerk) –
Fiona Hamilton