c 199 The City of Toronto Act, 1972 (No. 2)

Ontario
CHAPTER 199

An Act respecting the City of Toronto

Assented to April 27th, 1972
Session Prorogued December 15th, 1972

WHEREAS The Corporation of the City of Toronto, herein called the Corporation, hereby applies for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the application;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Notwithstanding paragraph 101 of subsection 1 of section 354 of The Municipal Act, the Corporation may require the entering into of agreements with the Corporation by any person or persons for such consideration and upon such terms and conditions as may be agreed in respect of any or all of the matters which by the said paragraph the council of the Corporation may by by-law authorize and regulate.

2.—(1) In this section,

(a) "corporation" means The Corporation of the City of Toronto;

(b) "inspector" means the person or persons from time to time designated by the council of the corporation to enforce the provisions of a by-law passed under this section;

(c) "owner" includes the person for the time being managing or receiving the rent of the vacant land in connection with which the word is used, whether on his own account or as agent or trustee of any other person or who would so receive the rent if such vacant land were let or a vendor of such vacant land under an agreement for sale who has paid any municipal taxes thereon after the effective date of the agreement, or the person for the time being receiving instalments of the purchase price of the vacant land, in connection with which the word is used, sold under an agreement for sale whether on his own account or
as agent or trustee of any other person or who would receive the instalments of the purchase price if such vacant land were sold under an agreement for sale;

(d) "standards" means the standards for the maintenance and improvement of the physical condition of vacant land prescribed by a by-law passed under this section;

(e) "vacant land" includes any land in the municipality not encompassed in a "dwelling" as defined in section 6 of The City of Toronto Act, 1936, nor in "non-residential property" as defined in section 11 of The City of Toronto Act, 1971.

(2) The council of the corporation may pass by-laws,

(a) for providing standards for vacant land within the municipality or within any defined area or areas thereof, and for greater certainty standards applicable to vacant land within any defined area or areas may be different from standards applicable to vacant land within any other defined area or areas;

(b) for requiring the owner of any vacant land to take any action necessary to make the same conform to the standards and for providing that in default of such action being taken, the corporation may take such action at the expense of the owner and may recover such expense by action or in like manner as real property taxes;

(c) for appointing one or more inspectors and empowering such inspectors to fix the time or times within which any owner of vacant land shall make the same conform to the standards.

(3) The corporation may enter into agreements with owners of vacant land to take, at the expense of such owners, any necessary action to bring any vacant land to the standards and to keep the same in conformity therewith upon such terms and conditions as may be agreed and such agreement may provide that in default of payment such expense may be recovered in like manner as real property taxes.

(4) Where a by-law passed under this section is in effect, any inspector or person acting under his instructions may enter and inspect any vacant land to which the by-law applies.

(5) A by-law passed under this section shall be enforceable in the same manner as a by-law passed under the authority
of The Municipal Act and any such by-law may impose penalties of not more than $1,000, exclusive of costs, upon every person who contravenes any provisions of such by-law.

3. — (1) By-law No. 39-72 of the Corporation, being "A By-law Respecting Fences", passed on the 1st day of March, 1972, set forth as the Schedule hereto, is hereby validated and confirmed, and may be amended from time to time to such extent as may be approved by the Ontario Municipal Board.

(2) Part XXI of The Municipal Act applies to By-law No. 39-72 referred to in subsection 1, and to any amendments thereto.

4. Subsection 2 of section 3 of The City of Toronto Act, being chapter 137, as re-enacted by the Statutes of Ontario, 1971, is repealed and the following substituted therefor:

(2) Before passing a by-law under this section, notice of the intention of the Corporation to pass the same shall be sent by prepaid mail to all persons rated on the last revised assessment roll with respect to land abutting on the highways or parts thereof to be designated as aforesaid at the addresses respectively shown for such persons in such roll.

5. This Act comes into force on the day it receives Royal Assent.

6. This Act may be cited as The City of Toronto Act, 1972 Short title (No. 2).
The Council of the Corporation of the City of Toronto enacts as follows:

1. In this by-law,

(1) "DIVISION FENCE" shall mean a fence which marks or substantially marks the boundary between adjoining occupied lands.

(2) "CITY SURVEYOR" shall mean the City Surveyor of the Corporation or such other employee of the Corporation as he may designate to act in his place and stead.

(3) "LAWFUL FENCE" shall mean:

(a) A division fence constructed at a height of not more than 5 feet 6 inches above ground elevation in accordance with the following minimum specifications:

(i) **Material:**
   a. Posts—1½ inch outside diameter double galvanized steel pipe—36 inches longer than width of wire.
   b. Fabric—chain link galvanized steel wire, after woven, 60 inch, number 11 gauge in 2 inch diamond shape mesh.
   c. Top rail—double galvanized steel pipe.
   d. Bottom brace—number 6 gauge galvanized steel wire.

(ii) **Installation:**
   a. Terminal corner posts to be imbedded 3 feet in concrete.
   b. Line posts to be placed at 10 foot intervals, and driven 3 feet into ground.

(iii) **Line of Fence:** the point of contact between the wire and the metal posts shall be on the boundary line between the said adjoining occupied lands.

(iv) **Siting of Posts:** where the boundary runs in an easterly and westerly direction the posts shall be located on the property to the south of the boundary, and when the boundary runs in a northerly and southerly direction the posts shall be located on the property to the west of the boundary, except in cases where, according to the prevailing customs in the area in which the fence is erected or to be erected, the posts are otherwise located, in which event the posts shall be located in accordance with the prevailing custom in such area.
(v) **Ground Elevation**: where the ground elevations are not the same on both sides of the boundary the higher of such elevations shall be considered as grade for purposes of the fence; or

(b) a division fence other than a fence described in subsection (3) (a), erected in accordance with specifications agreed upon by the owners of the adjoining lands at the time of the erection thereof, provided that a fence which otherwise complies with this paragraph shall be deemed to have been erected in accordance with specifications agreed upon by the owners of the adjoining lands at the time of the erection thereof where it has been erected for at least five years and further, provided that the height thereof shall be at least 3 feet 6 inches and not more than 5 feet 6 inches and that no part thereof shall be composed of barbed wire or other barbed material; or

(c) a division fence conforming to specifications fixed by an award of a Board of Arbitrators under this by-law.

(4) **Occupied Lands** shall mean lands which are appurtenant to or used in connection with a building, or which are improved, cultivated, or in actual and apparent possession of any person, but do not include a public street or lane.

2. Subject to Sections 3 and 5, no division fence shall be erected unless the same is a lawful fence, and no repair, alteration or other work shall be made or done thereto which has the effect of altering the height, construction, or line of fence thereof, or changing the ground elevation so that the same is no longer a lawful fence.

3. Nothing herein shall prevent a board of education or other school board from erecting a division fence which is not a lawful fence or from making or doing any repairs, alteration or other work thereto which has the effect of altering the height, construction and line of fence thereof, so that such fence is no longer a lawful fence where such fence marks or substantially marks the boundary between a school yard owned or occupied by a board of education or school board and adjoining occupied lands, provided that the provisions of this By-law imposing any liability or responsibility for erecting, repairing or performing other work in connection with such fence or for paying the whole or any part of the cost thereof, upon the owner of the lands adjoining the school yard shall not apply to such fence.

4. Nothing herein shall prevent the owner of a parking station as defined in By-law No. 20623, as amended from time to time, from erecting a division fence which is not a lawful fence or from making or doing any repairs, alterations or other work thereto which has the effect of altering the height, construction and line of fence thereof, so that such fence is no longer a lawful fence where such fence marks or substantially marks the boundary between a parking station and adjoining occupied lands, provided that the provisions of this by-law imposing any liability or responsibility for erecting, repairing or performing other work in connection with such fence, or for paying the whole or any part of the cost thereof, upon the owner of the lands adjoining the parking station shall not apply to such fence.

5. **Retaining Walls**: In any case where as a result of difference in ground elevation on one side of a boundary between adjoining occupied lands and the other side thereof there is reason to believe that there will be movement or slipping of the soil across the boundary, the owner of the lands at the higher level shall at his own expense erect and maintain upon his own property a retaining wall sufficient to prevent such movement or slipping.
6. MAINTENANCE OR REPLACING FENCES:

(a) Nothing herein shall prevent the maintenance of a fence during its lifetime if the same was at the time of construction thereof in compliance with all by-laws of the Corporation.

(b) Where either or both of the owners of adjoining occupied lands desires or desire that a division fence be erected or has or have erected a division fence on the boundary between their lands each of such owners shall erect a just proportion thereof, or shall bear a just proportion of the cost of erection thereof.

(c) Each of the owners of adjoining occupied lands shall repair, replace or maintain a just proportion of any division fence heretofore or hereafter erected which marks or substantially marks the boundary of their respective properties, or shall bear a just proportion of the cost of any work of repair, replacing or maintenance which has been carried out.

7. REMOVAL OF FENCES: No lawful fence or part thereof shall be taken down or removed unless the owners of the respective adjoining lands agree to such taking down or removal.

8. FENCES BETWEEN OCCUPIED AND UNOCCUPIED LANDS: Where lands which are not occupied become occupied subsequent to the erection of a division fence marking or substantially marking the boundary between the same and adjoining occupied lands, the owner of the lands which became so occupied shall pay to the owner of such adjoining lands as compensation for the fence already constructed his just proportion of the value of the fence in its condition at the time the first mentioned lands became occupied, which sum shall not exceed $3.50 per foot of such fence, and the owner of the lands which became so occupied shall thereafter repair, replace or maintain a just proportion of such division fence, or bear a just proportion of any work or repair, replacing or maintenance thereof.

9. DISPUTE AS TO COST OF DIVISION FENCE: Where the owners of adjoining lands are unable to agree as to what constitutes a just proportion of the erection, repair, replacing or maintenance of a division fence, or the cost thereof to be borne by each pursuant to paragraphs (b) and (c) of section 6 or section 7 hereof or of the amount to be paid as the just proportion of the value of a fence in its present condition at the time unoccupied lands become occupied, pursuant to section 8, or in the event that such owners are unable to agree to the specifications of a division fence, such matters of dispute shall be settled by a Board of Arbitrators constituted as hereinafter provided in section 10.

10. PROCEDURE FOR SETTLING DISPUTES RESPECTING DIVISION FENCES: The Board of Arbitrators referred to in section 9 shall be constituted and shall proceed as follows:

(a) If any one of the owners referred to in section 9 notifies the City Surveyor in writing that he requires the dispute to be settled by arbitration, and pays a fee of $25.00, the City Surveyor shall thereupon notify each of such owners in writing to appoint an arbitrator on his behalf and to notify the City Surveyor of such appointment; provided that where an owner is not the occupant of the property the City Surveyor may so notify the occupant, who shall immediately notify the owner, and if the occupant neglects to do so he shall be liable for all damage caused to the owner by such neglect.

(b) If any of such owners refuses or neglects to appoint his arbitrator within fourteen days after such notice from the City Surveyor is
sent to him by registered mail at his last known address or so sent to
the occupant of the land owned by him, the City Surveyor may proceed,
together with any arbitrator that has been appointed by any of the
said owners, to settle the dispute.

(c) The City Surveyor together with the arbitrator or arbitrators (if any)
appointed by the owners, shall constitute a Board of Arbitrators for
the settlement of such dispute.

(d) In case of an equal division of opinion between the members of the
Board of Arbitrators the decision of the City Surveyor shall prevail
and in all other cases the decision of a majority of the said
Board shall prevail, and the award shall be made accordingly.

11. DUTIES OF THE BOARD OF ARBITRATION: The Board of Arbitrators
shall:

(a) examine the premises and, if required by either party, hear evidence
and may examine the parties or their witnesses on oath;

(b) make an award in writing signed by any two of them, respecting
the matters in dispute, specifying the description of any fence to be
made, the time within which the work shall be carried out, the party
by whom the work is to be done or who shall arrange for the doing
of the work, the proportion of the work to be paid for by each party,
the amount to be paid by each or either party for work already done,
and the basis upon which the costs of the proceedings shall be paid
by each or either party;

(c) in making the award consider the proportion in which the respective
parties will benefit or have benefited from the work and reduce
accordingly the amount payable by any party whom the Board
considers will not benefit or has not benefited to the same extent as the
other party.

12. AWARD OF ARBITRATOR: The City Surveyor shall deposit the award
in the office of the City Clerk and shall cause a copy thereof to be sent by
registered mail to the last known address of each of the parties.

13. Without limiting any of the provisions of this By-law the provisions
of The Line Fences Act in respect to enforcement of and appeal from an
award made by the fence viewers under the said Act shall mutatis mutandis apply
to the enforcement of and appeal from an award of a Board of Arbitrators
pursuant to this By-law.

14. PAYMENT FOR OR PERFORMANCE OF WORK: Every person required
by an award of the Board of Arbitrators or by a decision of a Judge on an
appeal from any such award to pay any money or to perform any work,
matter or thing shall pay such money or perform the work, matter or thing
in compliance with the said award or decision.

15 FENCE ABUTTING PRIVATELY-OWNED PROPERTY AND PUBLIC STREET
OR LANE: The City Surveyor may give to the owner of any parcel of land
which is not appurtenant to a building or used in connection therewith notice
in writing by registered mail requiring that a fence shall be erected on the
boundary between such land and any public street or lane on which the same
abuts, and upon receipt of such notice the owner shall forthwith carry out the
requirements thereof.

16. A fence erected pursuant to section 15 shall:

(a) if constructed of wire and metal posts be uniform and at least 5 feet in
height;
(b) if constructed of other than wire and metal posts, be sufficient to protect the highway and the public from the creation or continuance of any nuisance or inconvenience as a result of any condition or use of the said lands;

(c) be constructed so that the same or any part thereof does not encroach over or upon the highway;

(d) not to be constructed of or have attached thereto any barbed wire or other barbed material, provided that on any land lying within a district designated as a commercial or industrial district under By-law No. 20623 of the Corporation, as amended, or any other restricted area by-law of such Corporation, any portion of the fence at a height of 7 or more feet above the ground may be constructed of or have attached thereto barbed wire or other barbed material;

(e) be repaired and maintained by the owner to the satisfaction of the City Surveyor.

17. Except as provided in paragraph (d) of section 16, no person shall construct or maintain a fence composed wholly or partly of barbed wire or other barbed material, or having attached thereto any barbed wire or other barbed material.

18. By-law 693 passed October 12, 1932, by the former Corporation of the Village of Forest Hill, Section 16 of Building By-law 1535 passed December 21, 1954, by the former Corporation of the Village of Swansea and By-laws 22693, 135-68, 37-70, and 80-70, passed December 8, 1965, May 8, 1968, January 21, 1970 and March 4, 1970 respectively by the Corporation of the City of Toronto, are hereby repealed.

19. Every person who contravenes any of the provisions of this by-law shall upon conviction thereof forfeit and pay, at the discretion of the convicting judge, a penalty not exceeding (exclusive of costs) the sum of Three Hundred Dollars ($300.00) for each offence.

20. This By-law shall come into force and effect when the same has been passed by the said Council and has been validated by a statute of the Province of Ontario.

Presiding Officer.  
City Clerk.