

Enabling Legislation – *Municipalities Act, 1999*

Pursuant to the authority conferred by paragraph 414(2)(hh) of the *Municipalities Act, 1999*, SNL 1999, c M-24, the following regulations have been made by the Kippens Town Council and were adopted on _____, 2024.

Fence and Retaining Wall Regulations, 2024

A. Interpretation and General Provisions

1. Title

These Regulations may be cited as the Town of Kippens Fence and Retaining Wall Regulations, 2024.

2. Definitions

- (a) "Act" means the *Municipalities Act, 1999*, SNL 1999, c-M Chapter c M-24 as amended.
- (b) "Building line" means "building line" as defined in the ministerial *Development Regulations*, NLR 3/01.
- (c) "Corner lot" means "lot, corner" as defined in the Town of Kippens Development Regulations.
- (d) "Council" means the Kippens Town Council.
- (e) "Fence" means a protective, enclosing, or visual barrier of posts, wire, boards, rails, pickets, pilings, wood, metal, fiberglass, plastics, masonry, or similar materials or any combination thereof, and includes a wall or partition that is not an integral part of a building.
- (f) "Fence height" means the vertical distance from the established grade to the top of the fence surface.
- (g) "Front yard" means "yard, front" as defined in the Town of Kippens Development Regulations.
- (h) "Grade" means the surface of the ground below a fence at each location where a structural support is embedded in the ground, or the point at which the lowest elevation of any part of the retaining wall contacts the surface of the ground.

- (i) "Lot line" means "lot line" as defined in the Town of Kippens Development Regulations.
- (j) "Nuisance condition" means any condition of a fence or retaining wall that is deemed to be an eyesore due to use of non-approved construction materials, poor maintenance, poor construction, graffiti and/or advertisements.
- (k) "Owner" means "owner" as defined in the ministerial *Development Regulations*, NLR 3/01.
- (l) "Person" means any person, firm, partnership, association, corporation, company, co-operator, club, society, or any other corporate body or organization of any kind.
- (m) "Public street" means "street, public" as defined in the Town of Kippens Development Regulations.
- (n) "Retaining wall" means any structure built to resist lateral pressures, prevents the movement of a mass of earth or water and/or abruptly and artificially changes the elevation of the ground surface on a property (except the wall of a building).
- (o) "Retaining wall height" means the total vertical distance from the grade to the top of the retaining wall regardless of terracing or other change in horizontal location from grade to the top of the structure.
- (p) "Street reservation" means "street, reservation" as defined in the Town of Kippens Development Regulations.
- (q) "Town" means the Town of Kippens.

3. Application

These regulations shall apply to the municipal area of the Town.

4. Conformity with Regulations

No person shall erect, maintain, repair, or relocate a fence or retaining wall except in accordance with these regulations.

5. Discretionary Approval and Public Notice

Despite section 4 and where the proposed development does not conform to these regulations, Council may approve a fence as a discretionary use/development per the requirements of the Town of Kippens Development Regulations. (See also "Public Notice and Written Comments" regulation of the Town of Kippens Development Regulations.)

6. Permit Required

No person shall erect, alter, repair, or relocate a fence or retaining wall unless the Town approves the location and plan for the fence or retaining wall and a permit has been issued for its construction, alteration, repair and/or relocation.

7. Form of Application

An application to construct a fence or retaining wall shall be made to the Town only by the owner or by a person authorized by the owner on such form as may be prescribed by the Town. Every application shall include such plans, specifications, and drawings as the Town may require and be accompanied by the required permit fee.

8. Provincial Street Reservation

Pursuant to section 3 of the *Building Near Highways Regulations*, NLR 28/97, the construction of a fence or retaining wall within the building line of Route #460 (Kippens Road) requires prior approval from the Department of Transportation and Infrastructure. (See also “Building and Structure Line Setback” regulation in the Town of Kippens Development Regulations).

9. Severability

Where a Court of competent jurisdiction declares any section or part of a section of these Regulations invalid, the remainder of these Regulations shall continue in force unless the Court makes an order to the contrary.

B. Fences

10. General

- (a) No person shall erect a fence that projects into or onto the street reservation.
- (b) Customary fencing around tennis courts and other recreational amenities shall be exempt from fence height restrictions but shall comply in all other respects with the terms of these regulations.
- (c) It shall be the responsibility of the owner to ensure that a fence does not impede, obstruct, or alter the flow of water drainage.
- (d) Fences shall not be constructed to impede access for firefighting purposes and shall not enclose a fire hydrant.

11. Fence Construction Materials

The material(s) used in the erection and repair of a fence shall only be of a type approved by the Town.

12. Wooden Posts

- (a) It is advised, but not required, that all wooden posts necessary for the erection and construction of a fence should be:
 - i. Installed at a minimum depth of 600mm below grade and if not pressure treated, coated with a wood preserver for that portion of the fence post situated below grade; and
 - ii. Anchored by means of a concrete footing or wooden shoe and the concrete footing or wooden shoe shall be covered by soil.
- (b) It is advised, but not required, that all corner posts should be installed a minimum depth of 900mm below grade and anchored by a concrete footing or wooden shoe which must be covered by soil.

13. Metal Posts

It is advised, but not required, that all metal posts necessary for the erection and construction of a fence be installed in accordance with the following:

- (a) All corner posts should be installed a minimum depth of 900mm below grade and anchored by a concrete pier footing; and
- (b) All line posts should be installed a minimum depth of 600mm below grade and anchored by a concrete pier footing.

14. Electrical and Barbed Wire Fences

- (a) No person shall erect an electrical fence on any land except where required to contain livestock or protect agricultural crops where such uses are allowed under the Town of Kippens Development Regulations.
- (b) No person shall erect a fence consisting wholly or partly of barbed wire or other barbed material on a residential zoned lot or lot with residential as a main use.
- (c) Barbed wire may be used:
 - i. Along the top of a fence in excess of 2.1m enclosing a lot used for commercial or industrial purposes, provided the industrial or commercial lot does not abut a residential zoned lot or lot with residential as a main use; or

- ii. To contain livestock or protect agricultural crops or land where such uses are allowed under the Town of Kippens Development Regulations.

15. Fence Maintenance

Every person who owns a fence shall maintain such fence in a good state of repair. For purposes of this section, good state of repair shall mean:

- (a) The fence is complete, structurally sound, plumb, and securely anchored;
- (b) Protected by weather resistant materials;
- (c) Fence components are not broken, rusted, rotten, or in a hazardous condition;
- (d) All stained and painted fences are maintained in a visually appealing manner; and
- (e) The fence does not present an unsightly appearance deleterious to the abutting land or neighbourhood.

16. Clear View

No fence shall be permitted to be erected that obscures a clear view of street intersections, pedestrian pathways, driveways, or other points of access or egress of vehicles or pedestrian traffic. (See also “Daylighting Triangle” regulation under the Town of Kippens Development Regulations.)

17. Properties Abutting a Park, Public Path/Trail or Street Reservation

The Town shall determine the location, style, type, and fence height of a fence to be erected, relocated or repaired on any property that abuts a park, public path/trail or street reservation.

18. Residential Maximum Fence Height

- (a) No fence shall exceed 1.0m in fence height in the front yard of a residential zoned lot or lot with residential as a main use.
- (b) No fence shall exceed 1.8m in fence height in any other yard of a residential zoned lot or lot with residential as a main use.

19. Non-Residential Maximum Fence Height

No fence shall exceed 2.5m in fence height on any lot that is not zoned residential or lot with residential as a main use.

20. Swimming Pool Fence

- (a) All swimming pools in excess of 0.91m deep, permanently or temporarily located outdoors either above or below ground, or partly there above or there below, must be enclosed or fenced.
- (b) A 1.8 metre fence shall be erected and maintained completely surrounding the swimming pool area of the lot. The fence shall be located so as to maintain a minimum separation of 1.8m between any portion of the swimming pool and the fence. The fence used to surround the swimming pool shall be of a type that restricts the view of the pool from beyond the exterior of the fence and would impede the unauthorized passage either through, under, or over the fence to the pool area with a gate that shall be locked.
- (c) Despite (a), in the case of a hot tub that is equipped with a locking cover and the cover is kept locked in place when the hot tub is not in use, fencing shall not be required.

C. Retaining Walls

21. Retaining Wall Construction

- (a) Retaining walls with a retaining wall height of 1.22m or greater shall be designed by a professional engineer licensed to practice in Newfoundland and Labrador. The design engineer shall provide the Town with written verification that the retaining wall has been constructed as per the submitted design drawings.
- (b) Where applicable, retaining walls shall be equipped with a guard as required by the National Building Code of Canada.
- (c) Retaining walls shall not conflict with site grading requirements of new subdivisions unless approved by the Town.
- (d) The material(s) used in the erection and repair of a retaining wall shall include wood, concrete, interlocking brick/block, gabion baskets, or as otherwise approved by the Town.
- (e) All wooden materials used in the erection and construction of any portion of a retaining wall that is located below grade shall be pressure treated or coated with a wood preserver.

22. Location of Retaining Wall

- (a) No portion of a retaining wall is permitted to project into a street reservation.

- (b) On any public streets where, in the opinion of the Town, the distance between the lot line and a public street and/or roadside ditch is not adequate to reasonably prevent the likelihood of damaging the structure during normal maintenance, ditching or snow clearing operations, the retaining wall shall be set back from the lot line a distance established by the Town.
- (c) Retaining walls are not permitted on utility easements and may only be constructed on Town easements at the discretion of the Town.

23. Protrusions

No person shall erect a retaining wall having protrusions along any exposed vertical surface.

24. Retaining Wall Maintenance

Every person who owns a retaining wall shall maintain such retaining wall in a good state of repair. For purposes of this section, good state of repair shall mean:

- (a) The retaining wall is complete, structurally sound, plumb, and securely anchored;
- (b) Retaining wall components are not missing, broken, rusted, rotten, or in a hazardous condition; and
- (c) The retaining wall does not present an unsightly appearance deleterious to the adjacent land or neighbourhood.

25. Clear View

No retaining wall shall be permitted to be erected that obscures a clear view of street intersections, pedestrian pathways, driveways, or other points of access or egress of vehicles, or pedestrian traffic. (See also “Daylighting Triangle” regulation under the Town of Kippens Development Regulations.)

26. Properties Abutting a Park, Public Path/Trail or Street Reservation

The Town shall determine the style, type and retaining wall height of a retaining wall to be erected, relocated or repaired on any property that abuts a park, public path/trail, or street reservation.

D. Compliance

27. Compliance with Regulations

A fence or retaining wall that legally exists and is not in accordance with the provisions of these regulations shall be considered a non-conforming fence or retaining wall which may continue to exist provided:

- (a) The fence is constructed within the owner's lot lines; and
- (b) The fence or retaining wall is maintained in a good state of repair, is not deemed to be a safety hazard, and/or is not deemed to be an obstruction by the Town.

28. Order to Remove

When in the opinion of the Town, a fence or retaining wall, or portion of a fence or retaining wall creates a safety hazard, obstruction or nuisance condition due to its location, retaining wall height, construction material, dilapidated state of repair, and/or damaged condition, the Town may issue an order to the owner stating that the fence or retaining wall or portion of a fence be removed, repaired, relocated to correct the safety hazard, obstruction or nuisance condition at the owner's expense.

29. Authority to Remove

The Council and/or the Court of competent jurisdiction has the power to make an order for the removal of any fence or retaining wall erected contrary to these Regulations or deemed to be a safety hazard, obstruction or nuisance condition. Should such an order not be complied with in the time specified, the Council may remove the fence at the owner's expense.

30. Damage to Retaining Walls

The Council shall accept no liability, financial or otherwise for damages caused to retaining walls during normal maintenance operations including but not limited to snow clearing and ditching.

31. Right of Entry

Pursuant to Section 51 of the *Urban and Rural Planning Act, 2000*, Council or its duly authorized agents have the authority to enter a property for the purposes of inspection or to carry out work as required under these Regulations.

32. Failure to Comply

- (a) Pursuant to subsection 404(5) of the Act, where a person to whom an order is directed does not comply with the order or part of an order made under these

Regulations, Council may take the action that it considers necessary to carry out the terms of the order and any costs, expenses, or charges incurred by Council in carrying out the terms of the order are recoverable from the person against whom the order was made as a civil debt owed to Council.

- (b) Council may delegate to an official or employee of Council the power to issue orders under this section.

33. Penalties

- (a) Pursuant to subsection 419 (2) of the Act, each day upon which the same offence is committed or continued is a separate offence.
- (b) Every person who is guilty of an offence under these Regulations or who acts in contravention of or fails to comply with any provision thereof, or neglects or refuses to do so:
 - i. Shall be subject to an order under paragraph 404(1)(i) of the Act;
 - ii. Shall be liable to penalties as stipulated in accordance with section 420 of the Act; and
 - iii. May be subject to any other penalties under the authority of Council.