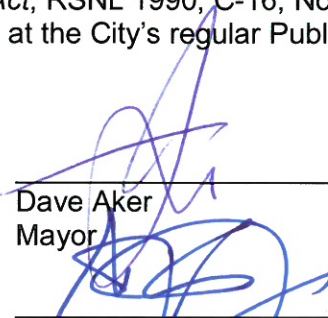


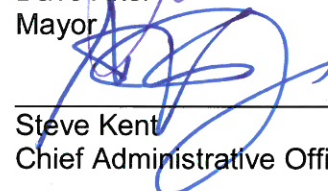
PUBLISHED BY AUTHORITY

Pursuant to the authority conferred by the *City of Mount Pearl Act*, RSNL 1990, C-16, Section 202, the following regulations have been made by the City Council of the City of Mount Pearl and was adopted on April 17, 2018.

In accordance with Section 39 of the *City of Mount Pearl Act*, RSNL 1990, C-16, Notice of Motion to adopt amendments to the regulations was given at the City's regular Public Council meeting held on April 3, 2018.



Dave Aker
Mayor



Steve Kent
Chief Administrative Officer

FENCE AND RETAINING WALL REGULATIONS 2018

1. Title

These regulations shall be known and cited as "*City of Mount Pearl Fence and Retaining Wall Regulations 2018*."

2. Interpretation

In these Regulations:

- (a) "Act" means the *City of Mount Pearl Act*, RSNL 1990, C-16;
- (b) "Building" means every structure, erection, excavation, alteration or improvement whatsoever placed on, over or under land, or attached, anchored or moored to land, and includes mobile structures, vehicles and marine vessels adapted or constructed for residential, commercial, industrial and other like uses, and any part of a building;
- (c) "Building Line" means a line established by the Council to set the horizontal distance between the closest point of a building and the street line;
- (d) "City" means the City of Mount Pearl as defined by the *City of Mount Pearl Act*, RSNL, C-16, and amendments thereto;

- (e) “*Commercial Lot*” means a lot used exclusively or primarily for commercial purposes;
- (f) “*Corner Lot*” means a lot situated at the intersection of two streets;
- (g) “*Council*” means the Council of the City of Mount Pearl or person(s) or agent(s) of the City of Mount Pearl delegated the authority to act on behalf of the Council of the City of Mount Pearl;
- (h) “*Electrical Fence*” means a fence through which electricity passes;
- (i) “*Erect*” means to alter, construct, reconstruct, plant, place, relocate and carry out any work preparatory to erection and “erection” has a corresponding meaning;
- (j) “*Fence*” includes railing, wall, line of posts, wire, gate, boards or other similar substances used for the purpose of privacy and protection to separate or divide any parcel of land or part thereof from any other parcel of land or part thereof, immediately adjacent thereto or to establish a property boundary and shall include hedges, shrubs and landscaping features which are used for these purposes;
- (k) “*Front Lot Line*” means the street line on which a lot has its civic address, except where a lot has two or more street lines, in which case the Council shall determine the front lot line;
- (l) “*Front Yard*” means a yard extending across the full width of the lot from the front lot line to the front wall of the main building on the lot;
- (m) “*Gabion*” means a basket or cage filled with earth or rocks and used especially in building a support or abutment;
- (n) “*Grade*” means the surface of the ground below a fence at each location where a structural support is embedded in the ground;
- (o) “*Industrial Lot*” means a lot used exclusively or primarily for industrial purposes;
- (p) “*Lot*” means any plot, tract or parcel of land, which can be considered as a unit of land for a particular use or building;
- (q) “*Lot Line*” means any line defining the boundaries of a lot and shall include a front lot line, side lot line and rear lot line;
- (r) “*Municipal Area*” means the area of the City of Mount Pearl as delimited in Schedule A of the *City of Mount Pearl Act*, RSNL 1990, C-16, and amendments thereto;
- (s) “*Rear Lot Line*” means the lot line or lines opposite the front lot line;

- (t) “*Rear Yard*” means a yard extending across the full width of the lot between the rear lot line and the rear wall of the main building on the lot;
- (u) “*Residential Lot*” means a lot used exclusively or primarily for a dwelling or dwelling unit;
- (v) “*Retaining Wall*” means any structure built to resist lateral pressures, prevent the movement of a mass of earth or water and/or abruptly and artificially change the elevation of the ground surface on a property;
- (w) “*Retaining Wall Height*” means the total vertical distance from the established 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;
- (x) “*Right of Way*” means the area of land over which a public road or pathway exists, including the legal limits of the public road or pathway reservation;
- (y) “*Side Lot Line*” means the lot line or lines other than a front lot line or rear lot line;
- (z) “*Snow Fence*” means a light fence of lath and wire or constructed of polyethylene mesh that is erected for a temporary period of time;
- (aa) “*Street*” means any street, road or highway or any other way designed or intended for public use for the passage of vehicles and pedestrians, owned by the City or other public agency and maintained at public expense, and is accessible to Fire Department vehicles and equipment;
- (bb) “*Street Line*” means the edge of a street, road or highway reservation as defined by the authority having jurisdiction; and
- (cc) “*Yard*” means any open, uncovered, unoccupied space appurtenant to a building.

3. Application

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

4. Conformity with Regulations

A fence or retaining wall shall only be erected, maintained or repaired in accordance with these Regulations.

5. Permit Required

A fence or retaining wall shall only be erected or repaired if the location and building plans of the fence or retaining wall are approved by Council and a permit for the erection or repair of the fence or retaining wall has been issued by the City.

6. Form of Application

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

7. Clear View

A fence or retaining wall may be permitted to be erected if it does not obscure a clear view of street intersection, pedestrian pathways, driveways or other points of access or egress of vehicles or pedestrian traffic.

8. Properties Abutting a Park, Public Walkway or Right of Way

Council shall determine the style, type, and height of fence or retaining wall to be erected or constructed on property, which abuts a park, public walkway, or right of way.

9. Maintenance of Fences and Retaining Walls

The property owner(s) of a fence or retaining wall shall be responsible for maintaining such fence or retaining wall in a good state of repair. For the purposes of this section, "good state of repair" means the fence or retaining wall:

- (a) is complete, structurally sound, plumb, securely anchored, and independently constructed and not attached to another building for any type of support;
- (b) is protected by weather-resistant materials;
- (c) components are not broken, rusted, rotten, or in a hazardous condition; and
- (d) is maintained free of peeling/wear for structures that are stained or painted.

10. Construction Materials of a Fence

The material(s) used in the erection and repair of a fence shall only be of a type which meet(s) the approval of Council.

11. Posts - All posts required for the erection and construction of a fence shall be:

- (a) Installed to a minimum depth of the frost line below grade.
- (b) All wooden post if not pressure treated at plant, coated with a wood preserver for that portion of the fence post situated below grade;
- (c) All wooden posts are to be anchored by means of a concrete pier footing or wooden shoe and the concrete footing or wooden shoe shall be covered by soil;
- (d) All metal posts are to be anchored by a concrete pier footing.

12. Corner Lots

A fence may be permitted to be erected on a corner lot no closer to the street than the building line setback established for the lot; and if, at the building line setback, the fence would create a visible obstruction at the intersection of the two streets, a City Inspector or authorized person(s) or agent(s) will determine the height and location of the fence.

13. Residential Lot – Front Yard Fence

A fence may be permitted to be erected for residential purposes in the area of the lot between the building line and front lot line only in the following instances:

- (a) for the purpose of acting as a retaining wall (along the front or side of the property) provided the retaining wall does not obstruct the view of the travelling public;
- (b) on boundaries bordering public walkways where a maximum one metre high chain link fence will be permitted;
- (c) in areas of adjoining driveways it will be permissible to:
 - (i) construct curbing to a height of 150 millimetres; or
 - (ii) to erect fencing to a maximum height of 600 millimetres (two feet) provided the fence:
 - i. does not create a visual obstruction for vehicles entering or existing the driveway;
 - ii. does not create an obstruction to the adjoining driveway;
 - iii. does not interfere with snow clearing operations; and
 - iv. is consistent and in line with other fences in the immediate neighbourhood.
- (d) on lots where the yard immediately behind the rear of the dwelling functions as a side yard and one of the side yards functions as the major private amenity space for the lot, a fence may be erected from the side of the dwelling to the front property line provided the fence:
 - (i) is not constructed in front of the dwelling,

- (ii) does not create a visual obstruction for vehicles entering or exiting the lot,
 - (iii) does not create an obstruction to the travelling public,
 - (iv) does not interfere with snow clearing operations, and
 - (v) is consistent and is in line with other fences in the immediate neighbourhood;
- (e) where an established form of front yard fencing has been established along a street, a fence may be erected that is consistent with this form of front yard fencing provided the fence:
 - (i) does not create a visual obstruction for vehicles entering or exiting the lot,
 - (ii) does not create an obstruction to the travelling public,
 - (iii) does not interfere with snow clearing operations, and
 - (iv) is consistent and is in line with other fences in the immediate neighbourhood.

14. Residential Lots – Rear Yard Fence

Unless otherwise approved by Council, the maximum height of a fence erected for residential purposes shall be a maximum height of 1.83 metres (six feet) above grade. A rear yard fence constructed up to 2.4 metres (eight feet) may be considered at the discretion of the City Inspector or authorized person(s) or agent(s) based upon grading difference in the yard.

15. Industrial and Commercial Lot – Front Yard Fence

Unless otherwise approved by Council, a minimum setback of ten (10) metres shall be maintained between the front lot line and the erection of a fence for industrial and commercial purposes and the maximum height of the fence shall be a maximum height of 2.7 metres above grade.

16. Industrial and Commercial Lot – Rear Yard Fence

Unless otherwise approved by Council, the maximum height of a fence erected for industrial and commercial purposes shall be a maximum height of 2.7 metres above grade in the area of the lot between the building line and street line, provided the lot does not abut a residential lot.

In the case where an industrial or commercial lot abuts a residential lot or use zone, the maximum height of a fence erected for industrial and commercial purposes shall be a maximum height of 1.83 metres (six feet) above grade.

17. Agricultural and Rural Property Fence

Unless otherwise approved by Council, the maximum height of a fence erected on an agricultural or rural property shall be 1.2 metres and may be constructed of wire and wooden posts typical of boundary fences demarcating agricultural or rural property.

18. Rear Yard Fence Abutting Street

A fence shall be permitted to be erected along the rear lot line of a lot which abuts a highway or street only if the fence is in accordance with a style, type and height of fence as determined by Council.

19. Electrical Fence

An electrical fence shall not be permitted to be erected on any land in the City.

20. Barbed Wire Fence

A fence consisting wholly or partly of barbed wire or other barbed material shall be permitted to be erected only along the top of any fence in excess of 2.1 metres enclosing a lot used for commercial or industrial purposes and provided the industrial or commercial lot does not abut a residential lot or residential use zone. The use of barbed wire shall not be permitted on residential lots.

21. Snow Fence

A snow fence shall be permitted to be erected only for the period of October 31 to May 1 in any year on land used for residential or commercial purposes.

22. Swimming Pool Fence

A fence of 1.83 metres (six feet) in height shall be required to be erected to completely surround the area of the lot in which a swimming pool is located. The fence shall be located so as to maintain, along the full perimeter of the swimming pool, a minimum separation distance of 1.83 metres (six feet) between the swimming pool and the fence.

23. Retaining Wall Construction

- (a) A retaining wall with a height of 1.22 metres (four feet) or greater shall be designed by a professional engineer licensed to practice in Newfoundland and Labrador. The property owner/resident shall provide to Council the design engineer's written verification that the retaining wall has been constructed as per the submitted design drawings.
- (b) Where applicable, a retaining wall shall be equipped with a guard as required by the National Building Code of Canada.
- (c) A retaining wall shall not conflict with site grading requirements in new subdivisions unless approved by Council.

- (d) The material(s) used in the erection and repair of a retaining wall shall include wood, concrete, interlocking brick/block, gabion, or as otherwise approved by Council.
- (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.

24. Location of Retaining Wall

- (a) No portion of a retaining wall is permitted to project beyond the front boundary into the right of way of any street.
- (b) On flanking streets, no portion of a retaining wall is permitted to project beyond either the front boundary on the flanking street into the right of way of any street.
- (c) On any streets where, in the opinion of Council, the distance between the property line and a 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 property line a distance established by Council.
- (d) A retaining wall shall not be permitted to be located on utility easements and may only be erected on City easements at the discretion of Council.

25. Protrusions

Protrusions along any exposed vertical surface of a retaining wall shall not be permitted.

26. Compliance with Regulations

- (a) 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 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 Council.
- (b) A non-conforming fence or retaining wall shall not be enlarged, extended, reconstructed, replaced or altered structurally with a fence or retaining wall which differs in height, type, style or material used in the erection or construction of the existing fence or retaining wall.
- (c) A fence or retaining wall which requires repairs, alterations and/or replacement of more than 50 per cent of its original supporting structure (i.e., posts, supporting rails, etc.) must be replaced with a fence or retaining wall that is constructed in accordance with these Regulations.

- (d) Any fence or retaining wall which is located in the front yard of a property may only be replaced in accordance with Section 14 of these Regulations.

27. Order to Remove, Replace, or Repair

When in the opinion of Council, a fence or retaining wall creates a safety hazard or obstruction due to its location, height or construction material, the City may issue a Notice or an Order to the property owner stating that the fence or retaining wall or portions thereof be removed, reconstructed or repaired within a specified time in order to correct the safety hazard or obstruction and the cost to remove, reconstruct or repair said fence or retaining wall or part thereof will be at the property owner's expense. In the event that the property owner does not remove the fence or retaining wall within the specified time as ordered, the City may remove the fence or retaining wall and the cost to remove, reconstruct or repair said fence or retaining wall shall be the responsibility of, and collected from, the property owner(s).

28. Authority to Remove

The Council and/or Court have the power to make an Order for the immediate removal or disposal of fences or retaining walls that are erected contrary to these Regulations.

29. Public Authorities

The provisions of these Regulations shall apply to all public authorities except in those cases where an exception from the Regulations is required to respond to an emergency or for a public purpose.

30. Responsibility for Damage

Council shall not be liable for any damages for the repair of any fence or retaining wall whatsoever where the City, its employees, agents or otherwise have acted without negligence. In particular, Council shall not be liable for any damages for the repair of any fence or retaining wall whatsoever during the normal operation of snow clearing on streets or sidewalks located within the municipal area.

31. Enforcement

These regulations may be enforced by the Royal Newfoundland Constabulary, Royal Canadian Mounted Police, Municipal Enforcement Officer, Peace Officer, or any person(s) or agent(s) appointed by Council.

32. Penalties

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 shall be liable:

- (a) to penalties as stipulated under regulations made in accordance with Sections 280.1, 280.2, 280.3, and 280.4 of the *City of Mount Pearl Act*, RSNL 1990, C-16 and amendments thereto; or
- (b) on summary conviction to a fine in accordance with the *City of Mount Pearl Act*, RSNL 1990, C-16, Section 438.

33. Coming into Effect

These Regulations shall come into effect on April 27, 2018.

34. Publication

Notice of Approval of these Regulations was published in *The Pearl* on April 18, 2018 and in the Newfoundland and Labrador Gazette on April 27, 2018.

35. Copy to Minister

A copy of these Regulations was sent to the Minister of Municipal Affairs and Environment on April 18, 2018.

36. Repeal of Previous Regulations and Amendments

The City of Mount Pearl Fence Regulations 2013 are hereby repealed.