

## CHAPTER 5

### Fences

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
15-5-1	Declaration of Policy	2000-12 2006-13	5/2/00 12/05/06
15-5-2	Definitions	2000-12	5/2/00
15-5-3	Design Characteristics	2000-12 2006-13	5/2/00 12/05/06
15-5-4	Location	2000-12	5/2/00
15-5-5	Permits	2000-12 2003-02	5/2/00 2/03
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#### SEC. 15-5-1 DECLARATION OF POLICY

- (a) The intent of this ordinance is to establish standards for the location and design characteristics of and permits for fences within residential, commercial, institutional and industrial zoned areas, including non-agricultural uses in A2 districts and including agricultural uses bordering on residentially zoned property but only as to the written mutual agreement prohibited materials under Section 15-5-3(b)(3), within the Village of Caledonia.
- (b) The intent of this ordinance is also is to provide a policy as to fences currently located within public drainage, sanitary sewer or water easements or public rights-of-way within the Town of Caledonia.

#### SEC. 15-5-2 DEFINITIONS

- (a) **Fence.** A fence is an artificial structure of posts and boards, wire, pickets, panels, rails or similar materials that is used as an enclosure of land. For purposes of this chapter, a fence shall not include vegetation, nor shall it include a retaining wall that retains or supports earth. Additionally, a fence shall not include a temporary snow fence that is installed and removed within the months of November through April, nor shall it include a temporary fence required to be erected by this Code.
- (b) **Primary frontage.** The primary frontage is a boundary of a lot bordering a public right-of-way. If a lot borders more than one public right-of-way, the primary frontage is the boundary of a lot bordering a public road right-of-way geographically situated in relation to and most convenient to the main entrance of the building.

- (c) **Front yard.** The front yard of a residential property is the portion of a lot between the front of the residence and public road right-of-way bordering the primary frontage located between the side-yard property lines.
- (d) **Front of the residence.** The front of the residence is any portion of the residence, including attached garages but not including architectural appurtenances, facing the primary frontage.
- (e) **“Good” side.** The good side of the fence is the side of the fence that by virtue of design and appearance would generally be considered as the most aesthetically pleasing side of the fence.
- (f) **District.** Any sanitary district or utility district operating in the Town of Caledonia.

### SEC. 15-5-3 DESIGN

- (a) **Height.**
  - (1) Residential properties.
    - a. A fence within the front yard may not exceed four (4) feet in height, unless it is located more than seventy-five (75) feet from the public road right-of-way extending across the primary frontage of the property and may not exceed any visual clearance requirements established by any applicable zoning ordinance or condition or by Town ordinance.
    - b. A fence within a back or side yard or located more than seventy-five (75) feet from the public road right-of-way extending across the primary frontage of the property may not exceed six (6) feet in height and may not exceed any visual clearance requirements established by any applicable zoning ordinance or condition or by Town ordinance.
    - c. A fence which is located in a front yard and which abuts a business, manufacturing, or industrial park property may exceed the height as per Sec. 15-5-3(a)(1)a but may not exceed six (6) feet in height and may not exceed any visual clearance requirements established by any applicable zoning ordinance or condition or by Town ordinance.
    - d. No fence, including fence posts, shall exceed eight (8) feet in height.
    - e. A supporting fence post that is set into the ground may exceed the heights specified in Sec. 15-5-3(a)(1)a through d by six (6) inches.
    - f. In no event shall any provision of this chapter shall be construed to permit a spite fence in violation of Section 844.10, Wisconsin Statutes.
  - (2) Livestock Fences.

Fences for the containment of livestock on residential properties shall follow the standards set forth in this section.

    - a. All fences shall be constructed of a sufficient height and of sufficient materials so as not to allow the animal to run at large.
    - b. Boards shall be allowed to be placed on the inside of posts, and electric wire if applicable, to properly contain the livestock, subject to any requirements under Sec. 15-5-3(b) below.
    - c. A fence located within seventy-five (75) feet of the public road right-of-way and extending across the frontage of the property may exceed four (4) feet

in height so long as the acreage of the parcel is at least five (5) acres in size, the type of fence is of post and rail design and not solid or stockade. The Village Engineer shall determine if the proposed fence design is of post and rail type. In no case shall any fence exceed eight (8) feet in height. All fences shall comply with the location requirements of Sec. 15-5-4.

- d. All other requirements of this Chapter shall apply, unless specifically waived or modified by this subsection.
- e. Any fence inadequately containing the livestock shall be deemed a public nuisance and the property owner may be proceeded against in accordance with Title 11, Chapter 6, of the Village’s Code of Ordinances.

(3) Commercial and industrial properties.

- a. Fences on commercial and industrial properties shall not exceed eight (8) feet in height, unless provided otherwise in a Conditional Use Permit/Site Plan Review applicable to the property.
- b. A fence located within a street yard setback, as defined by the applicable zoning ordinance, may not exceed four (4) feet high, unless provided otherwise by a Conditional Use Permit/Site Plan Review.
- c. A supporting fence post that is set into the ground may exceed the heights specified in Sec. 15-5-3(a)(2)a through b by six (6) inches.

(b) **Prohibited Materials.**

- (1) No person shall construct or cause to be constructed, in whole or in part, a fence with barbed wire or electrified wire within a residentially zoned district, unless as specifically allowed under Sec. 15-5-3(a)(2) above for electrified fencing of livestock.
- (2) No person shall construct or cause to be constructed, in whole or in part, a fence with barbed wire or electrified wire in a commercially zoned district unless so provided in a Conditional Use Permit/Site Plan Review under the applicable zoning ordinance.
- (3) No person shall construct or cause to be constructed a fence with electrified wire within ten (10) feet of a parcel boundary line between lands used for farming or grazing and residential property without a written, mutual agreement of the property owners as provided in Section 90.02(1m)(h), Wisconsin Statutes.

(c) **Maintenance.** A fence shall be maintained in a structurally adequate condition. Posts, supports, rails, boards, panels, etc. shall be repaired or replaced as reasonably required toward that purpose.

(d) **Aesthetics.**

- (1) The “good” side of a fence shall face toward the adjoining property and toward the public road right-of-way if any portion of a fence extending along the public road is within fifty (50) feet of the public road right-of-way. However, if the purpose of the fence is to contain livestock, the boards shall be allowed to be placed on the inside of the posts.
- (2) The Town Engineer shall determine which side of a fence is the “good” side and shall provide property owners with his determination upon request. The Town Engineer may require the property owner to provide sufficient evidence to make said determination. The determination of the Town Engineer may be appealed to

the Public Works Committee of the Town Board, whose determination shall be final.

#### **SEC. 15-5-4 LOCATION**

- (a) A fence may not be located within a public drainage, sanitary sewer or water easement or within a public right-of-way unless authorized elsewhere in this chapter.
- (b) A fence may be located within street, side, rear, and shore yard setbacks as permitted by applicable zoning ordinances, unless otherwise prohibited or restricted herein or unless prohibited or restricted by a Conditional Use Permit/Site Plan Review or variance.
- (c) Fences abutting alleys shall be set back a minimum of two (2) feet from the lot line extending along the alley.
- (d) No fence shall be constructed in any required front yard of a B-1, B-2, B-3, B-4, B-5, B-6 or B-7 zoned district, unless said fencing is approved in conjunction with a Conditional Use Permit/Site Plan Review under the applicable zoning ordinance.

#### **SEC. 15-5-5 PERMITS**

- (a) No person shall install or construct or cause to be installed or constructed a fence within the Town of Caledonia without first obtaining a permit therefor from the Town of Caledonia as herein provided.
- (b) Any person desiring a permit for the installation or construction of a fence within the Town of Caledonia shall file a written application form provided by the Town with the official designated in the Town of Caledonia Administrative Policy & Procedure Manual.
- (c) A permit fee in an amount as established by and as may be modified from time to time by resolution of the Town Board of the Town of Caledonia shall be paid at the time of the filing of the application for a permit hereunder.
- (d) A permit issued pursuant to this chapter shall be valid and permit construction of the fence for a period of one (1) year from date of issuance. If the fence is not completed within such period, a new permit shall be required.
- (e) The Town Engineer or his representative shall have a right to enter upon the premises to inspect the fence and its construction to insure compliance with the permit and the provisions of this chapter.
- (f) As a condition of receiving a permit under this section, the owner agrees to defend, indemnify and hold the Town of Caledonia harmless from and against all claims, including boundary disputes, for injury or damage received or sustained by any person or entity in connection with the installation or construction of a permitted fence.

#### **SEC. 15-5-6 EXCEPTIONS**

- (a) Fences located within a public right-of-way shall not be permitted and shall be removed.
- (b) A fence currently located within a public drainage, sanitary sewer or water easement in the Town of Caledonia shall be permitted to remain unless in the opinion of the Town Engineer the fence is determined to obstruct the purpose for which the easement was

obtained or the maintenance of the easement, including underground lines. If the easement is under the jurisdiction of a District, the Town Engineer shall consult with such District in rendering an opinion under this subsection. The determination of the Town Engineer as to the existence of an obstruction may be appealed as set forth below.

- (c) Any fence that is required to be removed and is removed, either by the owner or the Town, because of a violation of this Chapter, may be replaced at the cost of the owner if in the opinion of the Town Engineer the fence could not obstruct the purpose for which the public drainage, sanitary sewer or water easement was obtained or the maintenance related to such easement; provided that the owner shall agree to be responsible for the removal of the fence in the event of future interference with the purpose for which the easement was obtained or the operation or maintenance of the easement including underground lines; and provided that a permit is applied for and issued as provided in Section 15-5-5.
- (d) The Town Engineer may order any fence located within the Town of Caledonia contrary to the provisions of this chapter to be removed, repaired or otherwise corrected, as the case may be. Such notice shall be in writing and delivered to the last known owner of the property where the fence is located, either delivered in person or by certified mail addressed to the last known address of the owner, directing the work or action which is required to be taken. The work or action shall be completed within thirty (30) days after receipt of the notice in the case of personal delivery or after the mailing of the notice in the case of mailing. Upon written request of the Owner, and for good cause shown, the Town Board may extend the time for compliance with the Order provided the Owner waives any appeal rights set forth below.
- (e) Any person shall have a right to request a review of the determination of the Town Engineer under 15-5-6(b)-(c) or an Order served under 15-5-6(d) by filing a request for review in accordance with Title 4 of the Code of Ordinances. Failure to comply with the notice of required action shall permit the Town of Caledonia to enter upon the premises and complete such action. Any cost to the Town of Caledonia shall be charged as a special charge against the property as provided in Section 66.60(16), Wisconsin Statutes.
- (f) Fences existing in any residential district prior to the effective date of this chapter which do not meet the regulations of this chapter are permitted to be:
  - (1) Repaired for ordinary maintenance, including painting, staining, and cleaning. No permit shall be required for such work.
  - (2) Replaced; provided, however, that a permit is obtained for the construction of the replacement fence. No permit fee shall be required for a permit for a replacement fence.
- (g) As an exception to any notice requirements set forth above, the Town Chairperson may order the emergency removal of a fence, or a portion thereof, where there is an immediate danger to persons or property, or a significant maintenance concern. This determination shall be made by the Town Chairperson, upon the recommendation of the Town Engineer.

#### **SEC. 15-5-7 VARIANCE REQUESTS**

The Town Engineer may grant a variance, including an encroachment upon an easement, from the provisions of this ordinance for good and sufficient cause as determined by the Town Engineer, based upon the special circumstances of the particular case and the criteria set forth in the Town of

Caledonia Administrative Policy and Procedure Manual, but no variance shall be granted which is unjustly discriminatory in nature. As to any variance request involving a drainage, sanitary sewer or water easement granted to a District, a written recommendation indicating such District's position and the reasons therefor shall be obtained from each such District and filed with the Town Engineer before a variance request will be considered. The Town Engineer may accept or reject the District's recommendation, as he deems appropriate. Any person shall have a right to request a review of the Town Engineer's decision by filing a request for review in accordance with Title 4 of the Code of Ordinances. If the Town Engineer rejects a District's recommendation and grants a variance request, notice of the decision shall be given to each District affected by the decision and the variance shall not be effective until at least five (5) working days after notice of the decision is delivered to each District.

#### **SEC. 15-5-8 APPEAL FROM REVIEW OF INITIAL DETERMINATION**

The Town Board shall hear any appeals from the decision reviewing the initial determination in accordance with Title 4 of the Code of Ordinances. After such hearing, the Town Board shall issue its final determination as to the existence of an obstruction, the order of the Town Engineer to remove or repair a fence, or the decision of the Town Engineer with respect to a variance request. As to any appeal involving a drainage, sanitary sewer or water easement granted to a District, a written recommendation indicating such District's position and the reasons therefor shall be obtained from each such District and filed with the Town Board before a hearing under this Section may be scheduled. The Town Board may accept or reject the District's recommendation, as it deems appropriate.

#### **SEC. 15-5-9 PENALTIES**

In addition to any other remedies allowed by this Code, any person violating any of the provisions of this Chapter, including, but not limited to, failing to comply with the terms of a variance, shall, upon conviction, be subject to a forfeiture of not more than Five Hundred Dollars (\$500.00), together with the costs of prosecution. It shall be the responsibility of the offender to abate the violation as expeditiously as possible, and each day of such violation shall constitute a separate offense.

#### **SEC. 15-5-10 SEVERABILITY**

Any section, clause, sentence or provision of this chapter determined to be invalid for any reason shall not affect the validity of any other section, clause, sentence or provision of this chapter.