

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
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(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~COUNTY~~

~~CITY~~

~~TOWN~~

Village

of HERKIMER

Local Law No. 2 of the year 20⁰¹

A local law Fencing
(Insert Title)

Be it enacted by the BOARD OF TRUSTEES of the
(Name of Legislative Body)

~~COUNTY~~

~~CITY~~

~~TOWN~~

Village

of HERKIMER as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

143-40. FENCES

Fences shall be erected and maintained in conformance with the provisions of this section so as to assure the desirable residential character of property and to provide for the safety, health and welfare of individuals.

A. Permit.

- (1) A permit from the Village of Herkimer will be required for the erection of a fence. In order to obtain a permit, an applicant must complete the permit application in the form provided by the Village, pay the fee as set by the Village Board and provide a description or drawing of plans for the erection of said fence.
- (2) Plans for the fence are to be submitted and reviewed by the Village of Herkimer Codes Enforcer for a determination as to visibility where the fencing proposed is to be located on street corners or sides of streets which may affect pedestrian or vehicular traffic. In such instances, the Code Enforcement Officer or D.P.W. Superintendent shall make the determination as.

B. Placement, generally.

- (1) Placement with respect to property line: Any fence must be erected on the owner's side of the property line.
- (2) Placement with respect to sidewalks: Any fence shall not be erected nearer than two (2) feet from the sidewalk.

C. Placement with respect to visibility. In no event shall any fence be erected so as to affect visibility for pedestrian and/or vehicular traffic. In instances as set forth in Subsection A(2) above, the determination as to the placement with respect to visibility shall be made by the Codes Enforcer or D.P.W. Superintendent of the Village of Herkimer. In the event that the applicant is aggrieved by the determination of the Codes Enforcer or D.P.W. Superintendent, said applicant may apply to the Zoning Board of Appeals for a review of the determination.

D. Height limitations.

- (1) Fences shall not be erected within the Village limits more than six (6) feet in height above the surface of the ground without permission, by way of special permit, from the Zoning Board of Appeals. All fences and walls shall be properly erected, supported and braced. No new barbed wire fences, as opposed to those previously existing, shall be erected within the Village limits without permission granted by the Superintendent of Public Works. In no event shall a fence or portion thereof exceed a height of

three (3) feet when said fencing is located within ten (10) feet of a sidewalk and/or driveway, without permission, by way of special permit, from the Zoning Board of Appeals.

- (2) Protective fencing. For the protection of the general public, all permanently constructed swimming pools requiring construction and excavation below ground level and all permanent and/or temporary excavations, open pits or similar structures shall be completely and effectively fenced by an artificial enclosure not less than six (6) feet in height above the ground so as to exclude access by small children, and any openings in the enclosure affording access to the pool proper (whether above- or below ground pools) must be provided with a gate containing an automatic or manual locking device affixed in such manner as to exclude small children. Fences constructed for above ground pools to protect a pool from random access shall be at least four (4) feet in height.
- (3) The provisions of this section requiring protective fencing so as to exclude access by small children shall apply to all permanently constructed swimming pools, excavations, temporary or permanent, and open pits, whether or not constructed prior to the enactment of this provision.

E. **Appearance.** Fences must be erected with the attractive side of the fence facing the neighboring property. The tops of all fences shall have no sharp points.

F. **Maintenance.** Fences shall be maintained in safe and substantial condition. In the event that the fence is not so maintained, the Village, after notice to the property owner, shall have the right to remove said fence and assess the cost of removal to the property owner. Said cost shall thereupon become a lien upon the property on which such work was performed and shall be added to and become a part of the taxes next to be assessed and levied upon said property and shall be collected and enforced in the same manner as taxes. The Village shall also have the right to require the property owner to erect a new fence if the removal of a fence creates a hazardous situation, including but not limited to protective fencing. In the event that such a fence is not replaced, the Village shall have the right to replace said fence and assess the cost of replacement to the property owner. Said cost shall thereupon become a lien upon the property on which such work was performed and shall be added to and become a part of the taxes next to be assessed and levied upon said property and shall be collected and enforced in the same manner as taxes. The Code Enforcement Officer or other Village designee shall cause a ten-day notice and order of safety violation to be served on the property owner. If the property owner does not comply with the notice and order, the Village shall cause to have served on the property a petition returnable in the Village of Herkimer Court requesting an order allowing the Village to demolish said fence(s) and to erect a fence (where applicable). The property owner shall have a right to a hearing prior to demolition.

- G. **Penalties for offenses.** Any property owner, whether a person, a firm or a corporation, who violates any provision of this Article shall be liable for a civil penalty of not more than two hundred dollars (\$200.00) per day for each day or part thereof during which such violation continues. In addition, the property owner shall be responsible for the costs of demolition (and/or erection of a fence, where applicable) as set forth in Subsection F above.
- H. **Property owner's liability.** In no event shall the Village be responsible for damages to fences as a result of either use of the sidewalk plow or demolition as set forth above in Subsection F above. In addition, the Village shall have no liability with respect to any personal injury/damages that may occur as a result of removal of fencing, failure of the homeowner to replace said fencing and/or the Village's actions in replacing said fencing. The property owner shall be strictly liable and shall indemnify and hold the Village harmless for any and all claims and causes of action arising out of such actions taken by the Village.