

ORDINANCE #: 2018-04-19C

AN ORDINANCE OF THE CITY OF OVERTON, TEXAS AMENDING CHAPTER 92 (FENCE REGULATIONS) OF ORDINANCE NO. 2014-07-29A CITY OF OVERTON CODE OF ORDINANCES BY THE AMENDMENTS OF SECTIONS 92.01, 92.02, 92.03, 92.04, 92.07, 92.08, 92.09, 92.11 AND THE ADDITION OF SECTIONS 92.13, 92.14, 92.15, 92.16 AND 92.17 ; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES, PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Overton, Texas (the “City Council”) has investigated and determined that it is necessary to regulate fences within the city limit; and

WHEREAS, the City Council has investigated and determined that it will be advantageous, beneficial and in the best interest of the citizens of the City of Overton, Texas (“Overton”) to amend the fence regulations located in Chapter 92 of the City of Overton Code of Ordinances; and

WHEREAS, the City Council has determined that it is necessary to enact this Ordinance to protect the health and welfare of its residence; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as it fully set forth herein.

SECTION 2: Amending Overton’s Code of Ordinances, Chapter 92 (Fence Regulations). That Overton’s Code of Ordinances is hereby amended for the sole purpose of amending the current fence regulations as set forth in **EXHIBIT A**, attached hereto and incorporated herein for all puposes.

SECTION 3: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00) if the violation relates to the public health, sanitation or dumping of refuse, otherwise the fine shall be a sum not exceeding Five Hundred Dollars (\$500.00). The City retains all legal rights and remedies available to it pursuant local, state and federal law.

SECTION 4: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

SECTION 5: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Overton hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 6: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by law.

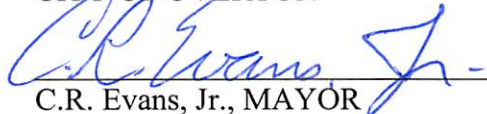
INTRODUCED, READ AND APPROVED FOR ADOPTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF OVERTON, TEXAS ON THIS THE 19TH DAY OF APRIL, 2018.



ATTEST:


Rachel Gafford, CITY SECRETARY

CITY OF OVERTON


C.R. Evans, Jr., MAYOR

APPROVED AS TO FORM AND LEGALITY



Blake Thompson, CITY ATTORNEY

EXHIBIT A
CHAPTER 92: FENCE REGULATIONS

Section

- 92.01 Definitions
- 92.02 Compliance and Permit requirements
- 92.03 Application required
- 92.04 Fee required
- 92.05 Encroachment of public property
- 92.06 Rear yard height limitation
- 92.07 Side yard height limitation
- 92.08 Front yard fences
- 92.09 Use of barbed wire or electrically charged fences
- 92.10 Gates or openings
- 92.11 Maintenance and standard of fences
- 92.12 Conflicts between chapter and zoning regulations
- 92.13 Fence not to create a traffic hazard
- 92.14 Sight visibility triangle
- 92.15 Fire hydrant and utility clear zone
- 92.16 Requirements for nonconforming fences, walls, gates and columns
- 92.17 Swimming pool and spa enclosure requirements

§ 92.01 Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

Approved Fence Materials. Materials normally manufactured for, used as, and recognized as, fencing materials such as: wrought iron or other decorative metals suitable for the construction of fences, fired masonry, concrete, stone, metal tubing, wood planks, chain link and vinyl composite manufactured specifically as fencing materials. Fence materials must also be materials approved for exterior use that are weather and decay-resistant. The provisions of this Ordinance are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved by the City Manager or his designee. An alternative material, design or method of construction shall be approved where the City Manager finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Ordinance in quality, strength, effectiveness, fire resistance, durability and safety.

City. The City of Overton

City Manager. The City of Overton City Manager, Interim City Manager or designee.

Code. The Code of Ordinances of the City of Overton, Texas

Corner lot. A lot which has at least two (2) adjacent sides abutting for their full lengths on a street, provided that the interior angle at the intersection of such two (2) sides is less than one hundred thirty-five degrees (135°).

Dilapidated fence. A fence which is decayed, deteriorated, or has fallen into partial ruin.

Easement. A right created by grant, reservation, agreement, prescription, or necessary implication, which one has in the land of another, and may be dedicated by plat or implied by right. It is either for the benefit of appurtenant land, such as for the right to cross, or egress, such a public utility easement, or in specific, such as an exclusive utility easement. An easement may or may not have descriptive metes and bounds.

Fence. An artificially constructed barrier enclosing, separating, or screening areas of land, serving as a boundary, a means of protection, a buffer, a decorative element, a means of visually modifying the view, and/or for confinement. Except where otherwise required in this Code, regulations governing the height, location and opacity of fences also applies to walls, hedges or landscaping used in lieu of a fence or in combination with a fence. A fence is any part of a fence including the base, footings, supporting columns, post, braces, structural members, or any other of its appendages.

Front yard. A yard located in front of the front elevation of a building and extending across a lot between the side yard lines and being the minimum horizontal distance between the front property line and the outside wall of the main building.

Interior lot. A lot situated in a block with frontage on only one public street and specifically not a corner lot.

Interior lot line. The side yard lot line of a corner lot that is adjacent to an interior lot's side yard line.

Lot, Depth. – The mean horizontal distance between the front and rear lot lines.

Opacity. Is the degree of openness which light or views are blocked measured perpendicular to the fence for each fence section between supports.

Public Right-of-Way (ROW). A strip of land which is used as a roadbed for street, alley or a highway and is intended for use by the public at large, or land set aside as an easement or in fee, either by purchase, agreement or condemnation. Generally, describes an area used for the provision of streets and utilities. Unless otherwise specified, the term right-of-way shall refer to a public right-of-way.

Rear yard. The area extending across the rear of a lot measured between the lot lines and being the minimum horizontal distance between the rear lot line and the rear of the outside wall of the main building. On both corner lots and interior lots, the rear yard shall in all cases shall be the opposite end of the lot from the front yard.

Reverse frontage corner lot. A corner lot where the rear lot line is adjacent to a side lot line of an adjoining lot or across an alley from such side lot line.

Side yard. The area between the building and side line of the lot and extending from the front lot line to the rear lot line and being the minimum horizontal distance between the side lot line and the outside wall of the side of the main building.

Setback. The distance from the property line or the right-of-way line of all streets adjacent to the premises on which a fence is located to the part of the fence closest to the property line or right-of-way line.

Street. Any dedicated public thoroughfare that affords the principal means of access to abutting property.

Vision or Visibility Triangle. The corner visibility triangle is defined as an intersection by extending the two ROW lines from their point of intersection to a distance. These two points are then connected with an imaginary line to form the corner visibility triangle. If there are no curbs existing, the triangular area shall be formed by extending the property lines for distance of thirty feet (30') from their point of intersection

Yard. An open space at grade between a building and the adjoining lot lines, unoccupied and obstructed by any portion of a structure from the ground upward. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the main building shall be used.

§ 92.02 Compliance and Permit Requirements

It shall be unlawful for any person to erect or have erected a fence or any part of a fence, that is not in compliance with these fence regulations. Compliance is required with or without a Fence Permit.

It shall be unlawful for any person to erect or have erected a fence or any part of a fence, that is seven feet (7') or higher, in the City without first obtaining a fence permit from the City of Overton.

§ 92.03 Application Required

Any person making application for a fence permit shall sign an application for the same showing the following information:

- (1) Applicant's name, address and, if the applicant represents a company or corporation, the name and address of the company, and the supervisor or foreman of the project.
- (2) Name of owner of property.
- (3) Local address where fence is proposed to be erected.
- (4) Type of fence construction.
- (5) Height of fence.
- (6) Plat (site plan) showing the lot on which the fence is proposed to be erected, location of adjoining or adjacent lots and with heavy black lines outline the location of proposed fence.
- (7) Approximate valuation of the fence project.

§ 92.04 Fee Required

A minimum fence permit fee as prescribed in City of Overton Schedule of Fees shall be charged for each permit issued.

§ 92.05 Encroachment of Public Property

No fence, guy wires, braces or any post of such fence shall be constructed upon, or cause to protrude over property, that the City or the general public has dominion and control over, owns or has an easement over, under, around or through, except upon utility easements that are permitted to be fenced.

§ 92.06 Rear Yard Height Limitation

It shall be unlawful to erect a fence at a height exceeding twelve feet in any rear yard or along any rear yard lot line.

§ 92.07 Side Yard Height Limitation

It shall be unlawful to erect a fence at a height exceeding twelve feet in any side yard or along any side yard lot line.

§ 92.08 Front Yard Fences

All fences constructed in the front yard of residential property shall:

- (1) Be no taller in height than forty-eight (48") inches.
- (2) Allow minimum fifty (50%) opacity.
- (3) Not impeded the visibility triangle.
- (4) Not allow vertical support posts and gates to extend more than four (4") inches above the top of the fence intersection.
- (5) Corner lots. It shall be unlawful to erect a fence in the required front yard building set-back area on any corner lot. Corner lot fences must be located behind the visibility triangle as defined in section § 92.14.

§ 92.09 Use of Barbed Wire or Electrically Charged Fences

- (a) No fence erected on property zoned for residential use or used for residential use shall be electrically charged in any manner or form. This exclusion includes but is not limited to fences electrically charged by battery or those tied in with the regular electrical outlet, unless such fence is erected for the purpose of controlling a dog.
- (b) No fence erected on property zoned for residential use or used for residential uses shall be constructed of barbed wire fencing unless the same is approved by the City Manager or his designee.
- (c) In nonresidential areas, fences armed with barbed wire and arms are permitted on fences over six (6') feet in height. Such arms may not extend over public right-of-way or easements or over private property of another person.

§ 92.10 Gates or Openings

In order to allow ingress and egress for fire department personnel and fire department equipment, there shall be at least one gate or opening, with a minimum width of three (3') feet in each fence, adjacent to or running parallel to any public alley, drainage easement or utility easement. This provision shall not apply to utility easements that the City has allowed to be completely fenced in.

§ 92.11 Maintenance and standard of fences

All fence or fences abutting City owned property or an easement, regardless of when originally constructed, shall be maintained by the owner of the property in compliance with the requirements of this Ordinance including, but not limited to, the following maintenance standards:

- a. A fence shall not lean more than one inch out of vertical for each foot of height as measured from the top of the fence.
- b. The owner shall replace broken, damaged, removed or missing parts of a fence within ten (10) days of the owner receiving notice from the City Manager or his designee, with the same material, or material with comparable composition, color, size, shape and quality of the original fence to which the repair is being made. No permit is required for repairs as defined in this ordinance. The City Manager or his designee may, upon written notice from the owner that unusual circumstances prevent the timely repair of a fence, extend the replacement time as required. The City Manager or his designee shall not extend the replacement time longer than reasonably necessary. The owner requesting a replacement time extension shall provide the City Manager or his designee a written scope and schedule detailing materials and estimated time period of the completed replacement for approval.
- c. A fence shall be maintained in sound structural condition as a whole or completely removed, including post(s).
- d. Property owners shall maintain fences, including those existing prior to the adoption of this Ordinance, at all times in a state of good repair, safe and secure condition, with all braces, bolts, nails, supporting frame and fastenings free from deterioration, termite infestation, rot, rust or loosening, and able to withstand at all times the wind pressure for which they were designed.
- e. Property owners shall regularly paint fence supports, gates, structural members and exterior surfaces that are covered with paint to prevent rusting, peeling or blistering surfaces.
- f. Existing fences that were constructed prior to the adoption of this Ordinance that were constructed with materials not currently permitted by this Ordinance may be maintained as long as no part of the fence is or becomes unsafe, dilapidated, or a public nuisance. If the City Manager or his designee determines the fence is unsafe, dilapidated, or a public nuisance the fence must be repaired with materials approved by this Ordinance or be removed.
- g. The repairs/maintenance must be made in complete sections extending a minimum of support posts to support posts. If the City Manager or his designee determines the extent of repair on any existing fence (materials are noncompliance) is in excess of fifty (50%) percent of the total fence, then the entire fence must be replaced with materials approved

by this Ordinance. A rolling twelve (12) month time period shall be used to determine if over fifty (50%) percent of a fence has been repaired.

- h. The construction of a fence or wall on the property line shall not preclude the property owner's responsibility to maintain and keep the area between the property line to the back of curb or edge of pavement or center of alley free and clear of debris and high weeds.

§ 92.12 Conflicts Between Chapter and Zoning Regulations

In all cases of direct conflict between this chapter and the zoning regulations of the City, concerning construction and maintenance of fences, this chapter shall prevail. In all cases of conflict between this chapter and any specific ordinance changing the zoning on a particular tract of land, the ordinance changing the zoning shall prevail.

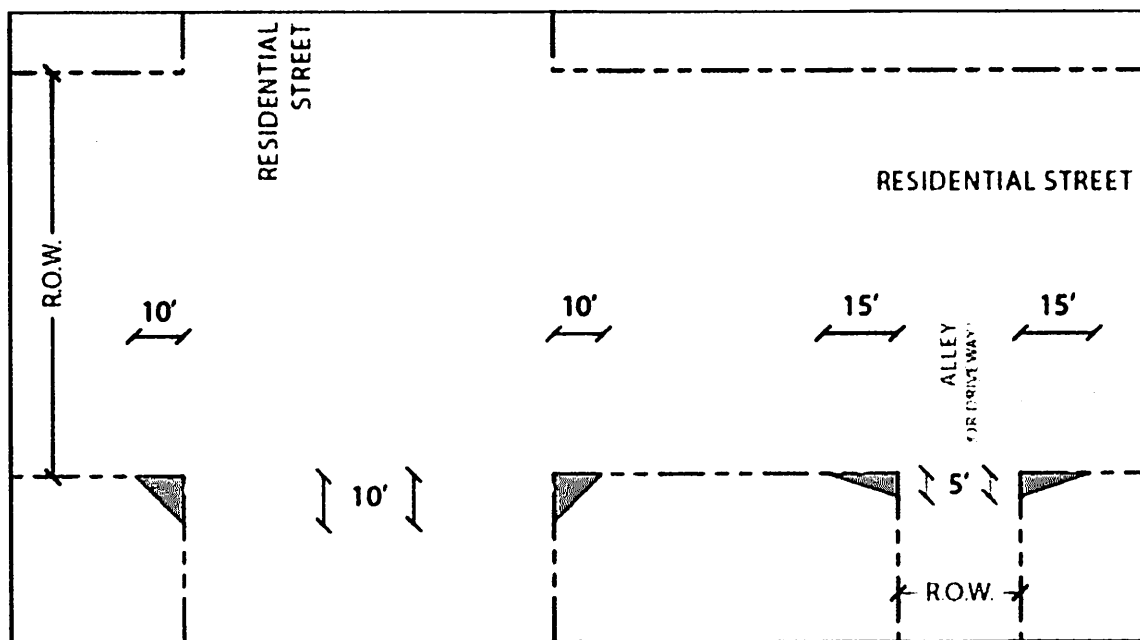
§ 92.13 Fence not to create a traffic hazard.

It is unlawful to erect, maintain, suffer or permit any fence on any corner lot in such a manner as to create a traffic hazard or restrict visibility. Failure of the owner, agent or occupant to remove such obstruction within the specified time limit required on the receipt of notice to do so is a violation of this Ordinance.

§ 92.14 Sight Visibility Triangle

The corner visibility triangle is defined as an intersection by extending the two ROW lines from their point of intersection to a distance as shown. These two points are then connected with an imaginary line to form the corner visibility triangle. If there are no curbs existing, then the triangular area shall be formed by extending the property lines for a distance of thirty (30') feet from their point of intersection. A fence on the corner of a major thoroughfare must have a forty (40') feet x forty (40') feet visibility triangle.

Figure 1. Visibility Triangle



§ 92.15 Fire hydrant and utility clear zone

- a. Any area three (3') feet in radius around any fire hydrants and fire hose connections must be kept free of any fencing that could impede access to or use of the hydrant or fire hose connection.
- b. A fence must not impede access to public utilities or metering devices.

§ 92.16 Requirements for Nonconforming Fences, Walls, Gates and Columns

Replacement of legal nonconforming fences, walls, gates and columns shall be subject to the requirements in this ordinance. Exceptions may be granted by an approved Planned Development Ordinance for the neighborhood.

- a. A permit shall not be required if:
 - 1) Repair of short sections of legal nonconforming fences, walls, gates, or columns when repairs are less than two fence panels or a maximum of sixteen (16') feet; or,
 - 2) Replacement of fence does not exceed fifty (50%) percent of the total fence length; or,
 - 3) A rolling twelve (12) month time period is observed between repairs or replacement.
- b. The replacement of any nonconforming structure shall be prohibited if the City Manager or his designee determines that a public safety hazard exists or the City Engineer determines that the structure encroaches in an easement or public right-of-way. Any fence, wall, gate, or column constructed without a lawfully issued permit is a violation of the City Code.

§ 92.17 Swimming Pool and Spa Enclosure Requirements

The purpose of this section is to protect the public health, safety and welfare by requiring:

- a. Residential swimming pools, or spas and similar structures eighteen (18") inches or more in depth designed for wading, swimming or other recreational purposes located on any residential premise within the City of Overton to be enclosed in the manner prescribed per the 2012 International Building Code (2012 IBC); and
- b. Any residential cesspool, seepage pit, well or similar type of shaft, having a diameter in excess of eight (8") inches to be securely covered at all times when the same is unattended.