

ARTICLE X. FENCES*

*Cross references: Fences or barriers required for livestock, § 3-152; screening devices required in the land development regulations, § 6-381 et seq.; fence requirements in the land development regulations, § 6-547; posting advertising on fences, etc., prohibited, § 9-83; streets, sidewalks and certain other public ways and property, ch. 13.

Sec. 4-441. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Barrier shall mean a fence, wall or other structure built to bar passage.

Corner shall mean the space between intersecting streets, the intersection of a street and an alley, the intersection of a driveway and an alley or the intersection of a street and a driveway.

Fence shall mean an enclosing barrier that prohibits through passage.

Fence, decorative, shall mean fencing that adds beauty and does not substantially block the view and maintains the open space characteristic provided for by zoning standards.

Gate, self-closing, shall mean a gate which is kept in a normally closed position and is equipped with an approved device to ensure closing and latching after having been opened for use.

Intersection shall mean a point where streets, roads, highways, alleys and driveways meet or cross.

Member shall mean a structural component part of a whole fence.

Private pool shall mean a swimming pool appurtenant to a single-family or duplex residence and used only by the occupants of the residence and their guests.

Semipublic pool shall mean a swimming pool that is privately owned and open only to an identifiable class of persons, including, but not limited to, motel guests, apartment residents and club members.

Swimming pool shall mean a pool of water 24 inches or greater in depth either indoors or outdoors and is used for swimming or water related recreations. This also includes spas and hot tubs.

Visibility range shall mean distance required to afford proper vision for pedestrian and vehicular traffic at intersections and/or corners.

Yard shall mean an open space on the same building lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise

provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a rear yard, and the depth of a front yard, the minimum horizontal distance between the building site and the lot line shall be used. A "yard" extends along a lot line and at right angles to such lot line to a depth or width specified in the yard regulations of the zoning district in which such building is located.

Yard, front, shall mean a yard extending along the whole length of the front lot line between the side lot lines, and being the minimum horizontal distance between the street line and the main building or any projections thereof other than steps, planter boxes, unenclosed porches and driveways.

Yard, rear, shall mean a yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear lot line and the rear of the principal building or any projections thereof other than steps, unenclosed balconies, unenclosed porches or driveways.

Yard, side, shall mean a yard extending along the side lot line from the front yard to the rear yard, being the minimum horizontal distance, measured at the building line, between any building or projections thereof except steps or driveways and the side lot line.

Zoning district map shall mean the map incorporated into this article as a part hereof by reference thereto.

(Ord. No. 1561-9-90, § I, 9-10-90)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 4-442. Required at pools.

All private swimming pools shall have a fence or enclosure around the entire pool a minimum height of six feet measured on the side of the barrier which faces away from the swimming pool.

This barrier shall comply with all conditions required by this article except requirements set forth in section 4-453(i), and all height requirements set forth in section 4-453(i)(1).

(Ord. No. 1561-9-90, § XV, 9-10-90)

Cross references: Swimming pool regulations, § 4-471 et seq.

Sec. 4-443. Permits required.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, replace, remove or demolish any fence regulated by this article without first obtaining a separate permit for each fence from the building official of the building inspection division of the community development department. A fence permit shall not be required if it is determined by the building

official of the building inspection division of the community development department that only minor repair or painting is necessary.

(Ord. No. 1561-9-90, § II, 9-10-90; Ord. No. 3358-07-2006, § 1, 7-10-06)

Sec. 4-444. Application for permit.

To obtain a permit required by this division, the applicant shall first file an application for permit on a form furnished by the building official of the building inspection division of the community development department.

(Ord. No. 1561-9-90, § III, 9-10-90; Ord. No. 3358-07-2006, § 2, 7-10-06)

Sec. 4-445. Plans and specifications.

Three sets of plans and such other data as deemed necessary by the building official of the building inspection division of the community development department shall be submitted with each application for a permit under this article.

(Ord. No. 1561-9-90, § IV, 9-10-90; Ord. No. 3358-07-2006, § 3, 7-10-06)

Sec. 4-446. Information on plans.

Plans shall be drawn to scale and shall include the following:

- (1) Building locations and area to be fenced.
- (2) Legal description of land to be fenced.
- (3) Height of fence and type of materials to be used.
- (4) Intersections of streets, roads, highways, alleys and driveways.
- (5) Zoning.
- (6) Corner "visibility range," when required, shall be shown.

(Ord. No. 1561-9-90, § V, 9-10-90)

Sec. 4-447. Permit issuance.

(a) The application, plans and other data, filed by an applicant for a permit under this article shall be reviewed by the building official of the building inspection division of the community development department. If the work described in an application for a permit and the plans and other data filed therewith conform to the requirements of this article and all other pertinent laws and ordinances, and the fees specified in the city ordinance providing for permit, inspection and license fees have been paid, the permit shall be issued to the applicant.

(b) The plans shall be endorsed by the city in writing or stamped "approved" and shall not be changed, modified or altered without authorization from the building official of the building inspection division of the community development department, and all work shall be done in accordance with the approved plans.

(c) One set of approved plans shall be retained by the building official of the building inspection division of the community development department for a period of not less than 90 days from the date of completion of the work covered, (one set of the approved plans shall be retained by the engineering department and one set of the approved plans shall be returned to the applicant.)

(Ord. No. 1561-9-90, § VI, 9-10-90; Ord. No. 3358-07-2006, § 4, 7-10-06)

Sec. 4-448. Validity of permit.

The issuance or granting of a permit under this article or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this article or any other code or ordinance of the city. The issuance of a permit based upon plans and other data shall not prevent the building official of the building inspection division of the community development department from thereafter requiring correction of errors in such plans and other data, or from preventing building operations being carried on thereunder when in violation of this article or any other code or ordinance of the city.

(Ord. No. 1561-9-90, § VII, 9-10-90; Ord. No. 3358-07-2006, § 5, 7-10-06)

Sec. 4-449. Permit expiration.

Every permit issued by the building official of the building inspection division of the community development department under the provisions of this article shall expire by limitation and become null and void if the authorized work is not commenced within 60 days from the date of permitting, or if the authorized work is not completed, or is abandoned for a period of 60 days.

Before the work can be recommenced, a new permit shall be first obtained and the fee shall be one-half the amount required for a new permit for such work, provided the elapsed time does not exceed 180 days from the date of permitting in which case the permittee shall pay a new full permit fee in order to renew the permit.

(Ord. No. 1561-9-90, § VIII, 9-10-90; Ord. No. 3358-07-2006, § 6, 7-10-06)

Sec. 4-450. Suspension or revocation of permit.

The building official of the building inspection division of the community development department may, in writing, suspend or revoke a permit issued under the provisions of this article whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any code or ordinance of the city or any of the provisions of this article.

(Ord. No. 1561-9-90, § IX, 9-10-90; Ord. No. 3358-07-2006, § 7, 7-10-06)

Sec. 4-451. Appeal.

Any applicant for a fence permit whose request is denied by the city staff for noncompliance with this article, or whose permit is suspended or revoked, may, within ten days from the date of written notification, appeal such decision for consideration by the city council. The decision of the city council shall be final.

(Ord. No. 1561-9-90, § X, 9-10-90)

Sec. 4-452. Permit fees.

The fee for each permit shall be as set forth in the city ordinance providing for permit, inspection and license fees which is set out in section 2-201. No permit fees shall be refunded.

(Ord. No. 1561-9-90, § XI, 9-10-90)

Sec. 4-453. General requirements and restrictions.

(a) Fences constructed on any lot, and specifically corner lots, will be subject to, and shall conform to the visibility range requirements contained in the drawing at the end of this section. An additional clear zone may be required by the city engineer.

(b) No fence, guy wire, brace or post shall be constructed upon or extend over property that the city has control over, owns or has an easement over or under, except upon:

(1) Underground drainage easements that contain nonpressurized storm sewer pipes.

(2) Underground sanitary sewer easements that contain nonpressurized pipes.

(3) Utility easements if written permission is granted by all users.

No drainage easement, public or private, shall be fenced or obstructed in any manner, if the drainage is above ground. A gate shall be constructed in a fence along easements to allow ingress and egress for maintenance.

(c) No fence shall exceed ten feet in height measured from the finished grade of the lot or property upon which the fence is being erected except as otherwise provided for in this article.

- (d) No fence erected within the city limits shall be electrically charged in any manner.
- (e) No fence shall be constructed of barbed wire except on property zoned agriculture-open space and is five acres or greater in size, or except as provided for in subsection (g) of this section.
- (f) All fences shall have a minimum of one gate for emergency ingress and egress. The minimum width of such gate shall be three feet. A driveway approach, in conformance with the general development ordinance and approved by the engineering division, shall be required for all vehicle gates.
- (g) In LC, GB, WH, LI, HI, PK, PU and FP zoning districts, fences six feet or greater in height may be constructed with angle arms at the top and such angle arms may be armed with barbed wire. Such arms shall not extend over public property, city, county, or state rights-of-way, easements or private property. Any property that requires a screening device shall conform to the general development ordinance.
- (h) Materials.
- (1) Permitted materials. Materials permitted are wood, metal tubing or wrought iron, stone, masonry and chain link. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.
- (2) Prohibited materials.
- a. No person shall use rope, string, wire products including, but not limited to chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The building official of the building inspection division of the community development department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.
- b. No person shall construct a fence of wood, metal or plastic products that are designed specifically for uses other than fence construction.
- c. No person shall construct a fence of used, damaged or unsafe materials.
- d. No person shall weave or use slats of any material, including but not limited to metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence or any other type of fence addressed in this chapter.

e. Used materials, equipment and devices shall not be reused unless it can be determined by the building official of the building inspection division of the community development department that they meet the requirements of the building code for new materials.

(3) Exceptions. See subsections 4-453(e) and 4-453(g)

(i) All semipublic swimming pools shall have a fence or enclosure which complies with the following:

(1) The top of the barrier shall be at least 72 inches above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier which faces away from the swimming pool shall be two inches. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be two inches.

(2) Openings in the barrier shall not allow passage of more than a four-inch diameter sphere.

(3) Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

(4) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side of the fence. Spacing between vertical members shall not exceed 1 3/4 inches in width.

(5) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches or more, spacing between vertical members shall not exceed four inches. Where there are decorative cut outs within vertical members, spacing within the cutouts shall not exceed 1 3/4 inches in width.

(6) Maximum mesh size for chain link fences shall be a 1 3/4-inch square unless the fence is provided with slats fastened at the top and the bottom which reduce the openings to no more than 1 3/4 inches.

(7) Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall be no more than 1 3/4 inches.

(8) Access gates shall comply with the requirements of previous paragraphs (1) through (7) of this subsection, and shall be equipped to accommodate a locking device. Gates shall have self-closing and self-latching devices which shall meet the following three requirements:

a. The release mechanism of the self-latching device must be located not less than 45 inches from the grade below the gate.

- b. The release mechanism shall be located on the pool side of the gate at least three inches below the top of the gate.
 - c. The gate and barrier shall have no opening greater than one-half inch within 18 inches of the release mechanism.
- (9) Where a wall of a dwelling serves as part of the barrier, direct access to the pool through the wall shall be limited to doors and windows which meet the following conditions:
- a. Windows leading to the pool area shall have a latching device at least 54 inches above the floor.
 - b. Hinged doors leading to the pool area shall be self-closing and shall have a self-latching device. The release mechanism, if not self-locking, shall be located at least 54 inches above the floor.
 - c. Sliding doors or sliding screen doors leading to the pool area shall be self-closing and shall have a self-latching device. The release mechanism, if not self-locking, shall be located at least 54 inches above the floor.
- (10) Barriers shall be located so as to prohibit permanent structures, landscaping objects, stationary equipment, or similar objects from being used to climb the barriers.
- (j) No fence shall be constructed in the required front yard building setback area of R, DU, TH, PH, OD or MD zoning districts, except that a decorative fence may be constructed to a height no greater than 3 1/2 feet above the finished lot grade and the solid area of such fence shall not exceed 50 percent of the total.
- (k) In all zoning districts where outside storage of material, equipment, goods and supplies is allowed, all fencing shall comply with the general development ordinance.
- (l) Yard fencing. Within the Old Town Center design district and the Old Town design district as defined in chapter 9.5, Old Town development, regardless of zoning classification or other provisions of this chapter, except as may be specifically required by the Old Town Development Ordinance, fences shall be constructed as follows.
- (1) Right-of-way yard fence. No solid fence, except a decorative low profile yard fence, shall be constructed closer to a front yard right-of-way line than the primary structure on that lot or within ten feet of a front yard right-of-way line, whichever is more restrictive. In the event that portions of the front elevation of a primary structure are closer to the front property line than other portions, it is the intent of this chapter to not allow any solid fence to be constructed closer to the front property line than the portion of the front elevation nearest to the right-of-way yard fence. In no event shall any portion of the front elevation be blocked by a solid right-of-way yard fence.
- a. Height. A right-of-way yard fence shall be constructed to a height no greater than eight feet above the finished lot grade at the location of the fence.

b. Permitted materials. Materials permitted for a right-of-way yard fence are brick, stone, decorative block, wood, metal tubing or wrought iron. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

c. Prohibited materials.

1. No person shall use for a right-of-way yard fence chain link, rope, string, wire products including, but not limited to chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The building official of the building inspection division of the community development department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

2. No person shall construct a fence of wood, metal or plastic products that are designed specifically for uses other than fence construction.

3. No person shall construct a fence of used, damaged or unsafe materials.

4. No person shall weave or use slats of any material, including but not limited to metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence or any other type of fence addressed in this chapter.

5. Used materials, equipment and devices shall not be reused unless it can be determined by the building official of the building inspection division of the community development department that they meet the requirements of the building code for new materials.

(2) Right-of-way decorative yard fence. Any fence, except a decorative low profile yard fence, that is constructed between any structure on the lot and the front yard right-of-way line shall be a minimum of 75 percent open.

a. Height. A right-of-way decorative yard fence shall be constructed to a height no greater than six feet above the finished lot grade at the location of the fence.

b. Permitted materials. Materials permitted for a right-of-way decorative yard fence are brick, stone, decorative block, wood, metal tubing or wrought iron. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

c. Prohibited materials.

1. No person shall use for a right-of-way decorative yard fence chain link, rope, string, wire products including, but not limited to chicken wire, hog wire, wire fabric, barbed wire (except as

allowed in other sections of this code), razor ribbon wire and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The building official of the building inspection division of the community development department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

2. No person shall construct a fence of wood, metal or plastic products that are designed specifically for uses other than fence construction.

3. No person shall construct a fence of used, damaged or unsafe materials.

4. No person shall weave or use slats of any material, including but not limited to metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence or any other type of fence addressed in this chapter.

5. Used materials, equipment and devices shall not be reused unless it can be determined by the building official of the building inspection division of the community development department that they meet the requirements of the building code for new materials.

(3) Decorative low-profile yard fence. Fences that are constructed to a height no greater than 24 inches above the finished lot grade at the location of the fence may be constructed at the right-of-way line.

a. Permitted materials. Materials permitted for a decorative low-profile yard fence are brick, stone, decorative block, wood, metal tubing or wrought iron. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

b. Prohibited materials.

1. No person shall use for a decorative low-profile yard fence chain link, rope, string, wire products including, but not limited to chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The building official of the building inspection division of the community development department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

2. No person shall construct a fence of wood, metal or plastic products that are designed specifically for uses other than fence construction.

3. No person shall construct a fence of used, damaged or unsafe materials.

4. No person shall weave or use slats of any material, including but not limited to metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence or any other type of fence addressed in this chapter.

5. Used materials, equipment and devices shall not be reused unless it can be determined by the building official of the building inspection division of the community development department that they meet the requirements of the building code for new materials.

(4) Property line/other fence. A fence that is on a side or rear property line, not meeting the requirements of the fence types above may be a solid fence meeting the requirements of this section.

a. Height. A property line/other fence shall be constructed to a height no greater than six feet above the finished lot grade at the location of the fence when located between the primary structure and a side yard right-of-way line. In all other allowed locations, the maximum height shall be no greater than eight feet above the finished lot grade at the location of the fence.

b. Location. A property line/other fence may be constructed on a side or rear property line when the side or rear property line is not a street right-of-way. If the side or rear property line is a right-of-way then the fence must have a minimum two-foot setback from the right-of-way. If a driveway enters the lot from a side or rear property line the fence must have a minimum ten-foot setback from the right-of-way. A solid property line/other fence may not extend closer to a front right-of-way line than the established fence line allowed by a right-of-way yard fence.

c. Permitted materials. Materials permitted for a property line/other fence are brick, stone, decorative block, wood, chain link, metal tubing or wrought iron. Vinyl or fiberglass composite materials may be utilized if the material is listed, designed and constructed for fencing materials. Metal posts will be allowed on wood fences.

d. Prohibited materials.

1. No person shall use for a property line/other fence rope, string, wire products including, but not limited to chicken wire, hog wire, wire fabric, barbed wire (except as allowed in other sections of this code), razor ribbon wire and similar welded or woven wire fabrics, chain, netting, cut or broken glass, paper, metal panels, corrugated metal panels, galvanized sheet metal, plywood, fiberglass panels or plastic panels in any fence or any other materials that are not manufactured specifically as fencing materials. The building official of the building inspection division of the community development department may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

2. No person shall construct a fence of wood, metal or plastic products that are designed specifically for uses other than fence construction.

3. No person shall construct a fence of used, damaged or unsafe materials.

4. No person shall weave or use slats of any material, including but not limited to metal, fiberglass, or bamboo, through a chain link fence to create a blind fence, screening fence or any other type of fence addressed in this chapter.

5. Used materials, equipment and devices shall not be reused unless it can be determined by the building official of the building inspection division of the community development department that they meet the requirements of the building code for new materials.

(5) Fence diagrams. The following fence diagrams shall be used for reference purposes as allowable locations of fences in the Old Town Center design district and the Old Town design district.

(6) Non-conforming fence. In the Old Town Center design district and the Old Town design district, any fence legally in existence at the time of the creation of this subsection that does not fully comply with the requirements of this subsection shall be considered legally nonconforming and may remain in place. Any nonconforming fence may be replaced, repaired or maintained in its current location without losing its nonconforming status. Any nonconforming fence that is enlarged, expanded or modified shall be made to conform to the specific requirements of fences in the Old Town Center design district and the Old Town design district or be removed. No addition, expansion or construction of a structure on a lot in the Old Town Center design district and the Old Town design district shall be allowed to create a nonconforming fence.

(Ord. No. 1561-9-90, § XIV, 9-10-90; Ord. No. 1688-3-92, § I, 3-16-92; Ord. No. 1910-4-94, § I(1)--(4), 4-4-94; Ord. No. 1978-10-94, § I, 10-3-94; Ord. No. 2165-10-96, § I, 10-21-96; Ord. No. 2345-6-98, § I, 6-1-98; Ord. No. 2602-9-2000, § A, 9-18-00; Ord. No. 3107-08-2004, § I, 8-16-04; Ord. No. 3300-01-2006, § I, 1-9-06; Ord. No. 3330-04-2006, § I, 4-3-06; Ord. No. 3358-07-2006, §§ 8, 9, 7-10-06)

Sec. 4-454. Inspections.

Upon completion of work authorized under this article it shall be the duty of the permittee to notify the building official of the building inspection division of the community development department that such work is ready for inspection. Required inspections shall include:

- (1) Alignment inspection. To be made after all post or support structures are in place.
- (2) Final inspection. To be made after the fence has been completed.

(Ord. No. 1561-9-90, § XII, 9-10-90; Ord. No. 3358-07-2006, § 10, 7-10-06)

Sec. 4-455. Maintenance.

(a) All fences, both existing and new, and all parts thereof, shall be maintained in a safe and aesthetically pleasing condition. Graffiti shall be removed immediately upon notification. All devices or safeguards which are required by this article shall be maintained operable.

(b) The owner or his designated agent shall be responsible for the maintenance of the fence, and to determine compliance of this section, the building official of the building inspection division of the community development department may cause any fence to be reinspected.

(Ord. No. 1561-9-90, § XIII, 9-10-90; Ord. No. 3358-07-2006, § 11, 7-10-06)

Secs. 4-456--4-470. Reserved.