

ORDINANCE 70 BAYSIDE FENCE BUILDING CODE

AN ORDINANCE REGULATING FENCES; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION WHEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF BAYSIDE:

ARTICLE I PURPOSE

The purpose of this ordinance is to provide guidelines for fences within the Town of Bayside. Fences shall be constructed and maintained in a manner which shall protect the rights of the persons constructing such fences and others who may be affected by such fences. These codes are to be considered the minimum requirements for all types of construction in the City of Bayside. The City Building Official is assigned the responsibility of building trade code licensing, permitting, interpretation and enforcement.

ARTICLE II GENERAL

SEC. 1 That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Town of Bayside hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SEC. 2 That the city secretary is hereby ordered and directed to cause notification of this ordinance to be published in the city official newspaper before adoption.

SEC. 3 That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect after the date of its final passage and adoption.

SEC. 4 No fence shall hereafter be constructed, moved, or altered except in conformity with the regulations specified for the zone in which such property is situated. Any construction shall be done with a permit to be issued by the Building Inspector. Normal repairs, restoration or improvement, which do not alter the footage of a fence, shall not be deemed to require a building permit.

ARTICLE III BUILDING INSPECTOR

SEC. 1 BUILDING OFFICIAL - The Building Official shall be in charge of administering this code for the city and will be appointed by the city council.

(A) APPOINTMENT; ASSISTANTS - Such assistants, other than herein provided, as the City Council may authorize, shall be appointed by and shall hold office at the pleasure of the City Council and under the supervision of the Building Official.

(B) **DUTIES** - The Building Official shall have authority to condemn any fence or material, which, in his opinion, is unsafe to life or property.

SEC. 2 COMMITTEES - The Mayor shall have the right and authority to call together committees as needed to receive advice and discuss building trade related issues. The Mayor and City Building Official shall be a member of all committees formed.

ARTICLE IV DEFINITIONS

For the purposes of this chapter, the following words and phrases will have the meanings respectively ascribed to them by this section:

Corner lot: A lot situated at the junction of two (2) or more streets.

Fence: a structure serving as an enclosure, barrier, or boundary consisting of wood, metal or masonry, or a hedge or other planting arranged in such a way as to obstruct vision.

Front yard: An open, unoccupied space on a lot facing a street and extending from the building or required building line across the front of a lot between the side yard lines.

Interior lot: A lot situated in a block with frontage on only one (1) street, and specifically not a corner lot.

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

Rear yard: A space occupied by principal structure, extending for the full width of the lot between a principal structure and the rear lot line.

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.

Screening fence: A woven wire or chain link fence with metal strips woven through the mesh to form a solid screen.

Side yard: An open unoccupied space on the same lot with the building, extending from the building or required building line and the side line of the lot, and extending through from the street or the front line to the rear line of the lot. Any lot line not a rear line or a front line shall be deemed a side line.

Solid fence: A fence that is constructed and maintained at accepted commercial fence standards. Materials shall be of uniform height and surface quality and shall consist of masonry, stone, or commercially available lumber designed for fences. A chain link fence with strips or slats is not a solid fence.

Streets: For the purpose of this chapter, street shall refer to the public streets and private streets.

ARTICLE V PERMITS AND EXPIRATION

SEC.1 REQUIRED. It is unlawful for any person to erect or cause to be erected, a fence, or any part of a fence in the city without first obtaining a fence permit from the City Office.

SEC.2 EXPIRATION. Every fence permit issued by the building official under the provisions of this ordinance shall expire if a permit extension has not been obtained for the fence authorized by the permit and work on the fence is not commenced within one hundred eighty (180) days from the original date of the permit or if the fence authorized by the permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days or more. Before the work can be commenced or recommenced, a new permit shall first be obtained to do so and the permittee shall pay a new full permit fee;

provided, no changes have been made or will be made in the original plans and specifications for the work.

SEC.3 Any permittee holding an unexpired fence permit may apply for an extension of the time within which work may commence or recommence under that permit when the permittee is unable to commence or recommence work within the time required by this section for a reason or reasons deemed sufficient by the building inspector. The building inspector may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

SEC.4 SUSPENSION OR REVOCATION. The building inspector may, in writing, suspend or revoke a permit issued under the provisions of this ordinance when the permit was issued in error, on the basis of incorrect information, or in violation of any applicable law.

SEC.5 SAME--APPLICATION. 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 business, the name and address of the registered agent of the business, or if the applicant represents an association, the name and address of a high managerial agent of the association.
- (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) Diagram showing proposed location of the fence and listing relevant dimensions between the fence and other structures on the lot and the location of property lines.

SEC.6 There will be no permit fee for re-building an existing fence due to deterioration or damage as long as footage remains unchanged and the new fence meets requirements of this ordinance. The existing fence must be inspected first to verify its existence before re-building a new fence.

ARTICLE VI PERMIT FEES

On all fences requiring a building permit or inspection, a fee set by the city council shall be paid as required at the time of filing application. Said fees may be adjusted annually.

ARTICLE VII RECEIVING RESULTS OF REVIEW PROCESS

SEC. 1 If compliance with the codes/ordinances/regulations is determined by the plans examiner, the permit is issued.

SEC. 2 If compliance is not determined, the application is denied. The Code violations may be corrected or appeal the decision to the city council.

ARTICLE VIII INSPECTIONS

SEC. 1 Two inspections are required:

(A) **SETBACKS** - When the site is staked and map and plats of proposed work verifying property boundaries have been submitted to the city secretary. Construction details should show enough detail and clarity to convey to the plans examiner all work to be accomplished. No construction may be started until the setback inspection is approved.

(B) **FINAL** - The Building Inspector shall inspect all fences and structures that are being erected, constructed, built, enlarged, altered, or moved. When code compliance is determined after the final inspection, the code official will issue a final approval.

SEC. 2 Inspections shall be requested in writing or by telephone to the City Office at least five (5) business days in advance.

SEC. 3 The person responsible for the construction project must request each inspection.

SEC. 4 If an Inspector finds that some work does not conform to approved plans, the Inspector will advise (and possibly provide written notice) that the situation is to be remedied. If the violation is serious, a **STOP WORK ORDER** may be posted until the problem is resolved. Another inspection may be necessary before work is resumed for an additional permit fee.

ARTICLE IX HEIGHT LIMITATIONS

SEC. 1 Residential:

- A. No fence or wall may be erected, placed, or maintained on any zoned residential lot to a height exceeding six (6) feet above the ground level. Height shall be measured above the highest grade within two feet of the fence line. Where such lot line is adjacent to non-residential zoned property, there shall be an eight (8) feet limit on the height of a fence or wall along such lot line.
- B. Solid fences within twenty (20) feet of property lines that abut city streets shall not exceed a height of three (3) feet. Chain link or woven wire fences up to six (6) feet high and at least fifty (50) percent through vision are allowed.
- C. Six (6) foot solid fences may abut city right of way in a back and side yard if the fence is situated where front and back streets encompass a single lot and fence must be in accordance with the procedures set forth in Article X SEC. 1. The property owner must determine the front and back yard and the front yard must be in accordance with the procedures set forth in this Article SEC. 1 B.

- D. Fences in excess of six (6) feet in height may be permitted upon written permit from the City Council in accordance with the procedures set forth in Article XIII of this Ordinance and upon showing of a reasonable need and further showing that a fence of the requested height is necessary to protect the health, peace, safety, and general welfare of the community and the owner's property.

SEC. 2 Non-residential:

- A. No fence or wall shall be erected, placed or maintained on any non-residential zoned property to a height exceeding eight (8) feet.
- B. Solid fences within twenty (20) feet of property lines that abut city streets shall not exceed a height of three (3) feet. Chain link or woven wire fences up to eight (8) feet high and at least fifty (50) percent through vision are allowed.
- C. Eight (8) feet solid fences may abut city right of way in a back and side yard if the fence is situated where front and back streets encompass a single lot and fence must be in accordance with the procedures set forth in Article X SEC. 1. The property owner must determine the front and back yard and the front yard must be in accordance with the procedures set forth in this Article Sec. 2 B.
- D. Junk yards, salvage scrap operations or automobile wrecking yards in an I District shall be surrounded with an eight (8) feet high solid or screening fence and in accordance with the procedures set forth in Article X SEC. 1 as determined by the city inspector. The material may not be piled higher than the fence and vermin must be controlled.
- E. Higher fences may be allowed surrounding water reservoirs, public buildings and structures, and where provided by State Laws.

**ARTICLE X
FENCE LOCATION**

SEC. 1 On any corner lot on which a front, or side yard is required, no wall, solid fence, or other structure or any plant growth shall be permitted or maintained higher than three feet above the average street grade within twenty (20) feet of the intersection of the property line. Chain link or woven wire fences up to six (6) feet high in residential and eight (8) feet high in non-residential and at least fifty (50) percent through vision are allowed.

SEC.2 Fences shall not be placed closer than eighteen (18) inches from telephone, cable, gas, or pedestals that would interfere with the maintenance for these utilities if necessary. Fences shall not be placed on water meters or pipes.

SEC.3 Homeowners are responsible for locating their sump pump line if buried in the yard to avoid damaging it during construction.

SEC.4 It shall be the homeowner's responsibility to make sure that any fence installed on his or her property is within his or her property line. The bottom of a board fence shall be placed above grade (ground level) to assure that drainage swales will function properly.

SEC.5 All swimming pools (pools having a depth of at least two (2) feet or more at any point) shall be enclosed by a fence that shall be at least four (4) feet in height of a type not readily climbed by children. However, if the entire yard of the residence is enclosed, then this provision may be waived by the Building Inspector upon inspection and approval of the yard's enclosure, or if the pool is of a portable type with a wall height of at least three (3) feet above the surrounding ground surface and of such construction as not to be readily climbed by children, then the ends of the fence may be attached to the pool structure and the fence need be erected only around the immediate area of the ladder, and other means of access to the pool. Gates shall be of a self-closing latch type with the latch on the inside of the gate, not readily available for children to open. Pools constructed or erected after the date of this Ordinance shall be enclosed by such a fence before water is placed in the pool. Pools which have been constructed or erected prior to the date of this Ordinance shall be enclosed by such a fence on or before August 1, 2003.

SEC. 6 Manufactured housing parks and recreational vehicle or travel trailer parks shall be enclosed by a screening or solid fence that shall be at least eight (8) feet in height.

ARTICLE XI FENCE MATERIALS

SEC. 1 No sheet metal, chicken wire, barbed wire, concertina wire or razor wire fences, products manufactured for other uses as plywood, corrugated steel or fiberglass panels shall be permitted on any residential lot. It is unlawful for any person to erect, maintain, or permit a fence that has in it or on it barbs, projections, broken glass, or anything reasonably capable of causing harm to persons or animals.

SEC. 2 The minimum size wire mesh for chain link or woven wire fence shall be not less than two (2) inches.

SEC. 3 It is an affirmative defense to Section 1 of this Article that the fence is situated in a non-residentially zoned area and that the barbed wire, concertina wire, razor wire, barbs, projections, broken glass, or anything reasonably capable of causing harm to persons or animals is on a portion of the fence that is more than six (6) feet above the grade measured no more than eighteen (18) inches either side of the fence, and not over public right-of-way, easement, or private property of a person who is not the owner of the fence. If the fence is next to property that is residentially zoned, it is an affirmative defense to Section 1 of this Article that the barbed wire, concertina wire, razor wire, barbs, projections, broken glass, or anything reasonably capable of causing harm to persons or animals is on an arm extending inward.

ARTICLE XII ENCROACHMENT ON PUBLIC PROPERTY.

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

ARTICLE XIII FENCE EXCEPTIONS

SEC. 1 REVIEW OF EXCEPTIONS OR UNUSUAL CIRCUMSTANCES

Exception requests to build a fence, which does not conform to the guidelines provided in this Ordinance, shall be brought to the City Council. The City Council shall be given the power to grant exceptions administratively; however, the notification process defined in Section 2 of this Article shall be followed prior to granting an administrative exception, and such exceptions shall be supported by written findings of fact. The City Council may grant exception requests in the event both the of the following circumstances exist:

- (A) The exception would not be materially detrimental to the purposes of this Ordinance or to property in the zone or vicinity in which the property is located or otherwise conflict with the objectives of any city plan or policy.
- (B) The exception will not create an unreasonably dangerous or hazardous condition. The City Council may determine that circumstances related to the request are such that the matter should be forwarded to the Planning Commission for review and recommendations. All applications for an exception shall be accompanied by the plans and specifications, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the sizes and locations on the lot of the fence; and such other information as is required to make a fair decision.

SEC. 2 FENCE EXCEPTION NOTIFICATION PROCESS

Upon receipt of a fence exception application, and at least 10 days prior to the rendering of a decision by the City Council or the date of the Planning Commission review hearing, notices shall be mailed to all property owners who own property abutting the exterior boundary of the property for which the application is made. In determining who is an abutting property owner, streets and alleys shall be excluded and/or treated as non-existent. For this purpose, the names and addresses of the property owners as shown on the records of the Refugio County Assessor may be used. A notice of the administrative review or Planning Commission review shall also be posted within the City. Failure of the person to receive the notice prescribed in this section shall not impair the validity of the review hearing.

Within five days after a decision has been rendered on an administrative request for an exception, the City Council shall provide the applicant and the abutting property owners with notice of the decision. The notice shall contain the following information:

- (A) Citation to the criteria and standards considered relevant in reaching the decision;
- (B) The facts relied upon in rendering the decision; and
- (C) The justification and rational for the decision based on the criteria, standards and facts set forth; and
- (D) A statement that the decision may be appealed in writing within 15 days of the date of the decision.

The Planning Commission may recess a review hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides

may be interested in the proposal being considered. Upon recessing, the time, date and place when and where the hearing is to be reconvened shall be announced. Authorization of an exception shall be void after six months unless substantial construction pursuant thereto has taken place. However, the City Council may extend authorization for administratively approved exceptions for six additional months upon request.

SEC.3 FEES Before any action shall be taken on any appeal to the City Council necessitating the publication of notices or sending of notices, the appellant shall deposit with the City Secretary the sum of One Hundred dollars (\$100.00) to cover the cost and expense relative thereto.

ARTICLE XIV NOTIFICATION

SEC.1 Any person found to be violating any provision of this ordinance shall be served, by the Town of Bayside, with written notice stating the nature of the violation and providing a time limit of fifteen (15) days for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease and correct all violations. Failure to obtain the necessary permits for the work and passing inspection may require returning the site to it's original state or condition.

SEC.2 The City secretary shall give the notice of violation:

(A) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(B) If personal service cannot be obtained, publication at least once in the local or official newspaper.

SEC.3 If the city mails a notice to a property owner in accordance with SECTION 2(A), and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

ARTICLE XV PENALTIES

SEC. 1 Where work for which a permit is required by this code is started prior to obtaining said permit, a penalty equal to the building permit fee shall be assessed. Payment of such penalty fee shall not relieve the persons from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

SEC.2 Whenever in this Code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or Ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not exceeding Two Thousand Dollars (\$2,000.00) for violations of municipal ordinances that govern fire safety, sanitation (not including vegetation and litter violations), public health or as the Legislature may amend from time to time. For traffic-related offenses and other violations not included in the classes enumerated above, the maximum permissible fine will be Five Hundred Dollars (\$500.00) or as the Legislature may amend from time to time. Further, that the above mentioned violations shall be subject to a

minimum fine of One Hundred Dollars (\$100.00). PROVIDED, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. A culpable mental state is not required for the commission of an offense under this Code of Ordinances, unless the provision defining the conduct expressly requires a culpable mental state. Notice of such a penalty shall be sent to said owner and all lien-holders at their last known address by certified and regular first class mail.

SEC.3 Any person violating any of the provisions of this ordinance shall become liable to the Town of Bayside for any expense, loss, or damage occasioned by the Town of Bayside by reason of such violation.

ARTICLE XVI ASSESSMENT OF EXPENSES; LIEN

SEC.1 To obtain a lien against the property, the mayor or city official designated by the mayor shall file a notice of lien in the appropriate county deed or lien records showing the penalty and all expenses as a lien against the property upon which the structure is located.

SEC.2 The lien obtained by the city is security for the fines, expenses and interest accruing at the rate of ten (10) percent on the amount due. The lien attaches upon the filing of the lien statement with the county clerk.

SEC.3 The lien is inferior only to Tax liens.

SEC.4 The city council may authorize the city attorney to bring a suit for foreclosure in the name of the city to recover the fines and interest due. In any civil, criminal or administrative appeal, hearing or action commenced by the City under this Ordinance, the City shall be entitled to recover from the defendant of such action reasonable attorney's fees, costs of suit, any other costs of enforcement, including, but not limited to, inspection costs.

SEC.5 The city council may authorize the city attorney to foreclose a lien on property.

ARTICLE XVII ATTORNEY AUTHORIZATION

Notwithstanding any penal provision herein, the city attorney is authorized to file suit on behalf of the city for such injunctive relief as may be necessary to abate such violations whenever any violations as herein defined is found in any place within the city.

ARTICLE XVIII VALIDITY

Sec. 1 CONFLICTS BETWEEN THIS 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. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Sec. 2 The validity of any section, clause, sentence, or provision of this ordinance shall not effect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

**ARTICLE XIX
EFFECTIVE DATE**

Sec.1 This ordinance shall be effective upon adoption and, in addition, if any penalty, fine or forfeiture is imposed by this ordinance, then this ordinance shall be effective only after publication of this ordinance in its entirety or in summary form once in the official newspaper of the Town of Bayside.

Date Published in Official Newspaper 7-31-02
1st Hearing Date 8-19-02

Passed, ordained, approved and adopted this the 10th day of September, 2002.

Attest:

Connie Cramer
City secretary

By: Billy P. Fink
Mayor Town of Bayside, Texas