

## **ORDINANCE NO. 21-08-19-04**

### **AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING SECTION 22 OF CHAPTER 14 OF THE LAGO VISTA CODE OF ORDINANCES REGARDING THE REGULATIONS APPLICABLE TO THE LOCATION AND CONSTRUCTION OF FENCES AND SCREENING DEVICES; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Lago Vista, Texas is a Home Rule City; and

**WHEREAS**, the City Council of the City of Lago Vista has previously established regulations applicable to the location and construction of fences and screening devices in Section 22 of Chapter 14, the Zoning Ordinance; and

**WHEREAS**, the staff and members of both the Planning and Zoning Commission and the Board of Adjustment have become aware of needed improvements to those regulations; and

**WHEREAS**, these needed improvements will help eliminate existing ambiguities and contradictions, in addition to creating regulations that are more consistent with the expectations of the residents and property owners; and

**WHEREAS**, the Planning and Zoning Commission of the City of Lago Vista has undertaken a review of those regulations and subsequently conducted a public hearing concerning those regulations at both a special call meeting on June 24, 2021 and their regular meeting of July 8, 2021; and

**WHEREAS**, the Planning and Zoning Commission of the City of Lago Vista has forwarded a recommendation to the City Council to amend those requirements contained within Section 22 of Chapter 14 of the Lago Vista Code of Ordinances as described below; and

**WHEREAS**, the City Council at its public hearing to consider this ordinance amendment held on August 5, 2021, reviewed the recommendation, and found the changes to be warranted.

**WHEREAS**, the City Council desires to amend the Lago Vista Code of Ordinances as described below.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:**

**SECTION 1. FINDINGS OF FACT.** All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

**SECTION 2. AMENDMENT.** The City Council of the City of Lago Vista, Texas, does hereby amend Section 22 of Chapter 14 of the Lago Vista Code of Ordinances as shown in Exhibit A.

**SECTION 3. REPEALER.** All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Lago Vista, Texas, are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

**SECTION 4. SEVERABILITY CLAUSE.** If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

**SECTION 6. OPEN MEETINGS.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**AND, IT IS SO ORDERED.**

**PASSED AND APPROVED** this 19<sup>th</sup> day of August 2021.

ATTEST:

Sandra Barton

Sandra Barton, City Secretary



Ed Tidwell  
Ed Tidwell, Mayor

On a motion by Mayor Pro Tem Davila, seconded by Councilmember Weatherly, the above and foregoing ordinance was passed and approved.

**EXHIBIT "A"**

**CHAPTER 14**

**ZONING**

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**Section 22 Fences and Screening Devices**

**22.10 Purpose**

Fence requirements are established to allow for privacy, access to light and air, the protection of property, assurance of safety and security, and in pursuit of an aesthetic appearance consistent with the goals of the community. For the purposes of this section, fences shall include all constructed barriers meant to provide security or impede views of property, and include walls, fences, or other similar structures.

**22.15 General Requirements**

(a) **Permit Required.**

Unless otherwise exempted herein, no fence or screening device may be built, erected, installed, or constructed without a permit issued in accordance with all applicable local requirements. The permit application must include all necessary drawings and other documentation to verify that the fence or screening devices is compliant with the requirements of this chapter as a specifically authorized accessory use.

A permit is not required for minimal repairs or replacement of deteriorated or damaged materials so long as the cost of the repairs or replacement is less than one-half of the cost to replace the fence and less than one-third of the existing material is replaced or repaired. Repair or replacement of material cannot be phased to avoid the requirement for a permit.

(b) **Principal Use Required.**

Except as follows, lots or parcels shall only be allowed to include a fence when a properly authorized principal use or building exists on the property or has been established by approved permits. A fence may extend from a lot or parcel that contains a properly authorized principal use or building onto a separate adjacent lot or parcel without a principal use or building if:

- (1) at least one-half of the common property line that the fence crosses is shared by both the lot that contains the principal use or building and the secondary lot or parcel; and
- (2) all such property is owned by the exact same individuals or entities. A fence permitted for a lot or parcel that does not include a principal use or building under this provision shall be removed within ninety (90) days if the lot or parcel is separately conveyed to any other individual or entity. Notwithstanding a contrary agreement between the parties, the separate owner of any lot or parcel without a principal use or building shall be responsible for its removal.

(c) Maintenance.

All fences and screening devices must be maintained in good repair that results in a safe, attractive condition that is consistent with the quality established by the permit requirements. The City shall have the authority to order the painting, repair, or removal of a fence or screening device that constitutes a hazard to public health, safety, or welfare by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

(d) Structural Integrity.

All fences shall be constructed to maintain structural integrity against normal weather conditions such as wind, rain, and temperature variations. Fences constructed of chain link, framed welded wire, picket or other similar materials shall require a minimum of two horizontal support rails with a minimum vertical spacing of one-half the fence height. All components, including foundations and framing members, of any fence that incorporates vinyl or fiberglass screening material shall be designed to withstand wind loads specified by the building code without detectable deformation.

(e) Fence Materials.

(1) Permitted Materials.

Materials approved for use in fence construction include wood, masonry, cement core planks, decorative precast concrete panels, decorative metals, chain link, welded wire (14-gauge, minimum) or other similar materials of comparable aesthetic quality and durability.

(2) Prohibited Materials.

Materials prohibited for use in fence construction include barbed wire, razor wire, metal spikes or finials (post caps), t-posts except when used as a component of a compliant electric fence, plywood, paper and fiber-core products, plastic, vinyl, fiberglass panels, lightweight wire fabric, and sheet, roll or corrugated metal panels.

(f) Varying Fence Faces.

For all fences that include a discrepancy in the visual quality between alternate sides of a fence, the less attractive side shall not be allowed to face a public right-of-way, a park, a vacant lot, or an adjacent property unless that adjacent property already includes a fence enclosure that would obstruct the view of this side of the fence from all other such locations. Any one side of a fence that includes all the support posts and rails shall be designated as the less attractive side of that fence.

(g) Traffic Safety.

Notwithstanding any other provisions in this section or other chapters in this ordinance, no fence that is considered sight-obstructing or solid that is taller than three feet in height shall be located within the sight or vision triangle specified in Section 5.80 of this Chapter. In addition, no fence or screening device shall be constructed, erected, or otherwise installed along winding streets or near unusual intersections to obstruct visibility of vehicular traffic or create undue safety hazards by reducing sight distances below acceptable levels.

(h) Drainage and Utility Conflicts.

Any fencing that might obstruct or cause a diversion to an existing drainage flow or pattern shall require the review and approval of the Lago Vista Public Works Department. Masonry walls, masonry posts or other fencing components requiring a foundation concealed below grade other than post-hole pilings shall

be prohibited within a public utility or drainage easement. Those easements must instead be vacated in accordance with all applicable procedures and requirements.

(i) Fences for Commercial and Multifamily Developments.

In addition to the provisions of this section, the City Council and/or the Planning and Zoning Commission as applicable, may impose additional or specific requirements for fencing, screening or other similar buffers needed by commercial or multifamily developments to meet the design review criteria included in Section 6.105 of this chapter.

**22.20 Exemptions**

The following are exempt from the requirements of this Section:

- (a) schools and school-owned property including but not limited to buildings, walls, land, structures and facilities, except swimming pools;
- (b) municipal property including but not limited to buildings, walls, land, structures and facilities, except swimming pools;
- (c) tennis courts, basketball courts, baseball fields, soccer fields or other non-swimming related athletic facilities of a homeowner's association or private country club;
- (d) electronic control security gates;
- (e) wire structures to prevent deer or other animals from eating trees, hedges or shrubbery and is located within two (2) feet of the trees, hedges or other shrubbery;
- (f) temporary construction fencing erected after a building permit is issued for a building and valid for the duration of the building permit;
- (g) temporary silt or erosion control fences maintained during construction; and
- (h) U.L. approved electric fences six (6) feet or less in height with required warning signs, insulators and wood or t-posts, no less than fifteen (15) feet from a public right-of-way or two (2) feet from a property line and located inside of a fence enclosure permitted in accordance with this section. Whenever the outside face of an electric fence is visible from adjoining property or a required front yard setback, warning signs no less than twelve (12) inches in either height or width and spaced no further than fifty (50) feet apart shall state: "Warning: Electric Fence in Operation."

**22.25 Fence Types**

- (a) Fences are broadly categorized for the purposes of this section as being considered either "solid" or "open." An "open" fence is defined as consisting of no greater than twenty-five (25) percent material rather than open space. Any fence that does not meet the requirements of an "open" fence shall be considered to be "solid" or sight-obstructing.
- (b) For the purposes of this section "open" fences are categorized as either "decorative" or "non-decorative" fences. "Non-decorative open" fences consist of chain link fences or framed wire fabric fences using material that is between 12 and 14-gauge. All other "open" fences are considered "decorative open" fences including framed wire fabric fences using 10-gauge or larger wire fabric sheets.

## **22.30 Fence Heights and Permitted Locations**

- (a) The fence height shall be measured from the adjacent grade or ground level except as follows. If the adjacent grade or ground level is different on each side of the fence, the measurement shall be taken for the higher of the two grade elevations. If a fence is constructed on top of a retaining wall or a freestanding wall, the measurement will include the height of both the fence and the wall, with the height of the wall being determined by the higher adjacent grade elevation at the base of either side of the wall.
- (b) A “solid” or “open” fence permitted by the provisions of this section to be located along a property line or within a required setback may not exceed an average height of six (6) feet or a maximum height of seven (7) feet, except as specifically provided in this section.
  - (1) A “solid” or “decorative open” fence permitted by the provisions of this section to be located along a property line may be constructed to a maximum height of eight (8) feet if each owner of property that adjoins that fence section provides signed, written consent along with a notarized statement verifying the authenticity of that consent from the owner of the property seeking a permit.
  - (2) A “solid” or “decorative open” fence permitted by the provisions of this section to be located along a property line may be constructed to a height of eight (8) feet if the fence is located between a residential use and:
    - (A) a property that includes an active commercial, multifamily or light industrial use; or
    - (B) a property within a commercial, multifamily, or light industrial zoning district.
  - (3) A “solid” or “decorative open” fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines and the maximum length of any such section not interrupted by a building and facing a public right-of-way is fifteen (15) feet.
  - (4) No fence other than an ornamental “wrought iron style” metal fence (a specific type of “decorative open” fence) with a maximum height of six (6) feet can be located within any required setback or along a property line adjacent to a golf course or property zoned for a golf course.
- (c) Except as otherwise prohibited by these provisions, “solid” fences less than three (3) feet in height or “decorative open” fences of any permitted height can be located in a required front yard setback, a required rear yard setback of a double frontage lot, a reverse corner lot side yard setback or a corner lot side yard setback.
- (d) “Non-decorative open” fences are not allowed to be located in a required front yard setback, a required rear yard setback of a double frontage lot, a reverse corner lot side yard setback or a corner lot side yard setback.

## **22.35 Loss Of Nonconforming Status**

A nonconforming fence or screening device loses its nonconforming status and becomes an illegal fence or screening device if:

- (a) the fence or screening device is damaged or deteriorated to such an extent that thirty (30) percent or more of the fence or screening device material must be replaced or repaired or that half the cost of total replacement has been exceeded (with phasing being unavailable to avoid this limit);
- (b) the fence or screening device is moved to any extent unless the moving was due to installation, maintenance or repair of public streets or utilities; or
- (c) the fence or screening device has been altered in any way except for normal wear and tear, routine painting or repair, or routine pruning of hedges.

#### **22.40 Enforcement**

If the City finds that any fence or screening device within the City is erected or maintained in violation of this chapter, the City shall give written notice via the postal service, facsimile, or e-mail of the violation to the owner. The notice shall state the nature of the violation and direct the recipient(s) to alter or remove the fence or screening device, or correct the violation, within ten (10) days of the receipt of the notice. Failure to comply with the provisions of this chapter within ten (10) days after the receipt of the notice shall result in a citation being issued to the owner. If the owner is found guilty of violating this chapter, in addition to paying any assessed fence and/or court costs he/she shall have the fence or screening device removed or the violation corrected within thirty (30) days after being found guilty of such offense. Failure to remove the fence or screening device or correct the violation within thirty (30) days may result in the City removing the fence or screening device at the expense of the owner; such expenses including administrative expense, penalties, and reasonable attorney's fees.

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