

TOWN OF BARTONVILLE
ORDINANCE NO. _____-23

AN ORDINANCE OF THE TOWN OF BARTONVILLE, TEXAS, AMENDING THE TOWN OF BARTONVILLE CODE OF ORDINANCES, CHAPTER 14, EXHIBIT "A," THE ZONING ORDINANCE, BY DELETING CHAPTER 20, "FENCING, WALLS AND SCREENING REQUIREMENTS," AND BY AMENDING CODE OF ORDINANCES CHAPTER 3, "BUILDING REGULATIONS" BY ADDING ARTICLE 3.10, "FENCES AND WALLS"; AMENDING OTHER ZONING ORDINANCE AND TOWN CODE PROVISIONS ACCORDINGLY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING NO VESTED RIGHTS; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bartonville, Texas ("Town"), is a Type A General Law Municipality located in Denton County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Town is a General Law Municipality empowered under the Texas Local Government Code, Section 51.001, to adopt an ordinance or rule that is for the good government of the Town; and

WHEREAS, the Planning and Zoning Commission of the Town of Bartonville and the Town Council of the Town of Bartonville, in compliance with state law, have given the requisite notice by publication and otherwise, and after holding due public hearings and affording full and fair hearings to all property owners generally, the Town Council of the Town of Bartonville is of the opinion that said zoning ordinance should be amended as provided herein, and that the Town's code of ordinances should be amended as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, THAT:

SECTION 1.
INCORPORATION OF PREMISES

The above and foregoing premises are true and correct legislative determinations and are incorporated herein and made a part hereof for all purposes.

SECTION 2.
AMENDMENT TO ZONING ORDINANCE CHAPTER 20

From and after the effective date of this Ordinance, the Code of Ordinances of the Town of Bartonville, Texas, shall be and the same is hereby amended by amending Chapter 14, Exhibit

“A,” the Zoning Ordinance, to delete Chapter 20, “Fencing, Walls, and Screening Requirements,” so that the provision shall read as follows:

“CHAPTER 20. Intentionally Deleted. See Town Code Article 3.10.”

**SECTION 3.
AMENDMENT TO TOWN CODE CHAPTER 3**

From and after the effective date of this Ordinance, the Code of Ordinances of the Town of Bartonville, Texas, shall be and the same is hereby amended by amending Chapter 3, “Building Regulations,” by adding Article 3.10, “Fences and Walls,” which shall read as follows:

**“Article 3.10
FENCES AND WALLS**

§ 3.10.001. Purpose.

The purpose of this article is to encourage the most appropriate fencing to conserve and protect the open community goals of the town. Regulations are prescribed herein for the location and type of fencing and walls, and other details, to further that purpose for the health, safety and welfare of the citizens of the town.

§ 3.10.002. Definitions.

The following words and terms, when used in this article, shall have the following meanings, unless the context clearly indicates otherwise.

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. A fence is any part of a fence including the base, footings, supporting columns, posts, braces, structural members, or any other of its appendages or parts. A fence does not include landscaping or hedges or other plants to meet town code landscaping requirements, or to provide living decorative elements, or to provide living screening elements. Reference to a “fence” shall include a wall, and reference to a “wall” shall include a fence. A fence or wall under this article does not include a retaining wall as provided in section 5.5 of the town’s development ordinance.

Opacity. 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. The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the town has an interest.

Public street. Any dedicated public right-of-way that affords the principle means of access to abutting property.

Repair. A repair to a fence or wall shall be defined as maintenance to a fence or wall where replacement of materials does not exceed fifty percent (50%) of the total length of the fence and does not change the scope, location, or dimensions of the fence. Repairs shall be made using the same material, or material with comparable composition, color, size, shape and quality of the original fence to which the repair is being made.

§ 3.10.003. Fences in general.

- (a) Permit required. It is unlawful for any person to construct or replace, or cause to be constructed or replaced, a fence or any part of a fence in the town without first obtaining a fence permit from the town. No permit is required for repairs as defined by this article.
- i. Permit fees. The fee for a permit shall be in the amount established in Appendix A to this code. When a person begins any work for which a permit is required by this article without first obtaining a permit, the permit application fee shall double. Payment of the fee shall not exempt any person from compliance with all other provisions of this article nor from any penalty prescribed by law.
 - ii. Application for permit. Any person making application for a fence permit shall complete a permit application on a form prescribed by the town showing the following information:
 - 1. Applicant's name, address, phone number and, if the applicant represents a corporation, the name, address, and phone number of the registered agent of the corporation, or if the applicant represents an association, the name, address, and phone number of a high managerial agent of the association;
 - 2. Name of the owner of the property
 - 3. Local address where fence is proposed to be erected;
 - 4. Type of fence construction (material);
 - 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 and easements;
7. The applicant's authorized signature; and
8. Other documentation as required by the town administrator or his designee.

(b) Height. Except for private sport courts, it is unlawful to erect, maintain, suffer or permit any fence to exceed six feet (6') in height.

(c) No privacy fences or walls. It is unlawful to erect, maintain, suffer or permit any opaque or solid privacy fence or wall. Notwithstanding this prohibition, solid fences and walls are allowed on any lot that is less than two (2) acres in size.

(d) Fence not to be located in public right-of-way, easements or set back areas. No fence shall be erected within, on, or across any public right-of-way, drainage easement, set back area, or vision or visibility triangle unless otherwise authorized in writing by the town administrator or his designee. Property owners that allow a fence to be constructed in a utility easement on their property do so at their own risk. Unless the terms of a specific easement state otherwise, fences constructed within utility easements may be removed by a utility company with rights to the easement and such utility company shall not be responsible for replacement of the fence or liable for damage to the fence that occurred during its removal.

(e) 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 town notice to do so is a violation of this article.

(f) Maintenance of fences. All fences shall be maintained reasonably plumb and structurally sound. Each structural and decorative member of a fence shall be free of deterioration and be compatible in size, material and appearance with the remainder of the fence.

- i. A fence that has deteriorated to a condition that it is likely to fall shall be repaired or replaced.
- ii. Fences shall not be externally braced in lieu of replacing or repairing posts, columns or other structural members.

- iii. After receiving notice from the town, the owner, agent or occupant of the property shall replace broken, damaged, removed or missing parts of a fence with the same material, or material with comparable composition, size, shape, color and quality of the original fence to which the repair is being made. The notice shall include a deadline by which the repairs are to be completed. The town administrator or his designee may, upon written notice from the owner, agent or occupant of the property that unusual circumstances prevent the timely repair of a fence, extend the replacement time as required, but shall not extend the replacement time longer than reasonably necessary.

§ 3.10.004. Fences in residential areas.

- (a) Allowed fence materials. Fences may be constructed of wood, pipe and cable, decorative metal, or wrought iron, and shall not be constructed of or include prohibited fence materials. Other materials traditionally used in private fence construction proven to be sturdy, durable, and relatively maintenance-free may be allowed only upon express written approval by the town administrator. All fence material colors shall be white, black, brown, natural, earthtone, or dark green.
- (b) Prohibited fence materials. Fences shall not be constructed using the following materials:
 - i. Chain link;
 - ii. Sheet, roll, or corrugated metal;
 - iii. Cast off, secondhand, or other items not originally intended to be used for constructing or maintaining a fence;
 - iv. Razor wire;
 - v. Slatted materials used to create increased opacity; or
 - vi. Above-ground electrical fencing, hog wire, chicken wire, barbed wire, except for containment of animals. Note: Underground “virtual fencing” is allowed.
- (c) Location. No residential fence shall be closer than fifteen feet (15') to a public street except in cases where the side or rear building line of the yards on continuous corner lots adjoin (*i.e.*, the side yard lot is not a key corner lot as defined in the town zoning ordinance), the fence may be constructed out to the property line of said side yard such that the street side yard may be included as part of the lot's back yard area.

- (d) Gates. Gates designed for vehicular access shall be set back from the property line a minimum of twenty-four feet (24’).
- (e) Swimming pools. Fences around swimming pools shall be constructed and maintained in conformance with this article and with the town code of ordinances.
- (f) Sight visibility. All fences and walls shall conform to the town’s standards for sight visibility.
- (g) Private sport courts. Fences designed to enclose private sport courts shall meet the following requirements:
 - i. The fence shall not exceed twelve feet (12’) in height when measured from the natural grade;
 - ii. The fence shall be either a dark or earthtone color with matching colored fittings and posts; and
 - iii. The fence shall not exceed fifty percent (50%) opacity, with the exception of wind screening materials. Stockade and wood fencing materials are prohibited.
- (h) Decorative fencing required by Chapter 18 of the town zoning ordinance shall meet the following minimum criteria:
 - i. The fence shall be an open fence constructed with openings between the materials used for construction whereby the openings represent a minimum of seventy-five percent (75%) of the total front surface of the fence. (See illustration below)

Front Face Surface

*Front Face
Surface –
Minimum 75%
Open Space*

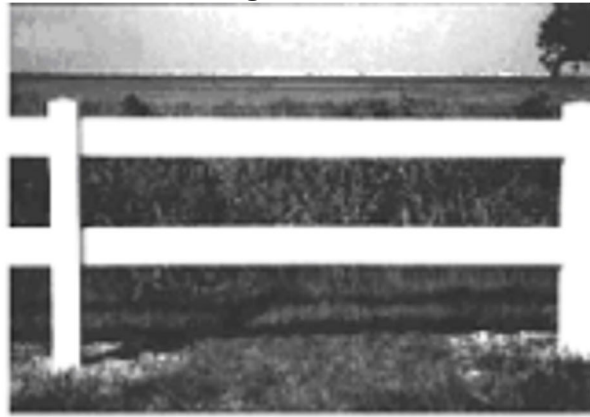


- ii. Decorative fences shall be designed so as to:
1. Contribute to the identification and beauty of the principal use;
 2. Serve as a landscape element and is not erected to satisfy any other provision of the town zoning ordinance;
 3. Not exceed thirty-six inches (36") in height as measured from the finished grade to the top of the fence;
 4. Is not located nearer than ten feet (10') to any property line adjacent to a public right-of-way; and
 5. Be of a split rail or post and rail fence design that is constructed of allowed fence materials as set forth in this article. (See illustrations below)

Examples of Acceptable Decorative Fence Designs



*Post and Rail Fence
(Split Rail Design)*



*Post and Rail Fence
(Board Fence Design)*

§ 3.10.005. Fences in non-residential areas.

- (a) In non-residential zoning districts, the term "screen" or "screening" requirements as used in the town zoning ordinance shall apply in the case of any conflict between such zoning ordinance provision and the provisions of this article.
- (b) In non-residential zoning districts, no fence or wall shall be erected in any front yard or side yard which is adjacent to a public street unless the fence or wall is required by the town's zoning ordinance to screen the development from an adjacent residential area (particularly if the residence has, or could have, a back yard fence that would be exposed to view from the street if the required screening wall were not extended out to the street right-of-way line), or if a decorative fence is used as a

landscaping element in the street yard as required by Chapter 18 of the town zoning ordinance. In such case, the screening fence or wall shall be extended out to the street right-of-way line by the developer of the non-residential development, and the fence or wall shall be finished on both sides in a manner and color that is compatible to the exterior finish materials used on the main buildings. Fences and walls shall be placed such that they do not impede visibility for vehicles entering or exiting the non-residential development in accordance with the sight visibility requirements in Chapter 25 of the town zoning ordinance.

- (c) Plans and specifications for fences around ground-mounted utility structures (*e.g.*, transformers, natural gas regulating stations, etc.) shall be approved in writing by the affected utility company, and shall be submitted, along with an approval letter from the utility company, to the town administrator with a fence permit application for review and approval prior to construction of said fence.

§ 3.10.006. Nonconforming fences and walls.

A lawful fence structure in existence on the effective date of the ordinance from which this article derived may be continued, although such fence structure does not conform to the provisions of this article; provided however, the right for said nonconforming fence structure to persist shall be subject to the following regulations:

- (a) Normal repairs and maintenance may be made to a nonconforming fence structure; provided those repairs do not exceed fifty percent (50%) of the total length of the fence.
- (b) Unless otherwise provided by law, a nonconforming fence shall not be added to or lengthened in any manner unless such additions are made to conform to the requirements of this article.
- (c) A nonconforming fence shall not be moved in whole or in part unless every portion of such fence is made to conform to the requirements of this article.
- (d) If a nonconforming fence is damaged, destroyed or in disrepair to an extent greater than fifty percent (50%) of the total length of the fence, such fence shall be replaced and must conform to the requirements of this article.

§ 3.10.007. Variances.

Appeals to the conditions of this article shall be heard by the town Board of Adjustment. The Board of Adjustment shall have the authority to authorize such variances from the terms of this article. In order to approve a variance, the Board of Adjustment shall determine that the requested variance meets three (3) of the following four (4) criteria:

- (a) The proposed fence or wall will not adversely impact the adjacent property (visibility, size and the like);
- (b) The proposed fence or wall is of a unique design or configuration or serves a unique function;
- (c) The variance is needed due to restricted area, shape, topography, physical features, or conditions that are unique to the property on which the proposed fence or wall would be constructed; or
- (d) The variance will substantially improve the health, safety, or welfare of the public and does not violate the spirit of this article.

§3.10.008. Offenses; penalties.

- (a) Any person violating any of the provisions of this article shall be deemed guilty of a class C misdemeanor and, upon conviction, shall be fined, except as otherwise provided herein, in a sum not to exceed five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- (b) If the town council determines that a violation of this article creates a threat to public safety, the town may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity. The town is not required to give bond as a condition to the issuance of injunctive relief.”

**SECTION 4.
AMENDMENTS TO TOWN ZONING ORDINANCE**

From and after the effective date of this Ordinance, the Code of Ordinances of the Town of Bartonville, Texas, shall be and the same is hereby amended by amending Chapter 14, Exhibit “A,” the Zoning Ordinance, Chapters 3, 5, 6, 7, 8, 9, 11, 12, 13, 14A, 16 and 18, in Subsections

3.2.I.29; 5.4.G.6; 6.4.F.3; 6.4.F.6; 7.4.F.3; 8.4.G.3; 9.4.F.4; 11.4.E; 12.4.E; 13.4.E; 14A.4.I; 16.8.B.7.b; 18.5.F; and 18.6.J.2.c, which shall each read as follows:

“§ 3.2.I.29: A general arrangement of land uses, buildings and other structures, including but not limited to:”

* * *

“§ 5.4.G.6: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

* * *

“§ 6.4.F.3: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

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“§ 6.4.F.6: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

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“§ 7.4.F.3: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

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“§ 8.4.G.3: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

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“§ 9.4.F.4: Fences shall conform to the requirements set forth in town code Chapter 3, article 3.10.”

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“§ 11.4.E: Screening Requirements – See town code Chapter 3, article 3.10.”

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“§ 12.4.E: Screening Requirements – See town code Chapter 3, article 3.10.”

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“§ 13.4.E: Screening Requirements – See town code Chapter 3, article 3.10.”

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“§ 14A.4.I: Screening Requirements – See town code Chapter 3, article 3.10.”

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“§ 16.8.B.7.b: Landscaping of yards and setback areas and proposed changes.”

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“§ 18.5.F: Decorative fencing required pursuant to this Chapter 18 shall meet the requirements of town code Chapter 3, article 3.10.”

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“§ 18.6.J.2.c: Perimeter landscaping shall include the installation of a Decorative Fence meeting the standards specified in town code Chapter 3, article 3.10.”

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**SECTION 5.
AMENDMENTS TO VARIOUS TOWN CODE CHAPTERS**

From and after the effective date of this Ordinance, the Code of Ordinances of the Town of Bartonville, Texas, shall be and the same is hereby amended by amending Chapter 8, and Appendix A, in Subsections 8.03.67(a)(2)(C), and A4.004(9), respectively, which shall each read as follows:

“§ 8.03.67(a)(2)(C): Screened from ordinary public view by appropriate means, including a fence constructed in accordance with town code Chapter 3, article 3.10, or rapidly growing trees, or shrubbery.”

* * *

“§ A4.004(9): Fence: \$75.00”

**SECTION 6.
SEVERABILITY**

It is hereby declared to be the intention of the Town Council of the Town of Bartonville, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the Town Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

**SECTION 7.
SAVINGS**

An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Zoning Ordinance and Town Code, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

**SECTION 8.
ENGROSS AND ENROLL**

The Town Secretary of the Town of Bartonville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the Town Council of the Town of Bartonville and by filing this Ordinance in the Ordinance records of the Town.

**SECTION 9.
PUBLICATION**

The Town Secretary of the Town of Bartonville is hereby directed to publish in the Official Newspaper of the Town of Bartonville the Caption and the Effective Date of this Ordinance for two (2) days.

**SECTION 10.
PENALTY**

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the Town of Bartonville, Texas, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

**SECTION 11.
NO VESTED RIGHTS**

No person or entity shall acquire any vested rights in this Ordinance or any specific regulations contained herein. This Ordinance and any regulations may be amended or repealed by the Town Council of the Town of Bartonville, Texas, in the manner provided by law.

**SECTION 12.
EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after its passage and the publication of its caption, as the law in such cases provide.

AND IT IS SO ORDAINED.

PASSED AND APPROVED on this the 21st day of November 2023.

APPROVED:

Jaclyn Carrington, Mayor

ATTEST:

Shannon Montgomery, TRMC, Town Secretary