

**ORDINANCE No. 2021-65**

**AN ORDINANCE AMENDING SECTION 3.05.005, RESIDENTIAL FENCES, OF THE CITY CODE OF ORDINANCES, ESTABLISHING AN EXCEPTION PROCESS AND AMENDING THE VARIANCE PROCESS TO ALLOW FOR ADDITIONAL FENCE HEIGHT; PROVIDING FOR REPEALER, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, Article 3.05 of the City's Code of Ordinances establishes the city's regulations pertaining to the construction and maintenance of fences; and

**WHEREAS**, the City Council has determined that Article 3.05 of the City's Code of Ordinances should be amended to allow for up to eight (8) feet of height in certain circumstances.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:**

**SECTION 1.** Article 3.05 is hereby amended as provided in the attached Exhibit A.

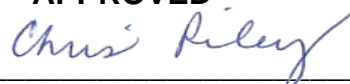
**SECTION 2.** The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

**SECTION 3.** That it is hereby declared to be the intention of the City Council of the City of Leon Valley that 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, and sections of this Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, and section.

**SECTION 4.** The ordinance shall be effective upon passage and publication as required by law.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley this the 21st day of December 2021.


**APPROVED**



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**CHRIS RILEY**  
MAYOR

Attest :

  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary



Approved as to Form: City Attorney

  
**CLARISSA M. RODRIGUEZ**  
City Attorney

## EXHIBIT A

### ARTICLE 3.05 FENCES

#### **Sec. 3.05.001 Definitions**

Authorized official. The city manager or his designate.

Fence. A barrier or screening device constructed of ornamental steel, ornamental iron, metal, wood, or masonry, singly or in combination.

Masonry. Building materials consisting of native stone, cut stone, cast stone; brick, decorative concrete masonry units, or stucco.

Stucco. A fine cement plaster typically made of cement sand and lime, applied using a three-step process to form a hard, durable covering for exterior walls or similar structural elements.

Vision-proof fence or wall. An artificially constructed barrier of masonry or wood erected to obstruct visibility.

(Ordinance 08-043 adopted 9/2/08; 2008 Code, sec. 3.05.001; Ordinance 2019-18 adopted 4/16/19)

#### **Sec. 3.05.002 Penalty**

Violations of the provisions of this article shall be punishable by a fine of not less than one hundred dollars (\$100.00) and no more than five hundred dollars (\$500.00) for each violation. (Ordinance 08-043 adopted 9/2/08; 2008 Code, sec. 3.05.005)

#### **Sec. 3.05.003 Permit**

No fence shall hereafter be erected within the city unless the person erecting the fence obtains a permit for construction of the fence. The cost of the permit is prescribed in [appendix A](#) of this code as amended or revised by ordinance from time to time. Such permit shall specify the approved height, length, material or materials, style and location of the fence. (Ordinance 08-043 adopted 9/2/08; 2008 Code, sec. 3.05.002; Ordinance adopting 2017 Code)

#### **Sec. 3.05.004 Variances**

(a) The city council may authorize a variance from these regulations. In granting a variance, the council shall prescribe only conditions that it deems necessary to or desirable in the public interest. In making the findings below required, the council shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the probable effect of such variance on surrounding property, and the probable effect of such variance on the public health, safety, convenience and welfare in the vicinity. No variance shall be granted unless the council finds:

(1) The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area.

(b) Such findings of the council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the council meeting at which such variance is granted. Variances may be granted only when in harmony

with the general purpose and intent of this article so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the applicant, standing alone, shall not be deemed to constitute undue hardship.

(Ordinance 09-011 adopted 3/24/09; 2008 Code, sec. 3.05.007)

### **Sec. 3.05.005 Dimensions and appearance**

#### **(a) Residential fences.**

(1) Residential fences in the RE-1, R-1, R-2, R-4, R-6, and R-7 districts:

(A) Shall not exceed eight (8) feet in height in the side or rear yards or forty-four inches (44") in height in the required front yard. The finished side shall face toward the public viewpoint or public right-of-way.

(B) No chain-link fence of any size shall be permitted in the front yard.

(2) At the time of development or change in use of any R-3 (multiple-family dwelling), R-3A (multiple-family retirement dwelling) or R-5 (manufactured home) the developer shall have erected a vision-proof fence or wall eight (8) feet in height on the abutting property line with any other zoning district, unless the properties are separated by a street of local access designation or higher, then a six-foot fence may be used. The finished side shall face toward the public viewpoint or public right-of-way.

(3) Residential fences in the RE-1 district and lots within the R-1 district that have a minimum lot size of one (1) acre, may have a maximum of six (6) feet in the height in the front yard; with the following restrictions:

(A) If constructed within the required front-yard, portions of residential fences higher than forty-four (44) inches above the natural surface of the ground, shall be constructed of open ornamental steel or ornamental iron; with the following exception:

(i) Pilasters, columns, or similar vertical elements may be constructed of masonry, provided they are spaced at regular intervals no less than fifteen (15) feet apart; with the exception of vertical elements at pedestrian gates, which may be spaced closer than fifteen (15) feet apart.

(B) No chain-link fence of any size shall be permitted in the front yard.

(4) Residential fences existing prior to the adoption of this section, not in conformance with these regulations, shall be permitted to remain, but shall not be permitted to expand.

(b) Retail, commercial and industrial or mixed-use development fences. At the time of development or change in use of any O-1 (office), B-1 (small business), B-2 (retail), B-3 (commercial), I-1 (industrial) and MX-1 (mixed use) property which abuts any residential district the developer shall have erected a vision-proof fence or wall eight (8) feet in height on the abutting property line with any other zoning district, unless the properties are separated by a street of local access designation or higher than a six-foot fence may be used. The finished side shall face toward the public viewpoint or public right-of-way.

(c) Alley fences between residential and small business, retail, commercial, industrial and mixed-use zoning districts. If the aforementioned zoning districts are separated by an alley, the fence shall be required to be constructed on the developing property line. In those instances where an alley separates commercial and residential districts, the city council may, at its discretion, allow the construction of the fence on the residential property line, but only after a petition signed by all affected property owners, both residential and business, is submitted to the council. Said petition will be approved as to form by the city attorney.

(Ordinance 08-043 adopted 9/2/08; Ordinance 09-011 adopted 3/24/09; 2008 Code, sec. 3.05.003; Ordinance 2017-50 adopted 9/5/17; Ordinance 2019-18 adopted 4/16/19)

### **Sec. 3.05.006 Storage areas to be fenced**

No land shall be used for or as a storage area for any material or storage units until a vision-proof fence is constructed and is sufficient height to conceal the storage materials and/or storage units. The fence shall also meet the setback requirements of the zoning district and the percentage of storage allowed for that zoning district. (Ordinance 08-043 adopted 9/2/08; 2008 Code, sec. 3.05.004)

### **Sec. 3.05.007 Nuisances**

#### **(a) Declaration of nuisance.**

(1) Any fence that is in such a state of disrepair to reasonably cause injury, damage, or harm to any individual is hereby declared a public nuisance.

(2) Any fence that is in such a state of disrepair to reasonably cause injury, damage, or harm to a considerable portion of the community in the use and enjoyment of property, materially interfering with the proper use and comfort and enjoyment of surrounding property, taking into consideration the nature and use of the properties in the area, and the character of the community in which they are situated, and which condition would be substantially offensive and annoying to persons of ordinary sensibilities living in the community in which they are situated, is hereby deemed a public nuisance.

(b) Notice to abate. It shall be the duty of the authorized official of the city to notify the owner or occupant of the property on which the fence is located to repair, remove, demolish any fence found to be a public nuisance under subsection (a) of this section, and specifying a period of thirty (30) days to complete such repair, removal or demolition. This notice shall be in writing, and may be served by handing it to said individual in person, by certified mail, or by publication a minimum of two (2) times within ten (10) consecutive days if personal service may not reasonably be had.

(c) Failure to comply with notice. Upon the failure of an owner or occupant of a property upon which a fence deemed to be a public nuisance is situated to repair, remove or demolish under the terms of subsection (b) of this section, it shall become the responsibility of the city to repair, remove or demolish the fence or part of the fence at the expense of the municipality on behalf of the owner of the property on which the fence is located.

(d) Abatement by city; assessment of city's costs.

(1) Upon action taken by the city under subsection (c) of this section, the owner of the property on which the fence is located shall be notified. This notice shall be in writing, and may be served by handing it to said individual in person, by certified mail, or by publication a minimum of two (2) times within ten (10) consecutive days if personal service may not reasonably be had. Notice shall be attempted to be served by certified mail or in person by the city, even if service under subsection (b) if this section was through publication.

(2) The charge levied shall be actual costs plus twenty-five percent (25%) administrative costs for such repair, removal, or demolition and shall be levied, assessed and collected against such property each time such repair, removal or demolition is performed. The charges provided for in this article shall be levied, assessed and collected by the authorized official, and if any person shall fail to pay such charges so assessed within ten (10) days after proper notice, the authorized official will file with the county clerk a statement by the mayor setting out the expenses that the city has incurred pursuant to the provisions of this section, and the city shall thereby perfect a privileged lien on the property involved, second only to tax liens and liens for street improvements, to secure the expense to the city, together with ten percent (10%) per annum interest, compounded monthly from the date such payment is due. This subsection shall be deemed an assessment on the property on which the fence is located in accordance with Texas Local Government Code section 214.002(a)(2).

(Ordinance 09-011 adopted 3/24/09; 2008 Code, sec. 3.05.006)