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PROPOSED LANGUAGE FOR CHANGES TO FENCE CONSTRUCTION  
DRAFT SUBJECT TO ADDITIONAL CHANGES

**~~§ 9-4-41 RESTRICTION ON USE OF BARBED WIRE FENCES.~~**

~~(A) Except as provided in Subsections (B) and (C), a person commits an offense if the person constructs or repairs, or causes to be constructed or repaired, a barbed wire fence.~~

~~(B) A person may use barbed wire at the top of or above a fence that is at least six feet high.~~

~~(C) This section does not apply to a fence enclosing a airport or other landing area for aircraft, if the use of barbed wire is required by Federal Aviation Administration regulation.~~

**§ 25-2-899 FENCES AS ACCESSORY USES.**

(A) Except as otherwise provided in this chapter, a fence:

- (1) is permitted as an accessory use in any zoning district; and
- (2) must comply with the requirements of this section.

(B) In this section:

- (1) an ornamental fence is a fence with an open design that has a ratio of solid material to open space of not more than one to four; and
- (2) a solid fence is a fence other than an ornamental fence.

(C) The height restrictions of this section do not apply to an ornamental fence.

(D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.

(E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:

- (1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or

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- (2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.
- (F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines.
- (G) a solid fence may be constructed to a height of eight feet if the fence is located between a residential use and:
- (1) property zoned as a commercial or industrial base district;
  - (2) property used for a commercial or industrial use; or
  - (3) an alley that separates a residential use and:
    - (a) property zoned as a commercial or industrial base district; or
    - (b) property used for a commercial or industrial use.
- (H) A fence that is six feet or less in height shall be constructed in accordance with this subsection.
- (1) This subsection does not apply to a fence that was constructed before the effective date of this subsection.
- (2) Except when the fence is used as a swimming pool barrier, this subsection does not apply to a fence that is placed on a property that is:
- (a) designated as a historic landmark pursuant to Section 25-2-352;
  - (b) contributing to a historic area combining district, as defined by Section 25-2-352;
  - (c) designated as a Recorded Texas Historic Landmark; or
  - (d) contributing to a National Register Historic District.
- (3) A fence may not include:
- (a) spiked pickets, spiked bars, or other spiked decorative elements above the top horizontal backer rail;
  - (b) vertical pickets above the top horizontal backer rail if the vertical pickets are separated by more than 2 inches and less than 9 inches;
  - (c) a shadow fence design that includes spiked pickets, spiked bars, or other spiked decorative elements above the top horizontal backer;

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(d) a ladder design that includes spiked pickets, spiked bars, or other spiked decorative elements above the top horizontal backer rail; or

(e) barbed wire unless the fence is enclosing an airport or other landing area for aircraft and the use of barbed wire is required by Federal Aviation Administration regulation.

(4) A fence that creates a substantial risk of entrapment or impalement is prohibited.

(5) A solid chain link fence shall use knuckle selvage.

(I) A fence used as a swimming pool barrier shall comply with Chapter 25-12, Article 14 (*Swimming Pool and Spa Code*).

(J) For purposes of determining the height of a fence, height is measured at all points along the fence from both sides of the fence starting from the adjacent ground for a distance of three feet measured horizontally to the highest element of the fence.