

**2023 Safe Fencing Regulations Engagement
Building And Fire Board Of Appeals
Question/ Comment Summary
January 25, 2023**



Question/ Comment:

The presentation slides mentions the original resolution language indicating when this rule would impact the public as 50%. This language is different from the proposed language, which is 100%. Why is the language weaker than that suggested on the resolution?

What happens between 50 and 100 percent? What constitutes a 100% of a fence? Is each of the four sections/sides considered a separate fence? How would this proposed language apply to a fence where the property owner only has responsibility for two sides? In a situation where fencing is shared determining 100% may be difficult.

Response:

This was done because a residential fence can belong to three or four neighbors. Causing one neighbor to replace their fence solely due to their neighbors' replacing sections of their fence could create a vicious cycle where neighbors do not want to do anything. This could be negative for home owner, especially if they do not have the resources to make the necessary changes to come into compliance with the proposed language.

The current language only requires replacement when entire fence is replaced. Engagements with stakeholders determined the 50% directive was not possible without creating significant issues for the homeowner. Instead, these engagements suggested the number 100% be used.

If someone replaced one side/section of a fence consisting of four sides/sections it would be 25% of the whole. All four sides/sections would have to be replaced.

Question/ Comment:

Is a permit required to build a fence? How would this proposed language be enforced? If the proposed language is difficult to enforce that may be an issue.

Response:

If the proposed language were to become an ordinance it would be enforced by Austin Code. It would be the responsibility of Austin Code to determine how best to enforce the ordinance. Compliance would most likely be complaint-based.

While the proposed ordinance language may be difficult to enforce there is value to the community to shine light on the issue and educate about alternatives to dangerous fence designs.

Question/ Comment:

What is the height requirement for a permit?

Response:

Any residential fence above eight feet in height requires a permit. Any commercial fence above seven feet in height requires a permit.

Question/ Comment:

What is the suggestion to deal with situations where two property owners may dispute responsibilities for repair and replacement of adjoining fences?

Response:

Fence repair and replacement is the responsibility of the property owner. Multiple people can be involved over all four sides of a fence if the properties are adjacent to one another.

Question/ Comment:

Can the proposed language be amended? Is it a requirement to start the process again with stakeholders for any changes made? What would the amendment process look like? Will the board see whatever changes are made before the ordinance is considered final?

Response:

Yes, but further engagement from stakeholders may be required depending on the changes? Sentiments of stakeholders need to be considered for the proposal before going to council. We do not want protests or people to be surprised about the ordinance. The process would be a repeat of what has already been accomplished to date. The board will be presented with any changes in the language before they are considered final and presented to Council.

Question/ Comment:

What do advocates think of changing the language now and going back to stakeholders (if this is necessary)? I am willing to consider passing the language as is if advocates view the content as acceptable.

If stakeholder input were sought again, how much engagement would come from homeowners, who are most impacted and how engagement would come from much through businesses/contractors?

Response:

Advocates present voiced a desire to see some action result from this process. However, advocates also expressed results should happen right in a way that makes the most impact. They understand where the 100% concerns today are coming from voiced in the meeting, but they believe the 100% language was used to align with business owners and contractors. When determining such things one must ask how long it would take to go back through the stakeholder process and if doing so is in the benefit of the public.

Advocates believe if engagement were to start again it would most likely be contractors and businesses who participate in the process more than homeowners.

Advocates expressed concern worry if the stakeholder process were restarted instead of going forward momentum could be lost. They agree the 100% threshold is not perfect, and would prefer the figure be 50%. The advocates commended the City for reaching out to the community to determine stakeholder sentiment.

Advocates explained most fence repairs are complete replacements, not piecemeal changes. Advocates suggested the current language could be strong and impactful and allow changes to some of the language in the future if desired.

Advocates explained other cities (Lakeway, Rollingwood, and Sun City) that have passed similar measures to protect they public have focused primarily on new fences. Advocates support the proposed language. They mentioned other codes are currently enforced by complaint such as impervious code. Remodels have a similar approach to percentages and the city has not let the issue of determining the percentage stop from improving. Advocates voiced a will to continue to advocate for the cause.

Question/ Comment:

If someone wants to replace less than 100% how do we prevent impalement and entrapment? The other items that have exemptions are understandable, but the intent should be maintained.

Response:

One could build above six feet and still have these issues, but children are less likely to be involved. Also, most residential fences are not allowed to be over six feet. The proposed approach allows businesses to maintain security while complying with the ordinance.

Question/ Comment:

The language you have provided is not an ordinance. Generally we are provided an ordinance. Why is this not written as an ordinance? What is the board being asked to pass? Has a lawyer reviewed this language?

Response:

The language is a proposed change. It will eventually be an ordinance. The board is being asked to consider the language for a future ordinance. The language you see will eventually be an ordinance, but the city's lawyer does not wish to draft an ordinance at the present time. The language presented has been reviewed by a city lawyer.

Question/ Comment:

Is it possible to include language indicating a fence may be changed less than 100% but it may not be changed to a spiked fence.

Response:

This change could be considered, but we would want to determine whether the inclusion of such language will require more engagement with stakeholders.

Question/ Comment:

How long will this ordinance allow for builders to comply? I believe I read somewhere after this is adopted contractors and builders will be provided one year to comply. This time period seems too long. I would prefer to see this ordinance come into effect no more than six months following adoption.

Response:

This topic has been discussed, but no specific date is included in the language.

Question/ Comment:

Item 2a mentions "Existing fences where less than one hundred percent of the existing structural component that maintain the structural integrity of the fence is being replaced;" This language does not seem to include pickets. If I follow this language correctly, someone could remove pickets and replace them with more pickets. That would go against the sentiment desired by the resolution. Item 2a only addresses structural components, not pickets. The language must include pickets.

Take out A and add "all new fences" instead of "all fences six feet"

2a could also be amended to say "existing fences where less than 100 percent of the existing fence is repaired/replaced." This approach would avoid mentioning "structural."

2a could be deleted to only include mention of "existing fences."

I would like to see the lawyer's thoughts about item 2a.

Response:

The City can consider changes to the language if the board suggests them. The lawyer said the original language in the resolution was not enforceable, and they proposed the language you see. The lawyer would determine if suggested changes require more stakeholder engagement than has already been done.

Question/ Comment:

Although this language is not perfect, I am comfortable suggesting the language be adopted if we can amend it eventually. Is there a way this language can be approved contingent upon our amending it at a later date to make it more restrictive? I would like to see this ordinance come into effect at 50% of repair or replacement, not the 100% currently mentioned. I worry about spiked fences being built if this process is drawn out more.

Could a motion be made to move this ordinance forward as it is currently worded along with a recommendation or motion to have city staff post information about the topic on the city website?

Response:

The board is welcome to attach whatever conditions or changes they desire to the passing of the ordinance. Council will review the ordinance along with the boards suggestions before any adoption occurs.

Question/ Comment:

The way this language is written only makes it applicable to new fences. People could find a way around this. Maybe language should simply state "new fences only."

There are too many loopholes in the existing language. Ensure there are no loopholes in the ordinance language. How do we calculate 100%? 100% of one side may be easier. Defining the side using cardinal directions may make enforcement easier to identify. Even then, if the fence is not 100% intact when it is replaced or repaired questions remain about how the City of Austin will enforce this.

If the language remains as it is a fence will be two different fences (one old, one new) by the time the city sees it. If this applied only to new fences the ordinance would be easier to enforce, and we could amend it later to include existing fences.

The way the language is currently written it can be easily amended. However, this may also make it less enforceable.

Although the board wishes to pass something to address the safety issue caused by fences I do not want Council to question why we proposed the language in this ordinance.

Response:

This change of language could be complicated by how one determines "new." Older products could be used for construction materials which may complicate enforcement. The language will also allow for people to avoid compliance if they build taller than 6'. There is no way to write the ordinance where someone will not be able to circumvent it.

Question/ Comment:

Will the adoption of this ordinance result in an amendment to the building code?

Response:

Yes, adoption of this ordinance will result in changes to both the building and residential code.

Question/ Comment:

If the public is frustrated with these changes and they come to the board to address their grievances, will DSD continue to respond to public frustrations? How will homeowners know about the proposed changes?

Response:

DSD has made numerous efforts to communicate this change to all stakeholders in the community, including homeowners. Significant public involvement in the future is not expected. The department can continue to assist with the process as requested.

Advocates concurred with this sentiment, mentioning the engagement process accomplished by the City has educated the public about an issue they did not realize was impacting the community. Further education by the City to the public was suggested, especially via an informational website. Advocates also noted a generally positive reception by the public when learning about the issue and how to address dangers posed by fences in the community.

Question/ Comment:

Can we request Austin Code to come and talk to the Board about this issue?

Response:

Yes, Austin Code can come and speak to the board about this issue at a future meeting if that is requested by the board.

Question/ Comment:

For residential fences, Home Owner Associations (HOAs) usually enforce. The HOA rules are governed by the HOA. Often people simply build a fence without consideration of HOA or municipal rules. Moving this forward may not achieve what is desired in the original resolution, and the ordinance may come back to the Board.

Response:

Thank you for the feedback.

Question/ Comment:

Who all has reviewed the proposed language and had an opportunity to provide input?

Response:

Stakeholders in the general community, contractors, city staff, and city lawyers have all had time to review the language and been provided the opportunity to participate.

Question/ Comment:

Would it help for the committee to meet with stakeholders? The board would like to do whatever possible to ensure all stakeholders are content with the proposed changes.

Response:

Appeasing everyone is unlikely. If the board wants to achieve the greatest degree of change there would need to be a requirement for building permits on all fences. This would take care of a lot of the concerns voiced by the board. A requirement for building permits on all fences could be accomplished during the next code cycle if desired by Council.

Question/ Comment:

How would the proposed ordinance apply if someone claims they are not constructing a fence?

Response:

This issue already exists. Some people claim they are building a retaining wall instead of a fence. The proposed ordinance would not change this.

Question/ Comment:

Do all individual items 1, 2, and 3 in the language stand separate. If an issue is found with 2 would 1 and 3 remain? All items need to be able to stand alone to be legally sound. If one item depends on another this approach may be weaker.

Response:

The beginning of the language to number three tells you what is covered. Items 3, 4, and 5 give more detail. The top part tells you what it applies to and does not apply to. The only part that is specific is the exemptions.

Question/ Comment:

The nature of this meeting is not adequately publicly-facing. This approach deprives the ability of some to voice their thoughts.

Response:

The agenda and the meeting are public. The public has also been given numerous opportunities to engage and provide input in various ways over the past year.

Question/ Comment:

The board will table the proposed language until a workgroup is created of several board members. This work group will review the language and determine possible alternatives to what has been proposed. Input from the lawyer will be sought and subject matter experts will continue to be involved in the process.

Response:

Thank you for the input.