

## ORDINANCE AMENDMENT REVIEW SHEET

**Amendment:** Safe Fencing Regulations Resolution No. 20211104-039

**Description:**

Initiated code amendments to address dangerous fence design, including spiked elements that protrude above the top horizontal bar of a fence. Resolution found that City Code currently allows some spiked fence styles that can pose significant risk to humans and animals.

Directed the City Manager to evaluate:

- Requiring flat top styles on new fences of all lengths.
- Applying flat top fence requirements to all new fences of six feet tall or lower.
- Applying flat top fence requirements to substantial fence repairs or remodeling of 50% or more of an existing fence.

**Proposed Language:** Consider modifications to fence regulations and relocate the ordinance from 25-12 to 25-2-899, with some changes to ensure safer fences.

**Summary of Proposed Code Amendment:**

See attached draft ordinance.

**Staff Recommendation:**

Staff recommends approval of this amendment.

**Board and Commission Actions**

January 25, 2023- Building and Fire Board of Appeals- Board Member Brasfield requested to make a motion to table the topic and create a work group, Board member Schumann second the motion. Motion passed 7-0. The conclusion of the work group was to enhance the safe fence requirements.

After additional discussion by Executive staff and Legal, it was determined that the proposed changes should be in City Code Section 25-2-899 (Fences as Accessory Use) with the purpose of combining all LDC fence requirements.

April 19, 2023- Codes and Ordinances Joint Committee- Chair Hempel move to approve the ordinance with the following amendments:

- (1) Include language that applies the requirements of this subsection to any substantial fence repairs or remodeling of 50% or more of an existing fence.
- (2) Amend subsection (H)(2) to the following language: "Except when the fence is used as a swimming pool barrier, an exemption can be requested from this subsection when applied to a fence that is placed on a property that [is described in (3) below].
- (3) Following subsection (H)(2)(d) include the additional subsection: "A request from the exemption can be made to the historic landmark commission and this decision can be appealed to the Planning Commission or the Zoning and Platting Commission. The exemption is only allowable for a fence fronting a street or pedestrian access."
- (4) Per request by Commissioner Greenberg, include the subsection: "Exemptions do not apply to residential properties to include multifamily residences or mixed-use."

(5) Per request of Commissioner Thompson, amend the ordinance to include language amending the height for fences that would allow spikes, razor wire or barbed wire be increased to 8 feet and above.

Chair Hempel included a request to involve City Legal to identify the implications of the ordinance amendment on HOAs. Chair Hempel had additional requests that the amendment should go into effect six months or less after council approves and an educational campaign by staff should be created to educate the Austin community about why the city is requiring safer fences through the ordinance amendments. Commissioner Greenberg seconded the motion, and the ordinance was approved with all of the above amendments, on a unanimous vote (6-0)

May 23, 2023- To be reviewed by the Planning Commission.

**City Council Action**

May 4, 2023, Council Approved on Consent to set a public hearing for Thursday, June 8, 2023

**Ordinance Number:** NA

**City Staff:** Tony Hernandez (Subject Matter Expert)/Lisa Martinez (Case Manager)

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PROPOSED LANGUAGE FOR CHANGES TO FENCE CONSTRUCTION  
VERSION THREE  
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]~~ a height of seven feet measured from a natural grade up.

(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[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) Except as otherwise provided in this subsection, a fence shall be constructed in accordance with this subsection.
- (1) This subsection does not apply to a fence:
- (a) that was constructed before [insert effective date of this ordinance];
  - (b) that follows historic design standards; or
  - (c) that is at least six feet and located on a property that has a non-residential use.
- (2) When more than 50 percent of an existing fence is replaced, the entire fence must comply with this subsection. The percentage is determined using the total linear distance of the existing fence.
- (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 two inches and less than nine inches;
  - (c) razor like wire; or

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(d) 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.

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



**HOUSING &  
PLANNING**

## Affordability Impact Statement

*Proposed Ordinance, Safe Fencing Regulations per  
Resolution No. 20211104-039  
2/23/2023*

### **Proposed Regulation**

*With exemptions, the proposal includes prohibition of the  
following features in all new fences six feet in height or less:*

- Spiked pickets, spiked bars or other spiked decorative elements above the top horizontal backer rail*
- Vertical picket spacing between 2 –9 inches above the top horizontal backer rail*
- Fences that create a substantial risk of entrapment or impalement as determined by the City also prohibited*

### **Affordability Impact**

Housing and Planning staff find that the proposed regulation will have a **neutral** impact to housing affordability.

**Manager's Signature** \_\_\_\_\_

*Stephen Grubbs*

Division Manager, Inclusive Planning  
2/23/2023





**Development** CITY OF AUSTIN  
SERVICES DEPARTMENT

*Building a Better and Safer Austin Together*

# **Safe Fencing Regulations**

## **Resolution No. 20211104-039**

**May 23, 2023**



# Resolution No. 20211104-39

- Initiated code amendments to address **dangerous fence design** including spiked elements that protrude above the top horizontal bar of a fence
- City Code **currently allows some spiked fence styles** that can pose significant risk to humans and animals
- Directed the City Manager to **evaluate**:
  - ☐ Requiring flat top styles on **new fences of all lengths**
  - ☐ Applying flat top fence requirements to all **new fences of six feet tall or lower**
  - ☐ Applying flat top fence requirements to **substantial fence repairs or remodeling of 50% or more of an existing fence**



# Community Engagement

- Hosted a series of engagements (online/virtual/in-person) and targeted outreach to a **broad range of stakeholders**, including:
  - ☐ Community-at-large
  - ☐ Partner departments
  - ☐ Building/ contracting community
  - ☐ Community advocates/ advocacy groups
- Also received input from the following **boards and commissions**:
  - ☐ Building and Standards Commission
  - ☐ Historic Landmark Commission
  - ☐ Building and Fire Board of Appeals
  - ☐ Codes and Ordinances Joint Committee (COJC)
- Feedback focused on **safety and affordability** considerations, and **enforceability**

# Proposed Amendments

City Code Section	Proposed Change
Section 9-4-41	<b>Deleted Section 9-4-41 Restriction on Use or Barbed Wire Fences</b> Section will be relocated to Section 25-2-899
Section 25-2-899 (D)	<b>Amendment to simplify height measurement</b> (D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed <del>[an average height of six feet or a maximum]</del> a height of seven feet <u>measured from a natural grade up.</u>

# Proposed Amendments

## City Code Section

## Proposed Change

### Section 25-2-899 (H) New Subsection

#### Requirements:

A fence may not include:

- spiked pickets, spiked bars, or other spiked decorative elements above the top horizontal backer rail;
- vertical pickets above the top horizontal backer rail if the vertical pickets are separated by more than two inches and less than nine inches;
- razor like wire;
- 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; or,
- any element that creates a substantial risk of entrapment or impalement



# Proposed Amendments

## City Code Section

## Proposed Change

**Section 25-2-899 (H)**  
**New Subsection**

### **Applies to:**

- All fences constructed after the effective date of the final ordinance
- All fences for which more than 50% will be replaced (entire fence must comply; percentage determined by total linear distance of existing fence)

### **Exemptions:**

- Fences required to comply with historic design standards
- Fences that are at least six feet in height and located on a property that has a non-residential use (includes multi-family)



# Proposed Amendments

## City Code Section

## Proposed Change

### Section 25-2-899 (H) New Subsection

#### Applies to:

- Fences constructed after the effective date of the final ordinance
- Fences for which more than 50% will be replaced (entire fence must comply; % determined by total linear ft of existing fence)

#### Exemptions:

- Fences required to comply with historic design standards
- Fences that at least 6-ft feet in height and located on a property that has a non-residential use (includes multi-family)

#### Other requirements:

- A solid chain link fence shall use knuckle selvage.
- A fence used as a swimming pool barrier shall comply with Chapter 25-12, Article 14 (*Swimming Pool and Spa Code*).

# Staff Recommendation

- **Affordability and enforceability concerns** with the 50% replacement trigger
- Staff recommendation is to **allow property owners to maintain** what they have and trigger compliance with full fence installation/ replacement





# Fencing Elements to be Prohibited



Gap between vertical members exceed 2" and potential for impalement



# Fencing Elements to be Prohibited



Gap between vertical members exceed 2”  
and potential for impalement



Potential for impalement



# Compliant Fencing Elements





# Compliant Fencing Elements





# Next Steps

- **05.23.23: Planning Commission** public hearing and possible action
- **06.08.23: Council** public hearing and possible action







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# Thank you!