



City of Gahanna

200 South Hamilton
Road
Gahanna, Ohio 43230

Signature

Ordinance: ORD-052-2020

File Number: ORD-052-2020

ORDINANCE TO AMEND THE CODE OF ORDINANCES OF GAHANNA, OHIO: Amending Chapter 1171 Fences.

WHEREAS, at the regular meeting of Planning Commission on May 27, 2020, the proposed code changes were presented and approved,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GAHANNA, COUNTY OF FRANKLIN, STATE OF OHIO:

Section 1. That Chapter 1171 Fences, is hereby amended as set forth in EXHIBIT A, attached hereto and made a part herein.

Section 2. That existing Chapter 1171 of the Codified Ordinances of the City of Gahanna, or any Ordinances or parts of Ordinances in conflict herewith, are hereby repealed and replaced.

Section 3. That this Ordinance shall be in full force and effect after passage by this Council and 30 days after date of signature of approval by the Mayor.

Yes: 7 Leeseberg, Renner, Schnetzer, Larick, McGregor, Angelou and Bowers

President _____

Jamie Leeseberg

Date _____

Attest by _____

April Beggerow, MPA, CMC
Clerk

Date

8/24/20

Approved by the Mayor _____

Laurie A. Jadwin

Date

8-19-2020

Approved as to Form _____

Raymond J. Mularski
City Attorney

Date

9-1-2020

CHAPTER 1171 - Fences

Footnotes:

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Cross reference— Fence defined - see P. & Z. 1123.2223; General screening requirements - see P. & Z. 1167.20; Preservation Zone - see P. & Z. 1167.21; No Build Zone - see P. & Z. 1123.40A; Design Review District standards - see P. & Z. 1197.09(a)(2)B.2.a., b.; Swimming pool fence - see BLDG. 1325.08

1171.01 - DEFINITIONS.

(a) *Fence* means an artificially constructed barrier of any material or combination of materials erected to enclose, screen, or separate areas. For the purposes of this chapter, a fence does not mean a structure.

(b) *Chain link fence* means a fence usually made of metal consisting of loops of wire interconnected in a series of jointed links. In no case shall a chain link fence be considered a decorative open face fence.

(c) *Commercial fence erector* means an individual or a company qualified to erect, maintain and repair all types of fences covered by these Codified Ordinances and who erects a fence for hire, or as a part of a sales agreement involving home improvement or the sale of fencing material.

(d) *Decorative open fence* means a fence constructed for its beauty or decorative effect, and when viewed at right angles and enclosing the outline of all parts of the fence in its vertical plane, has an open face area of at least 30 percent. Decorative open fences shall include, but not be limited to:

- (1) *Rail or split rail fence* means a fence constructed of narrow, whole or split, wooden timbers or vinyl placed horizontally between upright supporting posts.
- (2) *Picket fence* means a fence made of upright poles or slats that alternate with an open face.
- (3) *Iron or steel fence* means a fence constructed of narrow poles that are placed vertically and horizontally to resemble a fence that would be considered to be an antique or historical.

Hardware cloth, as defined in Section 1123.28A30, shall be used only in conjunction with any of the above listed decorative open fences, and must be attached to the owner's side of the fence. **Privacy screens and similar materials that alter the opacity of a decorative open fence are not permissible.**

~~(e) *Non-enclosing fence* means a fence which allows at least 30 percent open perimeter around the area visually defined.~~

~~(f)~~ **(e)** *Privacy fence* means a fence made to inhibit public view and provide seclusion and, when viewed at right angles and enclosing the outline of all parts of the fence in its vertical plane, has an open face of less than 30 percent. "Privacy fences" shall include, but not be limited to:

(1) *Basket weave* or *woven fence* means a fence made of interwoven strips or slats of flexible or semi-flexible material in which the pattern has the appearance of a plaited basket.

(2) *Louver, ventilating, shadow box* or *stockade fence* means a fence made of a series of slats placed at an angle or positioned so as to provide air but to deflect light perpendicular to its vertical plane.

~~(g)~~ **(f)** *Snow fences* are fences that consist of thin upright slats not to exceed 48 inches in height.

~~(h)~~ **(g)** *Swimming pool* means a structure, permanent or portable, filled or capable of being filled with water to a depth of 30 or more inches at any point therein and having a water surface area of 60 square feet or more and used, or designed to be used, for swimming or recreational bathing. ~~Swimming pools shall be classified as follows:~~

~~(1) *Private swimming pool* means a swimming pool used by the owner of the pool and friends as an additional accessory use at a private residence located on the premises of a detached one or two family dwelling.~~

~~(2) *Regulated swimming pool* means any swimming pool other than a private swimming pool, public or semi-public in character.~~

~~(3) *Club swimming pool* means a regulated swimming pool used by any group or institution on a non-commercial basis or on a membership basis for members and friends only.~~

~~(4) *Commercial swimming pool* means a regulated swimming pool which is located on land not publicly owned and which is operated on a commercial basis or primarily for private gain.~~

(Ord. 0112-2009. Passed 5-18-09; Ord. No. 0017-2017, Exh. A, 4-3-17)

1171.02 - PERMITS.

(a) No new fence shall be erected without an approved permit, which must clearly be displayed during construction. Replacement of a fence shall be allowed without a fence permit provided materials, height and location do not vary from existing fence and the placement is conforming to the current code.

~~(b) Fence permits shall be granted by the Planning and Zoning Administrator or their designee only upon the basis of representation made by clear drawings and specifications indicating the location, kind of material and full dimensions in figures of such fence. Such representation shall be attached to application forms furnished by the Building and Zoning Division, and signed by the owner of the property OR by the commercial fence erector, if one is to be used.~~

~~The Planning and Zoning Administrator or their designee or designee shall consider, within 30 days of receipt, the fence permit application if it is determined that the application complies fully with the requirements of this chapter. Upon approving the fence permit application, the Planning and Zoning Administrator or their designee shall sign the application, attesting to its compliance with the requirements of this chapter.~~

~~If the application does not comply with the requirements of this chapter, the Planning and Zoning Administrator or their designee shall deny the application and inform the applicant that the application may be:~~

~~(1) Modified and resubmitted to the Planning and Zoning Administrator or their designee within 30 days without an additional application fee; or~~

~~(2) Submitted for a variance per Section 1171.05; or~~

~~(3) Appealed to the Board of Zoning and Building Appeals per Article XII of the City Charter.~~

~~(e) (b) It is the responsibility of the applicant to verify all applicable deed restrictions. If the required information regarding deed restrictions has been misrepresented, the permit shall be revoked and the fence shall be removed.~~

~~(d) Commercial fence erectors shall, prior to erection or installation of any fence within the City, verify that the required fence permit has been issued for each job. Failure to have a permit prior to erection or installation of a fence is subject to penalty under Section 1171.99.~~

~~(e) (d) No person other than the property owner and/or a commercial fence erector, licensed **registered** in the City, shall engage in the business of erecting, maintaining or replacing fences of any type within the City **when a building permit is required**.~~

(Ord. 0112-2009. Passed 5-18-09; Ord. No. 0017-2017, Exh. A, 4-3-17)

1171.03 - FENCE STANDARDS.

Any fence constructed shall comply with the following standards:

- (a) Fences shall not exceed six feet in height except those which enclose athletic fields and courts, or define secure areas for the storage of public property, which shall not exceed 12 feet, or provide a secure area in the Office, Commerce and Technology District, which shall not exceed ten feet.
- (b) Only decorative open fences as defined in Section 1171.01(d), of a height no greater than 48 inches, may be erected in any area designated as a "No Build Zone."
- (c) ~~A fence of permitted height and design may be constructed along or upon common property lines and across any utility easement so as to allow maximum use of the area to be enclosed. Fences placed on utility easements shall provide access to manholes, utility boxes, cleanouts or other apparatus that may be used from time to time for maintenance of the utility. Fences placed on drainage easements shall allow for the~~

~~proper flow of water. Fences that are being proposed to be placed on utility and/or drainage easements shall require prior approval from the City Engineer.~~ **The height of a fence shall be measured from the established grade line to the highest point of the fence including posts and finials.**

- (d) No fence erected in a residentially or commercially zoned area shall have as part of its design or construction metal prongs or spikes, or barbed wire. Barbed wire may be permitted on the top of chain link fences in the Office, Commerce and Technology District. No fence other than an invisible fence shall have as part of its design or construction an electrified portion.
- (e) A fence shall **may be constructed along or upon common property lines and across any utility easement but may** not be located within three feet of a utility box, manhole or other apparatus that may be used for maintenance of the utility. However, a gate and/or removable section of fencing may be placed within this three-foot restriction if such gate and/or removable section provides sufficient access to the utility box, manhole or other apparatus. When a fence obstructs access to a utility box, manhole or other public apparatus for maintaining utilities, the owner shall be required to remove and replace such fence at his/her expense without remuneration from the City. This section shall not prohibit the City from removing any fence located in a utility or drainage easement that obstructs a utility box, manhole or other apparatus or obstructs the proper flow of water. **Fences placed on drainage easements shall allow for the proper flow of water. Fences that are being proposed to be placed on utility and/or drainage easements shall require prior approval from the City Engineer or designee.**
- (f) **Single Family and Two Family fence height shall be subject to the following:**

<u>Fence Type</u>	<u>Front Yard</u>	<u>Side Yard</u>	<u>Rear Yard</u>
<u>Privacy</u>	<u>Not Permitted*</u>	<u>6'</u>	<u>6'</u>
<u>Chain Link</u>	<u>Not Permitted*</u>	<u>6'</u>	<u>6'</u>
<u>Decorative open</u>	<u>42"</u>	<u>6'</u>	<u>6'</u>

***Corner lots are permitted a fence one-half the distance between the required building setback and the right-of-way only for the front yard which functions as a side yard. The height of the fence for the second front yard which functions as a side yard may be 6'. City staff shall determine which front yard functions as a side yard based on the layout of the lot, address, and design of the house.**

~~Any fence of a permitted height and design shall not extend in the front yard beyond the building setback line. Corner lots shall comply with the following:~~

~~A fence may be located one-half the distance between the required building setback line and the public right-of-way only in the side yard if the fence is a decorative open fence and does not exceed a height of 42 inches. Such fences shall not be located so as to encroach upon the required sight triangle area established under Section 1167.16.~~

- (g) ~~A decorative open fence shall be permitted in the side and rear yards.~~

~~A decorative open non-enclosing fence not more than 42 inches in height may be located in front of the required building setback line not more than one-half the distance between the required building setback lines and corresponding street public right-of-way. On corner lots, such fences may not be located so as to encroach upon the required sight triangle area established under Section 1167.16.~~

- ~~(h) (g) Privacy and/or chain link fences shall be prohibited in the side and front yards.~~
- (i) **(h)** Any fence constructed between the required building setback line and street public right-of-way shall not **encroach upon required sight triangle area established under Chapter 1167.16** or prevent or hinder access to the residence by vehicles and personnel responding to a fire, police or medical emergency.
- (j) **(i)** A private swimming pool constructed on the premises of a detached one- or two-family dwelling shall be enclosed by a fence erected wholly on said premises. ~~On a case by case basis, the Planning and Zoning Administrator or their designee may approve a fence permit application~~ **Applications** for a fence not wholly on the pool owner's property **may be approved if an adjoining property owner fence complies with the minimum requirements.** However, if a neighbor's fence, which makes up any portion of the pool enclosure is removed for any reason, the owner of the property on which the pool is located shall be responsible for restoring the pool to an enclosed state. This restoration shall be performed within 30 days of the date that the zoning division **City** is made aware of the situation. All fences shall conform to the following requirements:
 - ~~(1) For in-ground pools, the height of the fence shall be at least 48 inches above the grade measured on the side of the fence which faces away from the pool, but not to exceed 72 inches in height as measured from grade along the line of the fence as installed.~~
 - A. The maximum vertical clearance between grade and the bottom of the fence shall be four inches measured on the side of the fence which faces away from the pool.
 - ~~B. Solid fences which do not have openings, such as masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.~~
 - ~~C. B.~~ Spacing between vertical members of a wood or vinyl fence shall not exceed one and three quarter inches in width.
 - ~~D. C.~~ Maximum mesh size for chain link fences shall not exceed one and three quarter inch square unless the fence is provided with slats fastened at the top or bottom which reduce the openings to no more than one and three quarter inches.
 - ~~E. D.~~ In a lattice fence the maximum opening formed by the diagonal members shall be no more than one and three quarter inches.
 - ~~F. E.~~ Spacing between vertical members of a decorative metal fence shall be no more than four inches and any gate shall have no opening greater than one-half inch within 18 inches of the release mechanism.
 - ~~G. F.~~ Access gates to the pool shall comply with this subsection (j)(1)A. through F., and shall be equipped with a lock operated by a key, or combination lock, and shall be locked when not in use. Pedestrian access gates shall open outward, away from the pool, and shall be self-closing and have a self-latching device. Where the release mechanism of a self-latching device is located less than 54

inches from the bottom of the gate, (a) the release mechanism shall be located on the pool side of the gate at least three [inches] below the top and (b) the gate and fence shall have no opening greater than one-half inch within 18 inches of the release mechanism.

(2) For aboveground pools, fencing shall be the same as this subsection (j)(1) hereof except that if the sides of the pool are 42 inches or more above the minimum adjacent grade, and the pool is equipped with a removable ladder or a ladder that folds up and locks in an upright position when the pool is not in use, or the steps or ladder is surrounded by a fence as described in this subsection (j)(1), then additional fencing will not be required. If an aboveground pool has a fence at the top of the pool, the maximum vertical clearance between the top of the pool and the bottom of the fence shall not exceed four inches. A 36 inch minimum guardrail conforming to the Residential Code of Ohio is required for any porch, balcony or raised floor surface located more than 30 inches above the floor or grade below.

(k) Temporary snow fences not exceeding 48 inches in height, may be erected in non-residential areas without permit between December 1 of any year and the following March 31 for the purpose of controlling snow drifting across sidewalks, driveways, and roadways. Snow fences may extend beyond or be located in front of the required building setback line not more than one-half the distance between the required building setback line and corresponding street public right-of-way. On corner lots, snow fences may not be located so as to encroach upon the required sight triangle area established under Section 1167.16. Snow fences shall not be erected or located that would:

(1) Hinder access to the residence by vehicles and personnel responding to a fire, police or medical emergency; or

(2) Cause snow to accumulate in a manner which would encroach upon or block any public right-of-way, hinder proper operation of Municipal snow removal equipment, or block access to or cause damage to adjacent properties.

(l) Fences shall be maintained in good condition, be structurally sound, safe, and attractively finished at all times. **All fencing, regardless of the type or what zone district located in, shall have the finished side facing adjacent properties and or the right-of-way.** Any repairs or replacement ordered by the zoning division City shall be made within 30 days of the date of the order. Grounds between fences and property lines and between fences shall be well maintained at all times. Any fence shall be designed, constructed and finished so the supporting members thereof shall face the property of the owner of the fence. If a fence does not meet these standards, the owner of the property with the fence shall be subject to the penalty in Section 1171.99.

(Ord. 0151-2009. Passed 9-21-09; Ord. 0198-2009. Passed 9-8-09; Ord. No. 0017-2017, Exh. A, 4-3-17)

1171.04 - COMMERCIAL AND MULTI-FAMILY DISTRICT FENCES.

~~(a) All fencing required to separate the several usage districts in the City or as required for screening according to the Planning and Zoning Code or as required by the Planning Commission shall conform to these specifications as written or as may be modified by the Chief Building Official. All such fencing shall be constructed of quality materials and methods~~

shall conform to generally accepted standards. The fence shall be six feet in height, unless greater height is required by the Planning and Zoning Code.

Decorative or non-decorative fence not otherwise required by the City shall not be governed by this section, but shall be constructed as described in other sections of the Planning and Zoning Code. **Shall be subject to the Design Review standards identified in Chapter 1187. A separate fence permit is not required when fencing is approved within a Design Review application. Requests for fencing not previously approved within a Design Review application shall be subject to the permitting process identified within Chapter 171.02.**

~~(b) If wood is to be used, it shall be pressure-treated material, cedar, or redwood. Wood posts shall be not less than six inches by six inches and shall be buried not less than 32 inches in the ground, and be surrounded by concrete. Posts of any other materials shall be buried not less than 32 inches in the ground, and be surrounded by concrete. An inch or more of gravel shall be placed in the bottom of the post holes before installation of the post in order to insulate it from contact with soil but not restrict drainage of ground water. Concrete shall completely surround the post and shall be at least two inches in thickness between the post and the earth. Wood stringers shall be two inch by six inch wood. Boards shall be one inch by six inches by six feet and placed adjacent to each other with not more than one fourth inch gap between boards. In every case, the "neat" or "finished" side shall face the street or adjacent property.~~

~~(c) A regulated swimming pool shall be enclosed by a fence conforming to the following requirements:~~

~~(1) Regulated swimming pools shall be provided with an enclosure surrounding the pool area.~~

~~(2) The enclosure shall extend not less than six feet above the ground. All gates shall be self-closing and self-latching with latches placed at least four feet above the ground. However, if said gate is an attached gate while the pool is open, said gate shall be locked during the off season and in season closed hours.~~

~~(3) Enclosure fences shall be constructed to prohibit the passage of a sphere larger than four inches in diameter through any opening or under the fence. Fences shall be designed to withstand a horizontal concentrated load of 200 pounds applied on a one square foot area at any point of the fence.~~

~~(4) The use of a pool cover, capable of supporting at least 300 pounds shall be encouraged during any period of time when the pool is closed for more than 72 consecutive hours or during any off season, in addition to the protection afforded by the enclosure, gate, and latch described herein.~~

(Ord. 0112-2009. Passed 5-18-09.)

1171.05 - VARIANCES AND APPEALS.

(a) Variance Procedure.

(1) The standard for granting a variance which relates solely to area requirements is a lesser standard than that applied to variances which relate to use. An application for an area variance

need not establish unnecessary hardship: it is sufficient that the application show practical difficulties.

In determining whether a property owner seeking an area variance has encountered practical

difficulties, Planning Commission shall consider and weigh the following factors:

A. Whether the property in question will yield a reasonable return or whether there can be any

beneficial use of the property without the variance;

B. Whether the variance is substantial;

C. Whether the essential character of the neighborhood would be substantially altered or

whether adjoining properties would suffer a substantial detriment as a result of the

variance;

D. Whether the variance would adversely affect the delivery of governmental services (e.g.,

water, sewer, refuse);

E. Whether the property owner purchased the property with the knowledge of the zoning

restriction;

F. Whether the property owner's predicament feasibly can be obviated through some method

other than a variance;

G. Whether the spirit and intent behind the zoning requirement would be observed and

substantial justice done by granting the variance;

H. Whether the fence is sufficiently compatible with the architectural and design character of

the immediate neighborhood; and

I. Whether the fence will be hazardous to passing traffic or otherwise detrimental to the public

safety and welfare.

(2) In granting such variance, the Planning Commission may specify the size, type and location of the fence, and impose such other reasonable terms, restrictions and conditions as it may deem to be in the public interest.

(b) Appeals. Any person affected by any decision of the Planning and Zoning Administrator or their designee or the Planning Commission made pursuant to this chapter may file an appeal with the Board of Zoning and Building Appeals.

(Ord. 0112-2009. Passed 5-18-09; Ord. No. 0017-2017 , Exh. A, 4-3-17)

1171.99- CIVIL REMEDIES AND CRIMINAL PENALTIES.

(a) *Civil Remedies.* If any fence is erected, constructed, reconstructed, relocated, altered, converted or maintained, or used in violation of this Zoning Ordinance, the City, in addition to any other remedies provided for herein, shall institute proceedings as are

authorized by law to prevent and enjoin such unlawful erection, construction, reconstruction, relocation, alteration, conversion, maintenance or use, or to correct or abate such violation.

- (b) *Criminal Penalty.* Any person, firm or corporation violating any provision, amendment or supplement to this chapter, or failing to obey any lawful order ~~of the Planning and Zoning Administrator or their designee or his/her designee issued in pursuance thereof~~ **issued by the City**, shall be deemed guilty of a minor misdemeanor. Each and every day during which such violation of any provision, amendment or supplement of this chapter occurs or each and every day during which there is a failure to obey a lawful order ~~of the Planning and Zoning Administrator or their designee~~ **issued by the City**, may be deemed a separate offense.

(Ord. 0112-2009. Passed 5-18-09; Ord. No. 0017-2017, Exh. A, 4-3-17)

