

CITY OF VON ORMY, TEXAS

ORDINANCE NO: 2011-79

AN ORDINANCE REGULATING THE CONSTRUCTION AND MAINTENANCE OF FENCES; REQUIREING PERMITS; SETTING CONSTRUCTION STANDARDS; PROVIDING A PENALTY.

WHEREAS, the City Council of Von Ormy deems it necessary and proper for the public safety and general welfare of the city to adopt building codes related to fences to ensure the proper for the orderly and safe development of the building and housing stock within the corporate limits and extraterritorial jurisdiction of the city, and;

WHEREAS, the City Council finds it necessary for the efficient and effective government of the city to establish building codes related to fences.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VON ORMY, TEXAS:

SECTION 1. PURPOSE AND DEFINITIONS

- A. **PURPOSE.** This ordinance is adopted so that the City Council may promote the public health, safety, morals, and general welfare within the city through the regulation of the construction, repair, and expansion of fences.
- B. **DEFINITIONS.** For the purpose of this subsection, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and phrases which are not defined in this ordinance but are defined in other ordinances or code provisions of the city shall be given the meanings set forth in those ordinances.
 - 1. **BUILD.** To cut or fell trees, or place, erect, or construct any improvement found to be a fence.
 - 2. **EXPAND.** To add or increase any square footage of a fence.
 - 3. **FENCE.** A structure serving as an enclosure, barrier, or boundary, usually made of posts, boards, wire, metal, rails, plastic, stone, or other masonry materials, which typically follows a property line or perimeter of real property.
 - 4. **HEIGHT.** When referring to fence, the distance measured from the finished grade of the property upon which the fence sits to the highest point on the fence, including any wire affixed at the top.
 - 5. **PERSON.** Any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

SECTION 2. BUILDING PERMIT REQUIRED FOR FENCES.

- A. *Construction; permit required.* It shall be unlawful for any person to build, develop, expand, or modify any fence without first making application to the city and receiving a building permit issued by the city.
- B. *Exception for repair and maintenance.* Permits are not required for the routine repair and maintenance of fences that existed prior to the effective date of this section, provided that the fences are not expanded.
- C. *Exception for public safety.* Permits are not required for the erection of fences by government agencies or their vendors or contractors engaged in government construction projects or activities when that fencing is reasonably necessary for the protection of the public or workers engaged in the government construction projects.

SECTION 3. FENCE CONSTRUCTION STANDARDS.

- A. *Dimensions.* Any fence that faces a street or road within the incorporated limits of the city and is more than 4 feet in height:
 - 1. Shall have a solid to void ratio no greater than 1:8 (12.5%);
 - 2. Shall be no higher than 8 feet;
 - 3. Shall be placed only within the street side building setback provided by the zoning district if the building material is chain link fencing; and
 - 4. Any fence over 4 feet in height shall require a building permit.
- B. *Setbacks along streets.* Any fence which faces a street or road within the incorporated limits of the city shall be set back from an existing street or road surface on which motor vehicles travel by a distance of not less than 6 feet or the distance determined by the city to be necessary for the safety of pedestrians and for drainage improvements.
- C. *Repair of certain damaged fences.* Any fence which faces a street or road within the municipal boundaries (such as city limits) of the city and which has been damaged to the extent that the cost of repair exceeds 60% of the cost of replacement shall be considered destroyed. The owner shall remove a destroyed fence within 90 days of the date it was found to be in a destroyed condition. A destroyed fence may be replaced only with a fence that conforms to this ordinance.
- D. *Special exception variances.*
 - 1. A special exception to the fence construction standards shall be considered a variance to the regulations, rather than a right.
 - 2. Whenever the strict application of the fence construction standards would result in substantial hardship or inequity, the Building Code Board of Review ("Board") may recommend and the City Council may approve a variation or modification of the design, but not of procedure, except as otherwise indicated, so that the person may construct his or her fence in a reasonable manner. At the same time, the public welfare and interests of the city must be protected and the general intent

and spirit of these regulations must be preserved in accordance with the following provisions.

- i. *Jurisdiction.* Where a special exception variance from the fence construction standards is requested, the Building Code Board of Review may recommend and the City Council may approve a special exception to the construction standards, and the special exception, if granted, shall be considered to be a modification of the fence construction standards applicable to the specific fence for which the variance is sought.
 - ii. *Procedure.* Any person seeking a variance from the fence construction standards set out in §3 of this ordinance must send a letter requesting the variance to the Building Code Board of Review. The letter must be accompanied by a completed building permit application and the payment of all applicable fees. The Board shall give public notice and conduct a public hearing on the variance request. Following the hearing, the Board shall make a recommendation to the City Council regarding whether to grant or deny the variance, in whole or part.
 - iii. *Approval.* In recommending and approving a variance, the Commission and Council, respectively, shall consider and make written findings regarding the following criteria:
 1. The probable effect the variance will have upon traffic conditions and upon the public health, safety, convenience, and welfare of the community;
 2. The surrounding property will not be substantially or permanently impaired or diminished;
 3. The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property;
 4. The applicant has not created the hardship from which relief is sought;
 5. The hardship from which relief is sought is not solely of an economic nature;
 6. The variance is not contrary to the public interest;
 7. Due to special conditions, the literal enforcement of this ordinance would result in an unnecessary hardship; and
 8. In granting the special exception, the spirit of this ordinance is observed and substantial justice is done.
- E. *Building materials.* It is the intention of this section to reinforce and maintain the existing character of the built environment in the city. The city urges the use of natural building materials such as wood and stone and other items that are compatible with the community's rural character. The city encourages large setbacks from the property line and the creation of architectural features that add to the aesthetic character of the fence.

The city also seeks to avoid long uninterrupted expanses of fence. Plans for fences that do not meet these standards will be closely scrutinized.

- F. *Appeals.* The Board shall hear an appeal that is requested alleging error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance. The Board shall give public notice and conduct a public hearing on the appeal request. Following the hearing, the Board shall make a written recommendation to the City Council regarding whether to reverse or affirm, in whole or part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken. A majority vote of the Council may reverse or affirm, in whole or part, or modify the administrative official's order, requirement, decision, or determination and make the correct order, requirement, decision, or determination, and for that purpose the City Council has the same authority as the administrative official.

SECTION 4. APPLICATION; VIOLATIONS; REMEDIES NOT EXCLUSIVE.

- A. *Compliance.* All fences or additions to fences made after the effective date of this ordinance shall conform to this ordinance and shall be subject to inspection by the Building Official or his or her designee.
- B. *Enforcement authority; civil and criminal penalties apply.* The city shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is hereby declared to be a nuisance.
- C. *Written warnings.* Nothing in this ordinance shall preclude the issuance of written warnings to property owners or occupants notifying the property owner or occupant of violations of this ordinance. The city may issue such a warning and provide for a reasonable amount of time to bring fences into compliance with this ordinance. The issuance of written warnings is purely discretionary and is not required prior to initiating a criminal or civil action, as provided above and in §5.
- D. *Application relative to other ordinances.* This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance or code provision. This ordinance is specifically subordinate to any ordinance or regulations of the city pertaining to building and construction safety or to pedestrian and traffic safety.

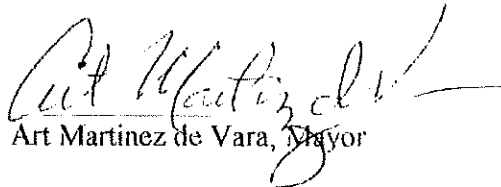
SECTION 5. PENALTIES.

- A. *Criminal prosecution.* Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$250. Each day that a provision of that ordinance is violated shall constitute a separate offense. An offense under that ordinance is a misdemeanor.

B. *Civil remedies.* Nothing in this section or ordinance shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of that ordinance and to seek remedies as allowed by law, including, but not limited to, the following:

- a. Injunctive relief to prevent specific conduct that violates this ordinance or to require specific conduct that is necessary for compliance with that ordinance;
- b. A civil penalty up to \$100 a day when it is shown that the defendant was actually notified of the provisions of this ordinance and after receiving notice committed acts in violation of that ordinance or failed to take action necessary for compliance with that ordinance; and
- c. Other available relief.

PASSED, APPROVED AND ADOPTED THIS 6th DAY OF JULY, 2011


Art Martinez de Vara, Mayor

ATTEST:


Julia A. Hernandez, City Clerk