

**CITY OF HEATH
ORDINANCE NO. 250128A**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEATH, TEXAS, AMENDING TITLE XV, "LAND USAGE", CHAPTER 157, "FENCES", OF THE CITY OF HEATH CODE OF ORDINANCES; PROVIDING SEVERABILITY, REPEALER, AND SAVINGS CLAUSES; PROVIDING AN EFFECTIVE DATE PROVIDING FOR PUBLICATION; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Heath, Texas (the "City") is a home rule municipality, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the duly elected City Council of the City of Heath, Texas is empowered to do all acts and make all regulations which may be necessary or expedient for the promotion of the public health, safety, and general welfare; and

WHEREAS, the City Council deems it necessary, expedient, and in the best interest of the City to adopt the revisions below to its Code of Ordinances.

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

Section 1. Findings. That the above and foregoing findings are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment to Chapter 157 That the Code of Ordinances, City of Heath, Texas is hereby amended to read entirely as follows:

CHAPTER 157: FENCES

157.01 Definitions

157.02 Fences in residential areas

157.03 Fences in agricultural areas

157.04 Fences for non-residential areas

157.05 Perimeter fences for development/subdivisions and estate lots

157.06 Miscellaneous

157.07 Permit required

157.08 Variances

157.09 Exceptions

157.10 Nonconforming fences

§ 157.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL AREA. Property located in the Agricultural District (A) as defined in Chapter 159 of the Code of Ordinances and primarily used for agricultural purposes.

ARCHWAY. See GATE TOPPER.

ELECTRIC FENCE. A fence designed and constructed to continuously conduct electrical current.

ESTATE LOT. A residential lot with an area of five acres or greater.

FENCE. Any man-made barrier or any structure of any material, the purpose of which is to provide protection from intrusion (both physical and visual), to mark a boundary, enclose, screen, restrict access, decorate or provide right-of-way edge treatment for any lot, building, structure, swimming pool, spa or development. A gate is considered part of the FENCE.

FENCE HEIGHT. FENCE HEIGHT shall be measured from grade. Fences on a retaining wall shall be measured from the top of the highest ground elevation adjacent to the retaining wall.

FRONT BUILDING LINE. A line adjacent to the front-most portion of a structure containing the main front entrance and generally parallel to the street right-of-way line which the structure faces; not a building setback line.

FRONT BUILDING SETBACK LINE. A line parallel to the street right-of-way line, which the building faces and takes primary access from.

FRONT YARD. An open, unoccupied space on a lot facing a street extending across the front of the lot between the side lot lines and from the front of the main building to the front property or street line.

GATE. A moveable portion of a fence used to close an opening in the fence.

GATE TOPPER. An archway or other structural or decorative feature mounted on top of posts positioned at opposite sides of a fence opening crossing and not obstructing a driveway and spanning the width of the fence opening. The fence opening may or may not include a gate.

KEY LOT. A corner lot that is so designed that the lots located directly behind it face the side street of the corner lot and are not separated by an alley.

LOT. An undivided tract or parcel of property which is designated as a distinct and separate tract.

NON-RESIDENTIAL AREA. Property that is not zoned residential and is primarily commercial, retail or industrial

in nature.

PARALLEL FENCE. A fence that runs in the same general direction of, and is located within five feet of, an existing fence. To be considered a PARALLEL FENCE, the fence does not necessarily have to maintain a precise constant distance from the other fence.

REAR YARD. An open, unoccupied space on a lot, except for accessory building/structure as herein permitted, extending between the side lot lines and from the rear of the main building to the rear lot line. The REAR YARD shall be at the opposite end of the lot from the front yard.

RESIDENTIAL AREA. An area within a platted subdivision or used primarily for residential uses.

SIDE YARD. An open, unoccupied space on a single lot, except for accessory building/structure as herein permitted, on one or two sides of a main building, on the same lot with the building, extending from the main building to a side lot line and from the front of the main building to the rear of the main building.

SIGHT TRIANGLE. The portion of a lot within a triangular area formed by connecting together the point of intersection of the edge of a driveway or alley and an adjacent street curb line (or, if there is no street curb, what would be the normal street curb line) and points on the driveway or alley edge and the street curb line 35 feet from the intersection.

SUBDIVISION/DEVELOPMENT. A platted subdivision or development. For purposes of this chapter, a SUBDIVISION or DEVELOPMENT consisting of a single lot shall be regulated as a lot and not as a SUBDIVISION or DEVELOPMENT.

(2005 Code, § 9-15-1) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.02 FENCES IN RESIDENTIAL AREAS.

(A) No fence, guy wire, brace, light standard, sign, vee-arm barbed wire base and arm, or any structure attached to a fence shall protrude over a property line.

(B) No fence is permitted within the sight triangle, nor shall any fence obstruct or cause sight restrictions at or near any street, roadway, or alley in the city to promote safety for vehicles and pedestrians.

(C) Fences in the front yard and side or rear yards abutting a street may have a maximum height of four feet. The City Manager or their designee may grant a height exception to allow a fence up to five feet tall measured from grade if all of the following conditions are satisfied:

1. The alignment of the fence subject to the height exception shall be separated from the edge of the right-of-way by at least 15 feet for side and rear fences abutting a street and setback to at least the front build line for front yard fences. The fence shall be outside of the sight triangle, aligned on the interior side of any easements at the front of the property, aligned on the interior side of any future easements and/or right-of-way needed to implement the City of Heath Capital Improvement Plan, and the City of Heath Thoroughfare Plan, and aligned on the interior side of any easements and/or right-of-way required to implement the City of Heath Trail Plan; and

2. If the fence includes a fence opening and gate crossing a driveway, the gate shall be offset from the edge of the street pavement by at least 30 feet.

(D) On any property line shared with another residential property, the fence shall be either on the property line or not less than five feet from the property line. No parallel fencing on a single lot or tract is allowed. Parallel fencing on adjacent tracts must be separated by at least five feet.

(E) Fences in front of the front building line of the residence or structure on the subject lot shall be ornamental wrought iron or tubular steel and shall have an average transparency of 75% open area excluding columns. The maximum width of columns shall be two feet.

(F) Fences on or behind the front of the building structure, except side and rear yards abutting a street, may have a maximum height of eight feet.

(G) Fences on lakefront properties shall be ornamental wrought iron or tubular steel with at least 75% open area per linear foot to maintain surrounding lake views. Fences are prohibited in the take line area except as allowed in the Lake Edge Zoning Ordinance.

(H) Fences on lakefront lots located more than 35 feet from the rear property line and constructed entirely behind the main residential structure may be privacy fences constructed following the provisions of this chapter.

(I) Fences shall be constructed of and repaired with new material of good quality natural decay-resistant wood, stained or unstained, for privacy fences, powder coated for metal fences, natural decay-resistant wood, stained or unstained, for rail fences.

(J) Privacy fences shall be constructed with metal or galvanized steel posts set in concrete at a minimum depth of 18 inches and no more than eight feet apart. Fences shall be required to be constructed so that the fence posts and rails face the interior side of the yard and, except for the top cap, may not be visible from the public way. In yards with pools, the fence post and rails must face the poolside of the yard. If adjacent lots both have pools, the property replacing the fence or installing a new fence must install the rails and posts facing the interior side of their yard.

(K) Front gates for fences shall be no taller than seven feet, except on estate lots which shall have a maximum front gate height of ten feet. The front fence alignment shall provide an opening for any driveway equal to or greater than the width of the driveway and shall not be narrower than 14 feet.

(L) Masonry or stone columns shall match the main residential structure or be complimentary and shall be no more than six inches taller than the allowed fence height.

(M) The unobstructed area below a gate topper shall be a minimum of 15 feet tall and a minimum of 14 feet wide. The maximum height of the gate topper shall be 18 feet tall.

(N) Fences in front of the front building line of the residence or structure on the subject lot shall be separated from the interior edge of any sidewalk or trail by at least five feet.

(2005 Code, § 9-15-2) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.03 FENCES IN AGRICULTURAL AREAS.

- (A) No privacy fences shall be permitted in Agricultural Areas.
 - (B) Fences constructed of barbed wire of any type or dimension shall only be permitted for the fencing of livestock. Field fencing and pipe fencing are permitted for any Agricultural Area.
 - (C) Split rail fences are permitted in Agricultural Areas and may be constructed with naturally decay-resistant materials and wood posts.
 - (D) Fences may have a maximum height of five feet and shall provide for an open atmosphere.
 - (E) Electric fences are permitted except adjacent to a residential lot where electric fences shall be prohibited.
 - (F) The use of razor wire shall be prohibited.
 - (G) Fences in front of the front building line of the residence or structure on the subject lot shall have an average transparency of 75% open area excluding columns. The maximum width of columns shall be two feet.
 - (H) No fence shall be permitted within the sight triangle.
 - (I) Front gates for fences shall be no taller than seven feet, except on estate lots which shall have a maximum front gate height of ten feet. The front fence alignment shall provide an opening for any driveway equal to or greater than the width of the driveway and shall not be narrower than ~~12~~ 14 feet.
 - (J) Masonry or stone columns shall match the main residential structure or be complimentary and shall be no more than six inches taller than the allowed fence height. The allowed fence height includes any approved height variances.
 - (K) The unobstructed area below a gate topper shall be a minimum of 15 feet tall and a minimum of 14 feet wide. The maximum height of the gate topper shall be 18 feet tall.
 - (L) On any property line shared with another agricultural area property, the fence shall be located either on the property line or not less than five feet (5') from the property line.
- (2005 Code, § 9-15-3) (Ord 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.04 FENCES FOR NON-RESIDENTIAL AREAS.

When required by the Zoning Ordinance, fences and screening walls shall comply with the following requirements:

- (A) Fences in Non-Residential Areas shall be made of masonry or ornamental wrought iron and shall have an average transparency of 75% open area excluding columns. The maximum width of columns shall be two feet. All other fencing shall be considered in conjunction with the site plan reviewed by the Architectural Review Board, Planning and Zoning Commission, and City Council.
- (B) No fence shall be permitted within the sight triangle.

(C) Masonry columns may only be 6 inches taller than the allowed fence height. The allowed fence height includes any approved height variances.

(2005 Code, § 9-15-3) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.05 PERIMETER FENCES FOR DEVELOPMENT/SUBDIVISIONS AND ESTATE LOTS.

(A) Perimeter fences for development/subdivisions and estate lots should provide an open atmosphere.

(B) Fence design.

1. No more than 10% of the total length shall be masonry columns.
2. Estate lot gates may be no taller than 8 feet.
3. The height of the masonry columns shall not exceed ten feet.
4. The remainder of the fence shall be of ornamental or wrought iron type with a maximum height of eight feet and a minimum of four inches between the vertical bars and shall have an average transparency of 75% open area excluding columns. The maximum width of columns shall be two feet.
5. Posts are to be no more than eight feet apart.

(C) No fence shall be permitted within the sight triangle.

(D) No fence shall be constructed to obscure existing view corridors from any street, roadway, or alleyway in the city. The fence alignment shall provide an opening for any driveway equal to or greater than the width of the driveway and shall not be narrower than 14 feet.

(E) The unobstructed area below a gate topper shall be a minimum of 15 feet tall and a minimum of 14 feet wide. The maximum height of the gate topper shall be 18 feet tall.

(2005 Code, § 9-15-4) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014) Penalty, see § 10.99

§ 157.06 MISCELLANEOUS.

These provisions shall apply to all fences.

(A) Fences shall be maintained in good repair by the owner. GOOD REPAIR shall mean that:

1. The fence shall not be out of vertical alignment more than one foot from the vertical height measured at the top of the fence for fences greater than four feet in height; except, however, for fencing four feet or less in height, the fence shall not be out of vertical alignment more than six inches from the vertical height measured at the top of the fence; and
2. Any and all broken, loose, damaged, insect damaged, or missing parts (i.e., slats, posts, wood rails, bricks, panels, gates, columns, masonry sections) shall be replaced or repaired.

(B) Unless otherwise allowed within this chapter, fences constructed of chained link, wire fencing including chicken wire, barbed wire or razor wire shall not be permitted.

(C) Electric fences are prohibited except in Agricultural Areas as provided in § 157.03(E).

(D) All structural elements of a fence shall remain in sound condition as determined by the Building Official.

(E) When a fence is to be located on a key lot, the regulations regarding height, location and materials applicable to the front yard or front building line shall apply regardless of where the fence is situated.

(F) Key lot fences shall have at least 75% open area per linear foot and may be located up to five feet from the property line of the side of the house. A fence that has at least 75% open area per linear foot may be located in the front yard building line of a key lot.

(G) All fences that include an access entry gate must meet all requirements of the approved International Fire Code, provide emergency access as required by the City's Public Safety Department, and be approved by the Fire Marshall.

(H) Fences may not be constructed in the 100-year floodplain, except as approved by the City Engineer.

(I) No fence shall be permitted within a sight triangle.

(J) Fences enclosing a permitted sports facility may be constructed of chain link materials but must be vinyl coated.

(K) If a fence has stone or masonry columns, the column height may exceed the permitted height of the fence by up to six inches except as provided in § 157.05. All stone or masonry columns four feet or greater in height shall have a footing approved by the Building Official.

(L) Parallel fences on a single lot or tract are prohibited. Parallel fences on adjacent properties must be at least 5 feet apart.

(M) Should regulations in this chapter conflict with each other, the most restrictive regulation shall apply.

(2005 Code, § 9-15-5) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.07 PERMIT REQUIRED.

A permit is required for construction of a new fence, alteration or repair of an existing fence if the repair exceeds 25% of the total fence area. A fence permit fee shall be established by the City Council.

(Ord. 140722A, passed 7-22-2014)

§ 157.08 VARIANCES.

(A) The City Council may allow a variance to the provisions of this chapter after a public hearing if it determines that the enforcement of a provision in a particular instance:

1. Is not in the best interests of the public;
2. Constitutes waste or inefficient use of land or other resources;
3. Creates an undue hardship on the applicant for a permit; or
4. Does not serve its intended purpose, is not effective or necessary.

(B) Before the tenth day prior to the public hearing on the variance, the city shall send notice via regular mail to all property owners, as indicated by the most recent tax appraisal roll, within 200 feet of the property on which the variance is requested.

2005 Code, § 9-15-6) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.09 EXCEPTIONS.

(A) Fences existing and in place at the time of the enactment of this chapter shall be excused from permit provisions. Any such fence or any fence in the area annexed by the city after the effective date hereof shall be subject to this chapter in the event of reconstruction modification, enlargement, extension, alteration or any construction thereto other than normal maintenance.

(B) City of Health municipal properties shall be exempt from the requirements of this chapter.

(2005 Code, § 9-15-7) (Ord. 970605C, passed - - ; Ord. 140722A, passed 7-22-2014)

§ 157.10 NONCONFORMING FENCES.

(A) An existing fence that was lawfully permitted and constructed and does not conform to the provisions of this chapter on the date of adoption may be maintained by the maintenance provisions contained herein.

(B) If the repair area of an existing fence that does not conform to the provisions of this chapter does not exceed 50% of the total area aggregated on a rolling 12-month basis, the fence may be repaired with new material of like design and color.

(C) If the repair area of an existing fence that does not conform to the provisions of this chapter exceeds 50% of the total area aggregated on a rolling 12-month basis, the fence must be removed or replaced, and the new fence must conform to the provisions of this chapter.

Section 3. Severability Clause

If any section or provision of this Ordinance or the application of that section or provision to any person, firm, corporation, situation, or circumstance is for reason judged invalid, the adjudication shall not affect any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, situation, or circumstance, and the City Council declares that it would have adopted the valid portions and applications of the Ordinance without the invalid parts and to this end the provisions of this Ordinance shall remain in full force and effect.

Section 4. Repealer Clause

That this Ordinance shall be cumulative of all other Ordinances of the City of Heath and shall not repeal

any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance or parts thereof in force at the time this Ordinance shall take effect, and that are inconsistent with this Ordinance, are hereby repealed to the extent that they are inconsistent with this Ordinance, provided, however, that any complaint, action, claim, or lawsuit which has been initiated or has arisen under or pursuant to such Ordinance on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose, the Ordinance shall remain in full force and effect.

Section 5. Savings Clause

That all rights and remedies of the City of Heath are expressly saved to any and all violations of the provisions of any Ordinance affecting the codes amended hereby, which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 6. Effective Date; Publication.

This Ordinance shall take effect immediately from and after its passage and its publication as the law and Charter of the City provides.


Section 7. Open Meetings

That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given, all as required by Article 551.041, Texas Government Code.

Passed and Approved by the City Council of the City of Heath, Texas, on this 28th day of January 2025.


Jeremiah McClure, Mayor

ATTEST:


Norma Duncan, City Secretary

