

ORDINANCE NO. 14-0605

AN ORDINANCE OF THE CITY OF WILMER, TEXAS, AMENDING ORDINANCE NO. 12.6.88, THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF WILMER, AS HERETOFORE AMENDED, BY AMENDING SECTION 4 (DEFINITIONS) BY ADDING A NEW DEFINITION; BY AMENDING SECTION 21 (SUPPLEMENTARY DISTRICT REGULATIONS) BY ADDING A NEW SUBSECTION 21.A(2.1) (CONSTRUCTION AND MAINTENANCE STANDARDS – ALL DISTRICTS), BY RELOCATING AND REVISING SUBSECTION 21.A(3)(e) (RESIDENTIAL DISTRICTS – GENERAL), BY ADDING A NEW SUBSECTION 21.A(4.1) (FENCES WITHIN FRONT YARDS – ALL DISTRICTS), AND BY REVISING SUBSECTION 21.A(5)(a) (BARBED WIRE FENCES); PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Wilmer and the governing body of the City of Wilmer, in compliance with state laws with reference to amending the Comprehensive Zoning Ordinance, have given the requisite notices by publication and otherwise, and after holding due hearings, and in compliance with the Texas Zoning Enabling Act, Texas Local Government Code §211, and affording a full and fair hearing to all persons interested in the exercise of its legislative discretion, the governing body of the City of Wilmer has concluded that the Comprehensive Zoning Ordinance, as heretofore amended, should be further amended as provided herein as such amendment is in the best interest of the City, and promotes the public health, safety and general welfare of the City.

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

SECTION 1. That Sections 4 and 21 of the Comprehensive Zoning Ordinance of the City of Wilmer, Texas, duly passed by the governing body of the City of Wilmer on the 6th day of December, 1988, as heretofore amended, be further amended to read as follows:

“Section 4: Definitions

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- (38.1) Earthtone Color – A color scheme that draws from a color palette of browns, tans, warm grays and greens that are muted and flat in an emulation of the natural colors found in dirt, moss, trees and rocks. Many earth tones originate from clay earth pigments, such as umber, ochre and sienna. For the purposes of this Ordinance, “earthtone color” shall also be defined as one of the colors in the following Sherwin-Williams exterior

color palette families: “Warm Neutrals” and “Cool Neutrals”. [added by Ordinance No. 14-0605]

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Section 21: Supplementary District Regulations

A. Screening Elements and Fences

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(2.1) Construction and Maintenance Standards for All Types of Fences – All Districts

- (a) A permit shall be required for all fences, screening walls, living screens and other types of screening devices. It shall be the property owner’s responsibility to submit a dimensioned site plan drawing, elevation views, detailed product specifications, as such may be required by the City, along with a fence permit application that clearly shows proposed location(s) and the materials and colors to be used for the fence, wall or screening device.
- (b) All fences and walls, regardless of location, shall be predominantly one color which is a hue of brown, grey, beige, dark green, brick/masonry red, white or black, as such color is natural and intrinsic to the material used, or shall be an earthtone color as such term is defined by this Ordinance. A secondary, accent color, earthtone or not, may be used for the posts, post caps, cross-members, and decorative elements on a fence provided that such accent color does not exceed twenty percent (20%) of any publicly visible surface of the fence as measured in elevation views.
- (c) In any zoning district, an electric fence may be located only within the side and rear yard, all electrified components must be located a minimum of twenty-four inches (24”) inside of another fence (which must be a minimum of 36" in height), the electric fence charging device must be approved by a nationally recognized testing laboratory, and the fence shall otherwise comply with all other applicable City codes.
- (d) In any zoning district, an underground, wireless “virtual” fence may be used in a front, side or rear yard provided that no components are above ground, and provided that such wireless fence adequately contains any livestock or other animals on the premises.
- (e) All fences and walls shall be maintained such that no portion is allowed to lean so that the fence’s axis is more than five degrees (5°) out of perpendicular alignment with its base, and

such that no portion is detached at any point from its supporting posts or has missing, loose or broken posts, pickets, slats, panels, columns, bricks or other components.

- (f) No signs, banners, symbols, writings, graffiti, messages, logos or other forms of communication shall be allowed on any fence or wall other than such as may be allowed in the City's Sign Ordinance.
- (g) No fence, wall or other screening device shall be allowed to encroach into any public right-of-way, any easement, or onto any other adjacent property.
- (h) No fence, wall or other screening device shall be allowed to impede physical access to any type of utility meter (i.e., gas, electric, water, etc.) or a premises' U.S. Postal Service mail delivery point (i.e., mailbox, mail slot, etc.).
- (i) Dual fences (i.e., paralleling fences or walls that are located closer than three feet (3') to each other) are prohibited unless specifically authorized by a variance granted by the zoning board of adjustment.
- (j) Wood fences shall be constructed of fencing-grade white wood or cedar pickets and minimum 4" by 4" pressure-treated posts (or galvanized metal posts) that are set at least 24" deep in concrete, at a maximum spacing of 8' on center. Landscape timbers shall not be used as fence posts. A minimum 2"x6" pressure-treated kick-board shall be provided along the bottom, with the pickets resting on top of it and not touching the ground. All pickets shall be secured to all runners with at least two galvanized ring-shank nails (or screws) per runner.
- (j) *Existing Nonconforming Fences – All Districts*
 1. An existing fence that is located within any zoning district, as of the effective date of this Ordinance No. 14-0605, shall be allowed to remain (and be maintained) as it exists, provided it conforms with all standards in Subsections (e) through (i) above. Eventual replacement of existing fences shall be in accordance with all provisions of this Section 21, and with all other applicable provisions within the Zoning Ordinance and the City's Code of Ordinances.

[Section (2.1) in its entirety added by Ordinance No. 14-0605]

(3) Residential Districts – General

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- (e) *[relocated to Section 21.A(4.1)(a) and revised by Ordinance No. 14-0605]*

(f)

(4) Nonresidential Districts – General

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(4.1) Fences Within Front Yards – All Districts

(a) No screening element or fence shall be erected, placed, or planted beyond the front building line of any permitted building in a residential or nonresidential district, either on a corner lot or interior lot, unless otherwise allowed by this Section 21.A(4.1), or as may otherwise be allowed as a zoning variance granted by the zoning board of adjustment. *[relocated and revised by Ordinance No. 14-0605]*

(b) Front Yard Fences in Residential Districts (SF1, SF2 and MH)

1. Fences may be placed in the front yard building setback, provided that all of the following criteria are met:

a. Maximum height: 48” (measured at top of predominant fence element), plus up to an additional 4” for the posts only

b. Maximum opacity: 50%

c. Allowed materials:

(i) ornamental metal (with a “wrought iron” look; posts set at least 18” deep in concrete at maximum spacing of 10’ on center; no chicken-wire, hog-wire, livestock fence panels, etc.)

(ii) chain link (only allowed if galvanized metal posts are set at least 24” deep in concrete, posts are at maximum spacing of 8 feet on-center, and fence is finished with both a “top rail” and a “smooth wire” along the bottom edge)

(iii) open wood pickets/lattice (natural or painted white, grey or brown)

(iv) open pickets/lattice made of PVC or recycled material (only if it looks like wood or ornamental ironwork)

(v) any of the above materials combined with masonry columns (maximum height of columns only: 52”)

d. Allowed placement: along front property lines (or anywhere within the front building setback area), provided that fence does not encroach into any public right-of-way, any easement, or any other adjacent property.

2. For lots having two or more front yards (such as “key corner” lots, through lots, etc.), all of the above restrictions shall apply for all areas defined as front yards unless a variance is granted by the Board of Adjustment for a residential lot that backs directly onto a street (i.e., as in the case of a “through” lot).
3. For properties that are larger than 5 acres within the SF1 zoning district, the height of a front yard fence can be up to 5’ if its purpose is to contain livestock. Such fences shall be constructed of materials that are appropriate for the containment of livestock. For properties that are larger than one acre and smaller than 5 acres, livestock containment fences up to 5’ in height may be allowed if other residential properties within 100’ along the same side street frontage have livestock fencing.
4. For properties that are larger than 5 acres within the SF1 zoning district, an electric fence that is intended to contain livestock may be incorporated into and attached to the fence supports/posts, and does not have to be placed at least 24” inside of the fence. All other regulations pertaining to electric fences shall apply.

(c) Front Yard Fences in Nonresidential and Multi-Family Districts (MF1, O, C1, C2, I1 and I2)

1. Fences may be placed in the front yard building setback for the following uses only:
 - a. Multi-family (apartment) complexes;
 - b. Townhome (single-family attached) complexes;
 - c. Self-storage (mini-warehouse) facilities;
 - d. Church and school play yards;
 - e. Athletic fields;
 - f. Day/child care centers;
 - g. Any type of local, state or federal governmental facility.
2. Fences placed within the front yard building setback for the above-listed uses shall conform with all of the following criteria:
 - a. Maximum height: 8’ (measured at topmost fence element), plus up to an additional 4” for the posts only; 10’ maximum height is allowed in the I1 and I2 zoning districts only within side and rear yards (not within the front yard building setback)

b. Maximum opacity: 50%

c. Allowed materials:

- (i) ornamental metal (with a “wrought iron” look; posts set at least 24” deep in concrete at maximum spacing of 10’ on center; no chicken-wire, hog-wire, livestock fence panels, etc.)
- (ii) chain link fencing (only allowed if vinyl-coated, galvanized metal posts are set at least 30” deep in concrete, posts are at maximum spacing of 10 feet on-center, and fence is finished with both a “top rail” and a “smooth wire” along the bottom edge); in the I1 and I2 zoning districts only, no vinyl-coating shall be required, and chain link fencing shall only be allowed within side and rear yards (not within the front yard building setback)
- (iii) open wood pickets/lattice (natural or painted white, grey or brown)
- (iv) open pickets/lattice made of PVC or recycled material (only if it looks like wood or ornamental ironwork)
- (v) any of the above materials combined with masonry columns (maximum height of columns only: 8’6”, or 10’6” in the I1 and I2 zoning districts only within side and rear yards, not within the front yard building setback)

d. Allowed placement for the uses specified in subsection (c)1 above: along front property lines (or anywhere within the front building setback area), provided that fence does not encroach into any public right-of-way, any easement, or any other adjacent property.

[Section (4.1) in its entirety added by Ordinance No. 14-0605]

(5) Barbed Wire Fences

- (a) Barbed wire fences used in conjunction with bona fide, permitted agricultural activities in any district are permitted on properties that are 5 acres and larger, but are expressly prohibited unless otherwise provided in this Ordinance or as specifically provided below. *[revised by Ordinance No. 14-0605]*

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(6) Landscaping Requirements in C1, C2, I1, and I2 Districts

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SECTION 2. That the recitals are true and correct and are incorporated herein by this reference.

SECTION 3. That all provisions of the ordinances of the City of Wilmer in conflict with the provisions of this ordinance are hereby repealed and all other provisions of the ordinances of the City of Wilmer not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and by then-applicable City ordinances that were in effect when such offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof, other than the part so declared to be unconstitutional, illegal or invalid, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided by the Comprehensive Zoning Ordinance of the City of Wilmer, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 7. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and City Charter in such cases provide.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF WILMER, TEXAS ON THIS 5th DAY OF JUNE, 2014.

Approved:


Casey Burgess, Mayor

Attest:


Sheila Martin, City Secretary

Approved as to Form:

Michael Halla, City Attorney