

ORDINANCE NO. 8585

AN ORDINANCE OF THE CITY OF MARSHALL, MISSOURI, ESTABLISHING RULES AND REGULATIONS REGARDING THE CONSTRUCTION AND MAINTENANCE OF FENCES IN THE CITY.

WHEREAS, the City's Planning and Zoning Commission held a public meeting on January 12, 2021, to consider whether to adopt rules and regulations regarding the construction and maintenance of fences in the City.

WHEREAS, the Planning and Zoning Commission, at its meeting on January 12, 2021, recommended adoption of certain fencing rules and regulations by the City Council; and

WHEREAS, due notice of the City Council's public hearing to consider the request to adopt fencing rules and regulations was given as required by law; and

WHEREAS, the public hearing has been held and comments received by the City Council from the citizens of the community

NOW, THEREFORE, BE IT ORDAINED BY THE Council of the City of Marshall, Missouri as follows:

Section 1. The following Articles and Sections shall be added to the City of Marshall's Code of Ordinances:

ARTICLE I. – GENERAL STANDARDS

Sec. 00-1. - Title of Chapter;

This chapter shall be known as the Fence Ordinance of the City of Marshall and may be cited as such.

Sec. 00-2. – Intent, purpose, and scope of chapter.

- (a) This ordinance shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the construction and continued maintenance of fences within the City of Marshall.
- (b) The Fence Ordinance of the City of Marshall shall apply to all fences in all districts.
- (c) The regulations of this chapter are not intended to permit any violations of the zoning ordinance, property maintenance code or any other applicable ordinances and codes.

- (d) Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this ordinance and any other ordinance, the provisions of this ordinance shall apply. Where, in a specific case, different sections of this ordinance specify different requirements, the most restrictive shall govern.
- (e) Safeguards required by this ordinance under which a fence is constructed, altered or repaired shall be maintained in good repair.

Sec. 00-3. - Enforcement of chapter.

- (a) The Code Official is hereby authorized and directed to enforce the provisions of this ordinance. The Code Official shall have the authority to render interpretations of this ordinance and to adopt policies and procedures in order to clarify the application of its provisions, such interpretations, policies, and procedures shall be in compliance with the intent and purpose of this ordinance.
- (b) *Violations; penalty.* It shall be unlawful for any owner to construct, enlarge, repair, improve, use, occupy or maintain any fence, partial or whole, in the city, or cause such work to be done, contrary to or in violation of any of the provisions of this chapter, or rules or regulations promulgated under this chapter. Failure to comply may result in a criminal complaint being filed against the violator, in the City of Marshall and they may be issued a summons to appear in municipal court in accordance with the City of Marshall Code of Ordinances which states that any applicant, person, firm, corporation or other entity violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each day such violation is committed, and shall be punishable as such hereunder.
- (c) *Inspections.* The Code Official shall make all required inspections or shall accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Code Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.
- (d) *Application for appeal.* Any person directly affected by a decision of the Code Official or a notice or order issued under this ordinance shall have the right to appeal to the Board of Building Code Enforcement, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this ordinance or the rules legally adopted thereunder have been incorrectly interpreted, or the provisions of this ordinance do not fully apply.

- (e) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Code Official has reasonable cause to believe that there exists any condition which makes a fence unsafe, dangerous or hazardous or there exists a violation of this chapter, the Code Official may enter upon the premises at all reasonable times to inspect or to perform any duty imposed upon the Code Official, provided that the Code Official shall first request entry to inspect any area not properly open to the Code Official.

Sec. 00-4. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fence means an enclosure, wall or partition, a barrier, railing, or other upright structure enclosing an area of ground to mark a boundary, control access, or prevent escape, constructed of chain link, split rail, wood, wire, plastic or vinyl, masonry, brick, stone, cinder block, ornamental, galvanized, or wrought iron or other building material which encloses or divides a lot or parcel of land. (fabricated primarily as fencing materials constructed in accordance with the manufacturer's instructions).

Types of fences shall include, but not be limited to: Wood, Vinyl, Wrought Iron, Aluminum, Chain Link, Picket, Composite, Utility, Garden, Privacy, Split Rail, and Security.

Owner means any person, employee, firm or corporation, partnership, association, organization or governmental agency properly regulated by the city who, alone or jointly or severally with others:

- (1) Shall have legal title to any structure, parcel, or part thereof with or without actual possession thereof; or
- (2) Shall have charge, care or control of any structure, parcel, or part thereof, as tenant, agent, possessor, or personal representative of the person having legal title to the structure, parcel, or part thereof.

Contractor means a person or company that builds, designs, installs, or makes fences.

Secs. 00-5—00-9. - Reserved.

ARTICLE II – CONSTRUCTION AND LOCATION

Sec. 00-10. - Fences.

1. Construction:

- (a) All fences shall be constructed with a finished surface facing outward from the property.
Posts and support beams shall be on the inside of the finished surface.
- (b) All fences shall be installed according to designer's or manufacturer's instructions or recommendations.
- (c) Wood fences shall be constructed with pressure treated materials.
(shall bear the quality mark of an approved inspection agency.)
- (d) All chain link or wire fencing shall have an approved top rail.

2. Location:

- a. No fence shall be constructed within the sight distance triangle.
- b. Fences are not permitted within a platted or recorded easement.
(Unless the easement allows the building of a fence over or across it.)
- c. No fence shall be constructed on a corner lot without prior approval from the Code Official and determination of the sight triangle.
- d. No fence shall be installed or maintained within any drainage way, designated flood zone, detention facility, or engineered swale which will create ponding on adjacent property, divert water onto the adjoining property, or impede drainage.
- e. Fences, generally. No fence over six feet high shall be erected on a residential lot, provided that this height restriction is further limited in subsections (b), (c), (d) and (e) of this section.
- f. *Front Yard Fence Height.* No fence in the front yard of a residential lot may be over 42 inches high. For purposes of this subsection, front yard is defined as the open space on the same lot with a building used as a residence, between the front wall of the building and the line of that wall extended, the side property lines of the lot, and the front property line of the lot nearest the street on which the building fronts.
- g. *Front Yard Fences on Vacant Lots.* No fence in the front yard of a vacant residential lot may be over 42 inches high. For purposes of this subsection, the front yard is defined as the open space between the platted or established front building

line, the side property lines of the lot, and the front property line of the lot nearest the street. The depth of a front yard of any vacant residential lot shall not be less than the least depth of the front yard of any existing improved residential property on the same side of the street within the same block.

h. *Fences on Corner Lots.* Where lots have double frontage, the required height (42 inches) shall be provided on both streets. For purposes of this subsection, side yard is defined as the open space on the same lot with a building used as a residence, situated between the side wall of the building or structure and the side property line of the lot nearest the street and extending through from the front yard to the rear yard. For purposes of this subsection, the rear yard is defined as the open space on the same lot with a building used as a residence between the rear line of the building and that line extended, the side property lines of the lot and the rear property line of the lot.

3. *Applicability.* The requirements of this section shall not apply to walls of buildings, portions of retaining walls below grade on one or both sides, or to any fence or wall constructed prior to the effective date of this ordinance. Any fence legally erected prior to the effective date of this ordinance, and not in compliance with the provisions of this section, shall be considered a nonconforming structure. Repairs to a nonconforming structure shall be made in compliance with applicable city ordinances including this chapter.

Sec. 00-11. – SPECIAL EXCEPTIONS.

(a) The Planning and Zoning Commission is hereby authorized to grant special exceptions to the requirements set forth in this ordinance.

(b) Special exceptions may be granted by the Commission if it is demonstrated that:

- 1) There is good and sufficient cause to grant the exception commensurate with the degree and nature of the exception requested;
- 2) The grant of a special exception will not adversely affect the appearance of the neighborhood or adjacent properties; and
- 3) The wall or fence is compatible with the existing residence/building in terms of materials and design.

(c) Upon consideration of the factors set forth in subsection (b) of this section, the Commission may attach such conditions to the granting of the special exception as it deems necessary.

- (d) The Planning and Zoning Commission is hereby authorized to establish rules and regulations for the method of requesting special exceptions, and such other matters it deems appropriate.
- (e) The filing fee for requesting of a special exception shall be \$25.00.
- (f) A simple majority of the Commission shall be required to approve any special exception.
- (g) The requirements as to public hearing and notice shall not apply to this section; provided, however, that all adjacent or contiguous property owners to the subject property shall be sent mailed notice 13 days in advance of any meeting before the Commission requesting a special exception to Section 00-10. The notice shall set forth the general purpose of the hearing and the time and place thereof. The names of property owners shall be determined as the owners of record according to the records of the county assessor.
- (h) Any person or persons jointly or severally aggrieved by any decision of the Commission or any office, department, board or bureau of the City may present to the Circuit Court of the county in which the property is situated a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition shall be presented to the court within 30 days of the date of the decision of the Commission.

Sec. 00-12. - PROHIBITED FENCES.

The following are hereby declared prohibited:

(a) *Barbed wire fences.*

- 1) *Residential zones.* Any barbed wire fence, or other thing dangerous and liable to snag, tear, cut or otherwise injure anyone coming in contact therewith.
 - 2) *Agricultural zones.* Any barbed wire fence, or other thing dangerous and liable to snag, tear, cut or otherwise injure anyone coming in contact therewith and located within five feet of any surfaced public street, public right-of-way or sidewalk.
 - 3) *Commercial and Industrial zones.* Any barbed wire fence located less than 6 feet above grade.
- (b) *Electric fences.* Any fence containing uninsulated electric conductors that may be exposed to human contact anywhere within the city, except that electric fences located in agricultural and commercial or heavy industrial zones as designated

shall be marked in compliance with (1) The marking shall adequately warn of the hazard using effective words and/or colors and/or symbols. Informational Note: ANSI Z535.4-2011, Product Safety Signs and Labels, provides guidelines for suitable font sizes, words, colors, symbols, and location requirements for labels. (2) The label shall be permanently affixed to the equipment or wiring method and shall not be hand written. Exception to (2): Portions of labels or markings that are variable, or that could be subject to changes, shall be permitted to be hand written and shall be legible. (3) The label shall be of sufficient durability to withstand the environment involved.

- (c) *Pallet fences.* Any fence containing a pallet. A pallet also called a skid, is a flat transport structure, which supports goods in a stable fashion while being lifted by a forklift, a pallet jack, a front loader, a jacking device, or an erect crane. A pallet is the structural foundation of a unit load which allows handling and storage efficiencies.

Sec. 00-13 MATERIALS.

- (a) *Privacy Fences.*

Materials allowed for construction of a privacy fence include wood, vinyl, composite, or similar material designed for fencing material.

- (b) *Decorative Fences.*

Materials allowed for construction of a decorative fence include wood, vinyl, galvanized or wrought iron, aluminum, composite, or similar materials.

- (c) *Alternative materials, methods and equipment.*

The provisions of this ordinance are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the Code Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this chapter, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this ordinance in quality, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not approved, the Code Official shall respond in writing within (10) working days, stating the reasons the alternative was not approved.

Sec. 00-14 APPLICATION, PERMIT AND FEES.

Application and plans must contain information regarding the height, design, material, special features if any, and the manner in which the proposed fence will relate to the structure to which it is attached and to adjacent properties.

Any owner or authorized agent who intends to construct, enlarge, alter, or move, any fence, shall first make application to the Code Official and obtain the required permit.

The Cost for a Fence Permit is \$15.00 (this includes application and inspection fees).

Section 2. If any provision of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable then all remaining provisions and portions of this ordinance shall remain in force and effect.

Section 3. That this ordinance shall be in full force and effect from and after its passage and approval.

PASSED by the Council of the City of Marshall, Missouri, this 1st day of March 2021.

Julie M. Schweetz
President

APPROVED by the Mayor this 1st day of March 2021.

Julie M. Schweetz
Mayor

FILED this 1st day of March 2021.

Julie A. Gauris
City Clerk