

ORDINANCE NO. ORD-2018-10044

AN ORDINANCE AMENDING SECTIONS 15-1 THROUGH 15-24 OF THE IRVING LAND DEVELOPMENT CODE, REGARDING FENCES; PROVIDING FOR PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION I. That Chapter 15 of the Irving Land Development Code is hereby amended by deleting the current “Chapter 15- Fences” in its entirety and replacing it with a new “Chapter 15- Fences” to read as follows:

Chapter 15. Fences

Sec. 15-1. - Definitions.

For the purposes of this chapter, the following words and phrases will have the meanings respectively ascribed to them by this section:

Approved fence materials means materials normally manufactured for, used as, and recognized as, fencing materials such as: wrought iron or other decorative metals, fired masonry, concrete, stone, chain link, metal tubing, wood planks, and vinyl or fiberglass composite manufactured specifically as fencing materials. Fence materials must also be materials approved for exterior use and that are weather and decay-resistant.

City means the City of Irving.

Code means the Code of Civil and Criminal Ordinances of the City of Irving, Texas.

Corner lot means a lot situated at the junction of two (2) or more streets.

Dilapidated fence means a fence which is decayed, deteriorated, or fallen into partial ruin.

Director means the Director of Inspections or his or her designee.

Director of public works means the City Engineer or his or her designee.

Fence means any wall or structure more than thirty (30) inches in height used to enclose or screen a portion of a lot or parcel.

Fence height means the maximum distance measured from the finished grade at any point eighteen (18) inches or less from either side of the fence. See Illustration 5

Fence structure means any part of a fence including the base, footings, supporting columns, braces, structural members, or any other of its appendages.

Front yard –refer to City of Irving Zoning Ordinance 1144 Section 52-75 – “Definitions”.

Interior lot means a lot situated in a block with frontage on only one (1) street, and specifically not a

corner lot. See Illustration 1

Mechanical equipment screening wall or mechanical equipment screening fence means a wall, fence, or architectural extension that may be attached to the structure, and that screens from view mechanical systems supporting or associated with the structure.

Person means any individual, corporation, business trust, estate trust, partnership, association, two (2) or more persons having a joint or common interest, or any other legal or commercial non-governmental entity.

Public right-of-way means a strip of land which is used as a roadbed for a street, alley or highway intended for use by the public at large, or land set aside as an easement or in fee, either by agreement or condemnation.

Rear yard –refer to City of Irving Zoning Ordinance 1144 Section 52-75 – “Definitions”.

Residential district means a district zoned for residential use in the City of Irving comprehensive zoning ordinance excluding multi-family.

Reverse frontage corner lot means a corner lot where the rear lot line is adjacent to a side lot line of an adjoining lot or across an alley from such side lot line. See Illustration 3

Setback means the distance from the property line or the right-of-way line of all streets adjacent to the premises on which a fence is located to the part of the fence closest to the property line or right-of-way line.

Side yard –refer to City of Irving Zoning Ordinance 1144 Section 52-75 – “Definitions”.

Street means a public street or a private street.

Vision or visibility triangle means the area of a triangle: a corner of which is formed by the intersection of two street right-of-way lines; two legs of which are created by measuring along the two intersecting right-of-way lines to points 35 feet from the point of intersection; and the third leg being the line connecting the non-intersecting ends of first two legs.

Sec. 15-2. Permit Application.

- (a) Any person making application for a fence permit shall complete a permit application and provide plans of the proposed fence.
- (b) An application for which no permit is issued within ninety (90) days following the date of submittal shall expire, and plans and other data submitted for review may be returned or destroyed.
- (c) A permit application may be extended for a period not to exceed ninety (90) days.
- (d) Construction documents and other data shall be submitted with each application for a permit. Where special conditions exist, the director is authorized to require additional construction documents to be prepared by a registered design professional.
- (e) Approved plans. When a permit is approved, the accompanying plans shall be stamped "Reviewed for Code Compliance". Such reviewed plans shall not be changed, modified or altered by any person

without authorization from the Director, and no work shall be done which is not in accordance with the approved plans.

Sec. 15-3. Permits.

- (a) It is unlawful for any person to construct, repair, replace, or cause to be constructed, repaired, or replaced, a fence or any part of a fence in the city without first obtaining a fence permit.
- (b) The fee will be waived for permits for repairing, partially replacing, or constructing a new section of residential fence which complies with the requirements of this chapter and all other applicable laws, and that does not exceed fifty (50) linear feet.

Exception: Fence maintenance or repair such as the replacement of pickets, rails, or posts not constituting entire fence sections is exempt from both permit and fee.

- (c) Expiration. Every permit issued shall become invalid unless the work authorized by such permit is commenced within ninety (90) days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of ninety (90) days after the time the work is commenced. The director may extend the time for action by the applicant for a period not exceeding ninety (90) days.
- (d) Suspension or revocation. The director may, in writing, suspend or revoke a permit issued under the provisions of this chapter when the permit was issued in error, on the basis of incorrect information, or in violation of any applicable law.
- (e) Validity of permit. The issuance of a permit or approval of plans does not grant authority to violate any of the provisions of this chapter or of any other city ordinance.

Sec. 15-4. Fees.

For fence permit related fees, refer to the Inspections Department fee schedule in Section 8B-3 of Irving's Land Development Code.

Sec. 15-5. Inspections.

A fence permit applicant shall make all construction or work for which a permit is required accessible and exposed for inspection until approved. An approved inspection is not an approval of a violation of the provisions of this chapter or of other city ordinances. Inspections presuming to give authority to violate or cancel the provisions of this chapter or of other city ordinances are not valid. When a fence is adjacent to public property, the director may require the applicant to submit a survey of the lot, showing the final fence location.

Sec. 15-6. Fence construction and materials.

Fences shall be constructed only of approved materials and construction methods and in accordance with Appendix B – Fence Design Guidelines.

(a) Design and construction.

- (1) A gate or other opening in the fence of at least three (3) feet in width is required.
- (2) Any masonry fence exceeding four (4) feet in height shall be installed in compliance with a design submitted by a registered engineer or registered architect.
- (3) A person constructing a masonry fence (including concrete block) shall make the exterior surfaces free from sharp projections.
- (4) Fences shall not exceed twenty-four (24) inches in thickness. Cavities or spaces within a wall or fence shall not be used for the support, storage, shelter, or enclosure of animals or personal property.
- (5) A column, pillar, post, or other supporting element of a fence shall not exceed twenty-four (24) inches in width.
- (6) A person constructing or maintaining a fence or wall enclosure around a swimming pool, hot-tub, or spa shall comply with the minimum requirements of the building code and Chapter 36 "Public Swimming Pools and Spas" of Irving's Code of Civil and Criminal Ordinances.
- (7) Metal posts shall be used when constructing new or replacement wood fences. Wood posts may be used for replacement fences when reinforced with intermediate metal fence posts.
- (8) The director may require the applicant to provide the manufacturer's standards to establish the intended use of a proposed fencing material.

(b) Acceptable Fence Materials.

- (1) Fences shall be of rigid construction of approved fence materials and shall be able to support fencing materials.
- (2) Material used for metal fences shall be anodized, painted, or powder-coated at the factory.
- (3) Fences constructed with boards shall be of species such as cedar, redwood, or other durable decay-resistant composition or be sealed with an approved preservative treatment.
- (4) Any stain, pigment, paint, or other surface treatment to a wooden fence shall be materials and finishes specifically manufactured for the purpose of preserving a specific wooden material.

(c) Prohibited fence materials.

1. Rope; string; wire products including but not limited to chicken wire, hog wire, wire fabric, and similar welded or woven wire fabrics; barbs; broken glass; chain; netting; unapproved corrugated metal panels; galvanized sheet metal; plywood; fiberglass panels; or other materials that are not manufactured specifically as fencing materials.

2. Damaged or unsafe materials; or used materials unless approved by the director.
3. Materials that cause a fence to be electrically charged in any manner.
4. Slats of any material woven through a chain link fence, including but not limited to metal, fiberglass, or bamboo.
5. Metal panels on a residentially-zoned property unless in compliance with Appendix B - Fence Design Guidelines of this chapter.
6. A fence that has in it or on it barbs, broken glass, or anything reasonably capable of causing harm to persons or animals.

Exception: Wire installed in accordance with Section 15-7.

7. Mesh screening material attached to a fence on property used for residential purposes.

Sec. 15-7. Use of barbed, concertina or razor wire.

- (a) It is unlawful for any person to erect, maintain, or permit a fence that has barbed, concertina, or razor wire in or on it.
- (b) It is an affirmative defense to this section that:

1. The fence is in a non-residentially zoned district; and
2. The barbed, concertina, or razor wire is on a portion of the fence that is more than six (6) feet above the grade, and is not over:
 1. Public right-of-way, or
 2. Private property of a person who is not the owner of the fence; and
3. The barbed, concertina, or razor wire portion of the fence is a maximum height of two (2) feet vertically above the main portion the fence; and
4. The overall fence is no higher than ten (10) feet; and
5. The barbed, concertina, or razor wire portion consists of individual strands of wire placed parallel to the ground and not placed in a coiled or wrapped position; and
6. If the fence is next to property that is residentially zoned, the barbed, concertina, or razor wire is installed on an arm extending inward. See Illustrations 6 and 7

Sec. 15-8 Fence Locations.

Fences may be located anywhere on a property except as modified by this section, other provisions of this chapter or other city ordinances.

- (a) No person shall construct a fence, guy wire, brace or any fence post upon or protruding over public property.
- (b) A fence shall not interfere with utility lines or normal drainage.
- (c) Permission from the City Engineer is required to build a masonry fence or any fence supported by piers within a utility easement.
- (d) Permission to build a fence upon a utility easement does not remove the obligation of the owner to remove the fence at the owner's expense upon demand of the utility company.
- (e) It is unlawful to erect, maintain, suffer, or permit any fence in such a manner as to create a traffic hazard. The City's Director of Traffic and Transportation may approve a fence location within a platted sight easement if the placement of the fence will not create a traffic hazard.
- (f) A fence shall not be placed within a required landscaped interior parkway.
- (g) Fence location or placement on a property does not remove, change, or impact the obligation of the owner to maintain the entirety of the property in compliance with other City ordinances.

Sec. 15-9. –Fence Height—All properties.

- (a) Vertical support posts and gates shall extend no more than six (6) inches above the top of the fence.
- (b) When the fence is located in a vision triangle of a corner lot, the fence:
 - 1. Shall have a maximum height of thirty (30) inches and
 - 2. Shall allow at least fifty (50) percent through visibility

Sec. 15-10. Fence Height-Front yards.

- a) It is unlawful for any person to construct, erect, maintain, suffer or permit a fence in any front yard which:
 - 1) exceeds a height of forty-eight (48) inches, or
 - 2) allows less than fifty (50) percent through-visibility
- b) It is an affirmative defense to this section that the fence is located in a zoning district that designates outside storage as an allowed principal or accessory use, and
 - 1. The fence does not exceed ten (10) feet in height; and
 - 2. The fence is not located within:
 - a. Ten (10) feet of any street right-of-way line; or

- b. A required landscaped interior parkway

Sec. 15-11. –Fence Height—Rear and side yards.

It is unlawful for any person to construct, erect, maintain, suffer, or permit a fence in any rear or side yard which exceeds:

- (a) Eight (8) feet in residential zoning district or
- (b) Ten (10) feet in a non-residential zoning district.

Sec. 15-12. –Fence Height-Reverse frontage lots.

(a) It is unlawful for any person to construct, maintain, suffer or permit a fence within a side yard area that is adjacent to:

- 1. a street right-of-way line and
- 2. the front yard of an adjacent property at a distance closer than fifteen (15) feet from the side property line.

(b) It is an affirmative defense to this section that the fence is located in a non-residential zoning district, and the fence is not located within:

- 1. Ten (10) feet of the side property line that is adjacent to a street; or
- 2. A required landscaped interior parkway

Sec. 15-13. Mechanical equipment screening for nonresidential zoning.

(a) A screening wall or fence, shall not exceed sixteen (16) feet in height and shall not be more than two (2) feet taller than the equipment being screened.

(b) Building wing walls that meet the following requirements may exceed the restrictions of section (a):

- 1. Are connected to or terminate at the building on at least one end;
- 2. Are located in accordance with the required zoning district setbacks for the principal structure;
- 3. Do not exceed the allowed zoning district height for the principal structure; and
- 4. Are constructed of the same materials as the principal structure.

(c) A screening wall or fence exceeding ten (10) feet in height shall have a minimum setback of twenty (20) feet from the nearest property line.

Sec. 15-14. Maintenance and standard of fences.

(a) Fences, including those existing at the time of adoption of this chapter shall be maintained at all times in sound structural condition and in a state of good repair. All braces, bolts, nails, supporting

frame and fastenings shall be kept free from deterioration, termite infestation, rot, rust, or loosening, and be able to withstand at all times the wind pressure for which they were designed.

- (b) A fence more than four (4) feet in height shall not be out of vertical alignment more than one (1) foot from the vertical measured at the top of the fence. A fence four (4) feet or less in height shall not be out of vertical alignment more than six (6) inches from the vertical measured at the top of the fence.
- (c) Broken, damaged, or missing parts of a fence shall be replaced with the same material, or material with comparable composition, color, size, shape and quality of the original fence to which the repair is being made.
- (d) Painted fence supports, gates, structural members and exterior surfaces shall be regularly painted or sealed to prevent rusting, peeling, or blistering surfaces.
- (f) Fences that were constructed prior to the adoption of this chapter with materials prohibited by this chapter may be maintained as long as no part of the fence becomes unsafe, dilapidated, or a public nuisance. Fences that become unsafe, dilapidated, or a public nuisance must be removed or repaired with materials approved by this chapter. If more than fifty percent of the length of the fence between corner posts is replaced in any ninety (90) day time period, the entire fence between the corner posts shall be replaced.

Sec. 15-15. Relocation or construction of private fences related to public improvement projects.

- (a) Fences relocated or constructed due to construction of a public improvement project (e.g. road widening project) may be located as close as practical on or inside the new property line and must comply with the installation standards required by the city engineer. This section does not permit any obstruction which may create a traffic or other safety hazard. The owner of the fence shall comply with all other requirements of this chapter.
- (b) A permit is not required for the relocation or construction of fences relocated or constructed to accommodate a public improvement project, unless the relocation or construction is performed by the property owner or his or her representative.

Sec. 15-16. Conflicts between this chapter and zoning regulations.

Fencing provisions addressed through any property-specific zoning ordinance, Overlay District zoning, Site Plan District zoning, or Planned Unit Development (PUD) Development Plan shall be exempt from the provisions of this chapter. Any portion of the property not so addressed shall be subject to the provisions of this chapter.

Sec. 15-17. - Variance procedures.

- (a) A person may obtain a variance to this chapter only through the special fence project plan procedure outlined in the comprehensive zoning ordinance, through site plan zoning, or through a development plan.
- (b) A variance to the provisions of this chapter may be granted in the following areas:
 - (1) Height regulations;
 - (2) Area regulations;
 - (3) Setback regulations; and/ or
 - (4) Material regulations.
- (c) A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss. In order to grant a variance to the provisions of this chapter it must be determined that:
 - (1) The requested variance does not violate the intent of this chapter;
 - (2) The requested variance will not adversely affect surrounding properties;
 - (3) The requested variance will not adversely affect public safety; and
 - (4) Special conditions exist which are unique to this applicant or property.

Sec. 15-18. - Penalties.

Violation of this chapter shall be a class C misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00). Each day any violation of this chapter continues shall constitute a separate offense.

Appendix A – Fence Ordinance Illustrations

Purpose

These illustrations are intended to provide clarity to the text of the ordinance. If there is a conflict between these illustrations and the requirements included in Chapter 15, these illustrations take precedence.

The diagram illustrates a residential lot layout. At the top is a **STREET** with a **PARKWAY** below it. The lot is bounded by a **FRONT** line. A **RESIDENCE** is shown as a hatched rectangle. To the left and right of the residence are **ADJACENT LOT** areas. A **BLDG. LINE** is indicated on the left side. A **4' FENCE W/ 50% VISIBILITY ALLOWED** is shown along the front boundary. An **8' FENCE ALLOWED** is shown along the left and right boundaries. A **25'** dimension is marked on the left side. A north arrow is located in the bottom right corner.

Illustration 2: Corner Lot

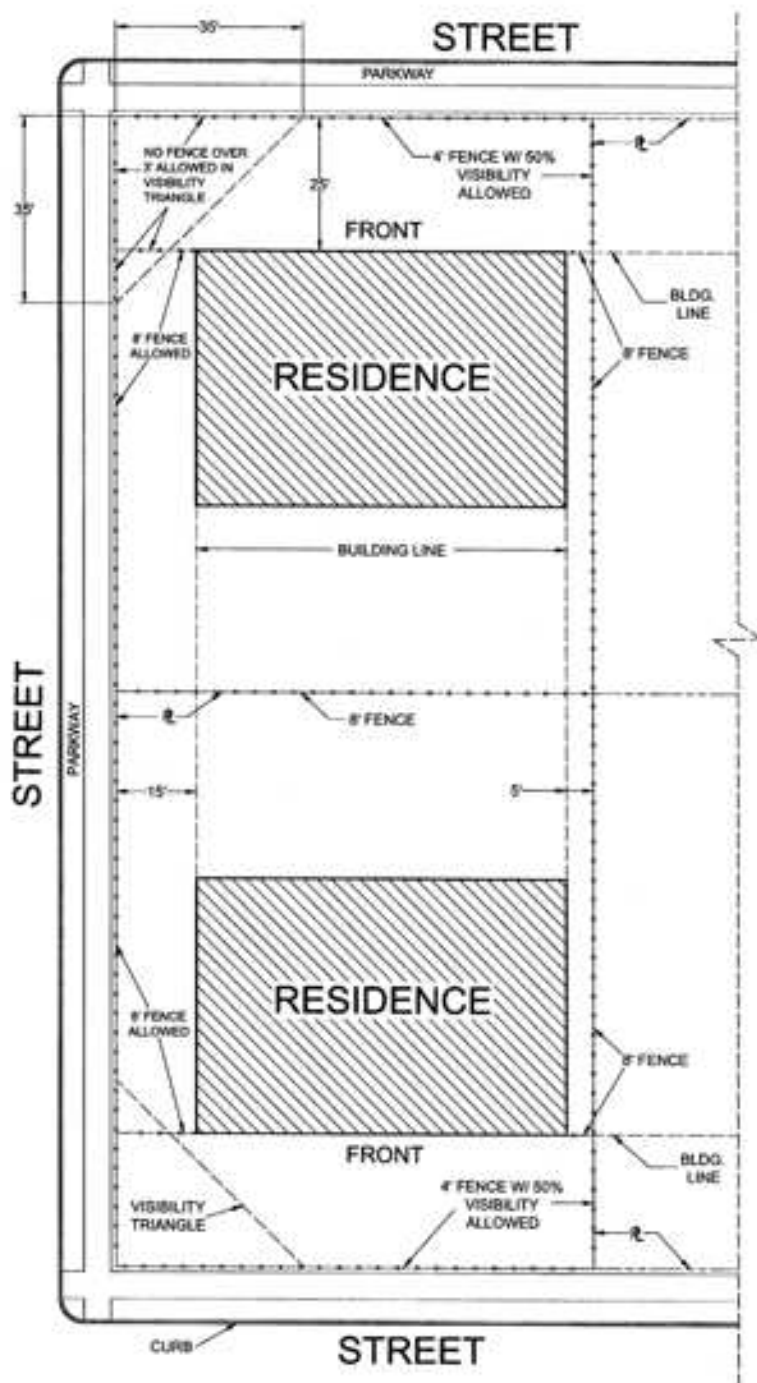


Illustration 3: Reverse Front Lot

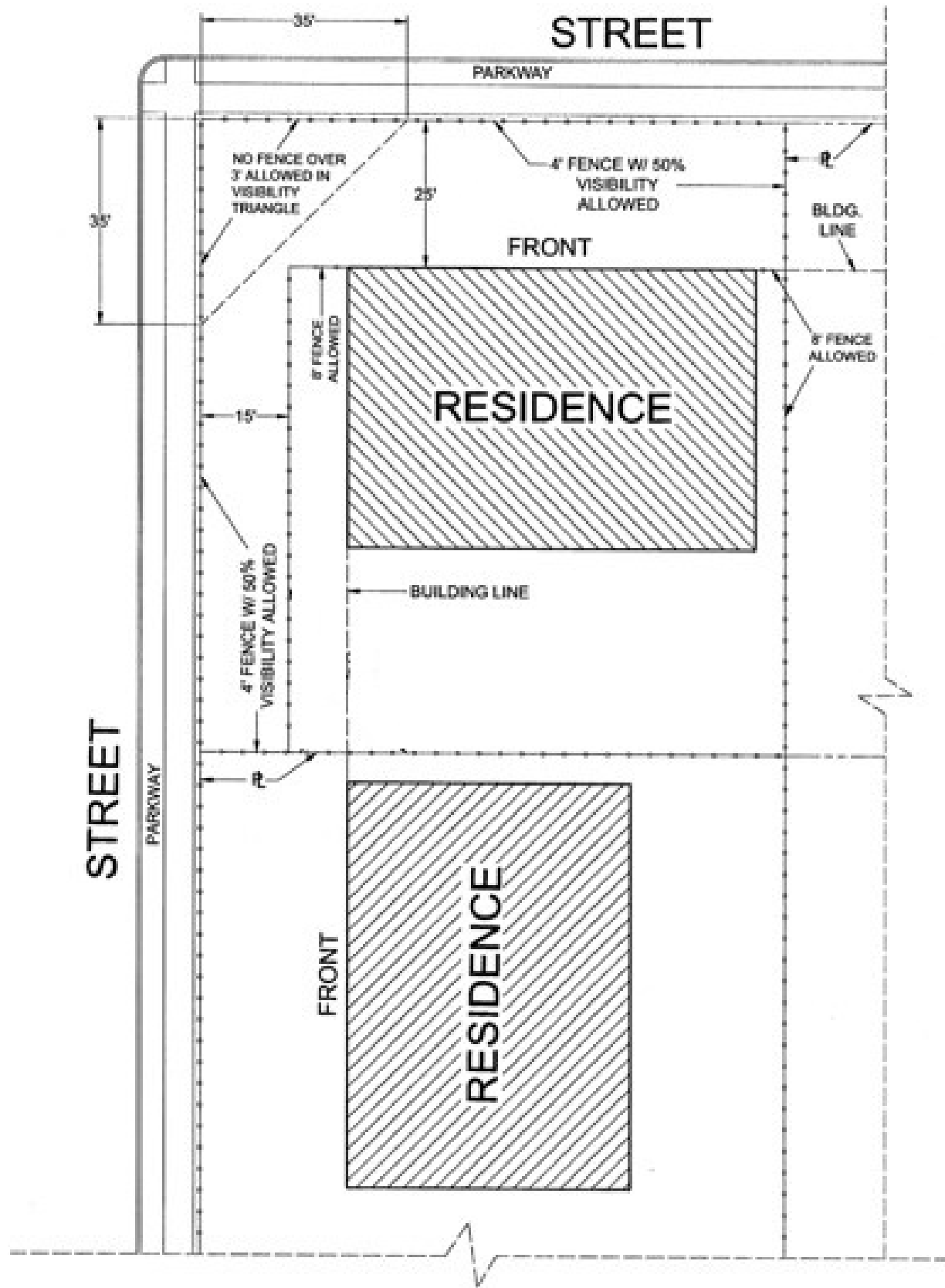


Illustration 4: Fence Height Restrictions

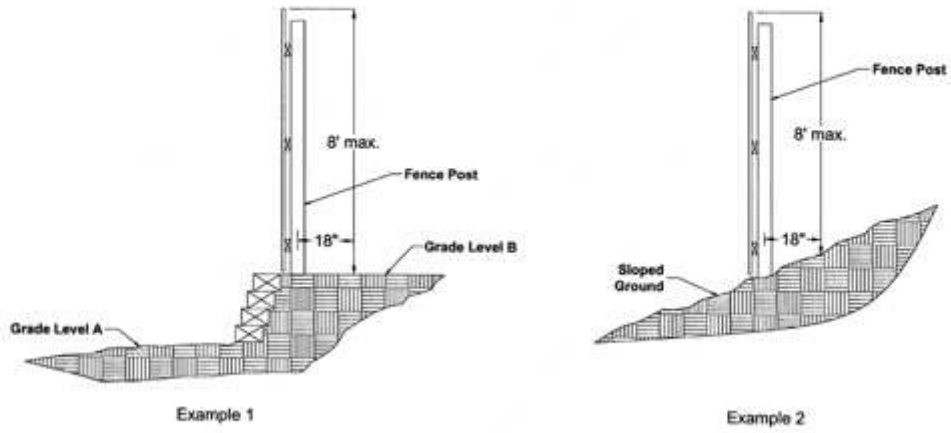


Illustration 5: Non-residential Fences Supporting Barbed, Razor, or Concertina Wire

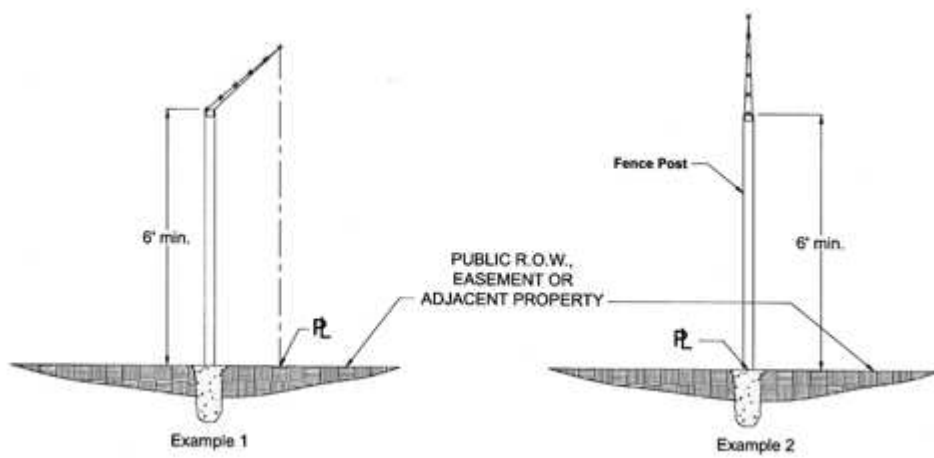
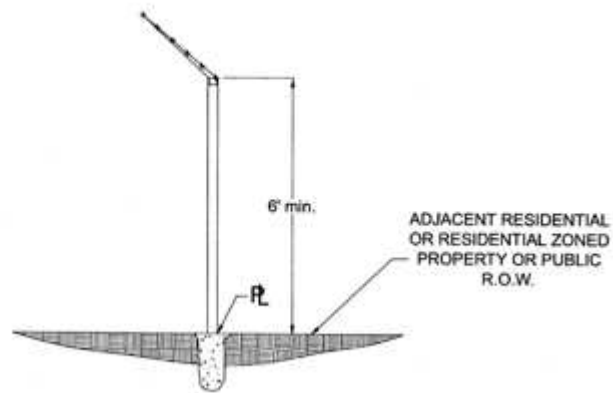


Illustration 6: Fences Adjacent to Residential Supporting Barbed, Razor, or Concertina Wire



Appendix B – Fence Design Guidelines

Purpose

These illustrations are intended to provide clarity to the text of the ordinance. If there is a conflict between these illustrations and the requirements included in Chapter 15, these illustrations take precedence.

Metal Fence Types Allowed in Single-Family Residential Zoning Districts



Picture used with the permission of Steel Partners Las Vegas, Nevada



Picture used with the permission of Berridge Manufacturing San Antonio, Texas

Metal Fence Provisions in Commercial Zoning Districts

Edge and Corner Trim Required



Picture used with the permission of Lightfoot Construction Irving, Texas

SECTION II. That terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause, or phrase of this ordinance should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance.

SECTION III. That it is the intent of the Irving City Council that pending prosecutions, brought under the previous code, which this ordinance replaces, should continue under the terms and penalties of said code and be saved from dismissal as if said prior ordinances had not been repealed.

SECTION IV. That this ordinance shall become effective on May 7, 2018.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,
on April 5, 2018.

RICHARD H. STOPFER
MAYOR

ATTEST:

Shanae Jennings
City Secretary

APPROVED AS TO FORM:

Kuruvilla Oommen
City Attorney