

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF LEXINGTON, NEBRASKA, AMENDING CHAPTER 6 OF THE CITY CODE BY ADDING PROVISIONS FOR FENCES; AMENDING CHAPTER 24 OF THE CITY CODE BY ADDING PROVISIONS FOR VISION CLEARANCE; TO REPEAL ORIGINAL CHAPTER 9, AND ALL OTHER ORDINANCES OR SECTIONS OF ORDINANCES IN CONFLICT HEREWITH, AND TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM.**

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA AS FOLLOWS:

**Section 1.** That Chapter 6 of the Lexington City Code is hereby amended to add the following provisions relating to Fences:

Article V. Fences

Sec. 6-35 Building Permits.<sup>1</sup>

No fence shall be erected, constructed or moved until a building permit shall have been procured from the Building Inspector. Application for a fence building permit shall include a sketch of the lot, the location of any buildings on the lot, the proposed fence and sufficient dimensions to locate these features accurately. Property owners are responsible to locate property pins prior to any permit being issued. A fee shall be paid by the applicant in an amount set by Resolution of the Lexington City Council.

(Ord. No. 1943, Ord. No. 2149)

Sec. 6-36 Encroachment into right-of-way

No person shall construct, place, or maintain a fence, wall or hedge which encroaches into the public street right-of-way without first obtaining a permit in the form of an Easement issued by the Lexington City Manager. Application for such Easement shall be filed with the City Building official, on a Building Permit Application, providing a site plan for the location of any proposed encroachment into the public street right-of-way.

- A. The building official shall collect in advance a permit fee plus the anticipated cost of recording of the Easement to be issued.
- B. An Easement shall be granted if the City Manager shall determine as follows:
  - 1. That the encroachment shall not be hazardous to or interfere with vehicle or pedestrian traffic on the street, alley, or sidewalk.
  - 2. That the encroachment shall comply with the vision requirements of Section 24-1.1.

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<sup>1</sup>As to building permits generally, see Secs. 6-3 to 6-5 of this Code.

3. That the encroachment will not interfere with the operation and maintenance of the public utilities located within the public street right-of-way.
4. That the encroachment will be subject to the express condition that said encroachment shall be removed upon thirty (30) days written notice that the area of the encroachment is necessary for public improvements or maintenance or repairs of such improvements, and that the property owner will indemnify, protect, and hold the City harmless from and against any claims and demands for damages arising from the construction or maintenance of the encroachment.
5. In the event that the City Manager refuses to grant the Easement, the application may be presented to the Lexington City Council for final determination. (Ord. No. 2000)

#### Sec.6-37 Definitions.

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

Fence. Any vertical structure, other than a building or plant material, which is for the purpose of obstructing visual observation or for the purpose of obstructing pedestrian, automotive or animal movement or for the purpose of beautification, and which is attached to the ground or to a building, but excluding retaining walls.

Open Fence. A fence having more than sixty (60%) percent of its area perforated, so as to not to obstruct visual observation.

Privacy Fence. A fence having less than sixty (60%) percent of its area perforated, so as to obstruct visual observation.

#### Sec. 6-38 General Requirements

- A. All fences shall comply with the vision requirements of Section 24-1.1.
- B. All fences shall be constructed of materials which are structurally sound, including Concrete, Galvanized chain link, Masonry, Vinyl, Wrought iron, or Wood not exceeding six inches (6”) in width.
- C. In areas where the primary use is residential, fences shall comply with the following requirements:
  - 1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding four (4) feet in height.

- 2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six (6) feet in height.

D. In areas where the primary use is Commercial, fences shall comply with the following requirements:

- 1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding six (6) feet in height.
- 2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six (6) feet in height.

E. In areas where the primary use is industrial no fence shall be erected, constructed or moved except for the following types:

- 1) In any yard which faces a public street, and from the public street right-of-way to the front line of the main structure, only open fences shall be allowed, and not exceeding six (6) feet in height.
- 2) In any other yard, a privacy or open fence shall be allowed, and not exceeding six (6) feet in height.

#### Sec. 6-39 Appeals to Board of Adjustment.<sup>2</sup>

Appeals from any requirement of this chapter may be made by any person to the Board of Adjustment of the City and the Board shall have the authority to waive any such requirement in the case of unnecessary or undue hardship.

**Section 2.** Chapter 24 of the Lexington City Code is hereby amended to add the following provisions relating to Vision Clearance:

#### Sec. 24-1.1 Vision Clearance

No shrubs, trees, bushes or other plant material shall be planted, maintained, allowed to grow, and no structures shall be erected so as to hinder vision in the vicinity of an intersection of two streets, within a sight distance triangle bounded by the edges of the roadway or the curb on the two sides and a line diagonally across the corner lot meeting the edges of the roadway or the curb forty feet from their intersection at the corner. To hinder vision shall be taken to mean that the plant material has leaves, needles, branches or other foliage during any period of the year, and structures of any type as defined in the zoning regulations exist between levels two feet and eight feet above the crown of the street adjacent. Structures in zoning district C-2 shall be exempt from this regulation.

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<sup>2</sup>As to appeals to board of adjustment generally, see Sec. 28-65 of this Code.

**Section 3.** That original Chapter 9, together with all ordinances or sections of ordinances in conflict herewith are hereby repealed.

**Section 4.** That this Ordinance shall be published in pamphlet form and take effect as provided by law.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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President of the Council

Attest:

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City Clerk