

**ORDINANCE NO. 1543**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON,** relating to the Zoning Code and the regulation of fences in residential zones, adding new sections defining different fence types and amending DMMC 18.40.150 changing requirements for fence height and setbacks.

**WHEREAS,** the City of Des Moines currently prohibits residential property owners from installing any fence that is greater than 42 inches in height within the front 20 feet of their lot and within 10 feet of a side lot line adjacent to a street, and

**WHEREAS,** City staff has received complaints from single family home and condominium owners stating that the manner in which the City regulates fencing is not practical and causes hardships including the inability to not properly mark their property lines and provide privacy and screening for outside family recreational activities, and

**WHEREAS,** City staff researched how other cities regulate fencing and it was discovered that many cities had similar prescriptive requirements to the existing Des Moines Code, but some cities emphasized regulating fence height and location based on whether or not the fence was an open-type fence type or otherwise provided for safe sight distance for traffic safety purposes, and

**WHEREAS,** there is some concern that allowing taller and solid fences to extend to front and side property lines facing public streets may create a cavernous effect for the community, but it is believed that this would require a substantial number of property owners to design their fences in a continuous pattern that is highly unlikely, and

**WHEREAS,** providing increased flexibility to existing fence regulations allows property owners greater freedom to use their properties as they determine necessary without impacting the public welfare, and

**WHEREAS,** pursuant to DMMC 18.56.080, amendment of the zoning code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

**WHEREAS**, Type VI legislative decisions require Council action at a public hearing, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with law and a public hearing was held on June 28, 2012, and all persons wishing to be heard were heard, and

**WHEREAS**, the textual code amendments proposed by this Ordinance are exempt from the requirements of SEPA pursuant to WAC 197-11-800(19), and

**WHEREAS**, the textual code amendments proposed in this ordinance were provided to the Department of Commerce on May 9, 2012 as required by RCW 36.70A.106 and an expedited review was requested and granted pursuant to RCW 36.70A.106(3)(b), and

**WHEREAS**, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1.** A new section is added to chapter 18.04 DMMC to read as follows:

**18.04.277 Fence, fully view-obscuring.** "Fully view obscuring fence" means a continuous and substantially solid masonry or stone wall or a barrier composed of posts connected by boards, rails, panels, or wire that are spaced at regular or even intervals for the purpose of defining or enclosing space or separating parcels of land and that has an average of 80 percent or more solid surface that does not allow natural, open, air space to be visible and pass through and which open visible space is evenly distributed across its full length and height.

**Sec. 2.** A new section is added to chapter 18.04 DMMC to read as follows:

**18.04.279 Fence, partially view-obscuring.** "Partially view obscuring fence" means a continuous masonry or stone wall

or a barrier composed of posts connected by boards, rails, panels, or wire that are spaced at regular or even intervals for the purpose of defining or enclosing space or separating parcels of land and that has an average of less than 80 percent solid surface or other percentage specifically defined elsewhere in this Title, that does not allow natural, open air space to be visible and pass through and which open visible space is evenly distributed across its full length and height.

**Sec. 3.** DMMC 18.40.150 and section 1 of Ordinance No. 175 as amended by section 4 of Ordinance No. 1237 are each amended to read as follows:

**18.40.150 Location and height of wall, fence, or hedge.** In any residential zone a wall, fence, or hedge is permitted under the following conditions:

(1) Where a fence is installed directly on the ground, the height of the fence shall be the vertical distance from the top board, rail, or wire to the ground directly below the fence; where a masonry or stone wall is used as a fence, the height shall be the vertical distance from the top surface of the wall to the ground on the high side of the wall;

(2) A wall, fence, or hedge not more than 42 inches in height may be permitted on any part of a lot that is not otherwise restricted;

(3) On all residential lots either partially or fully view-obscuring walls, fences, or hedges not exceeding six feet in height shall be permitted on any lot line; except that any wall, fence, or hedge greater than 42 inches in height and located within the required front yard and side yard adjacent to a street shall be constructed of wrought iron, chain link, or similar materials that, as a whole, shall not be greater than 20 percent view obscuring or, if other materials are used that are greater than 20 percent view

obscuring, the property owner shall first obtain approval from the City traffic engineer to ensure that safe sight distance is maintained and a traffic hazard shall not be created;

(4) Where a retaining wall protecting a cut below the natural grade is located on the line separating lots or parcels, such retaining wall may be topped by a fence, wall, or hedge of the same height that would otherwise be permitted at the location if no retaining wall existed, and the top of the retaining wall shall be considered the bottom of the fence;

(5) Where a retaining wall contains a fill, the height of the retaining wall built to retain the fill shall be considered as contributing to the permissible height of a wall, fence, or hedge, and shall be measured from the ground on the low side; provided, that in any event a protective fence not more than 42 inches in height may be erected at the top of the retaining wall and any portion of such fence above the six-foot maximum height shall be no greater than 50% view obscuring;

(6) Electric fences shall not be permitted in any residential zone;

(7) No fence shall be located in any public right-of-way, unless a right-of-way permit is obtained from the City;

(8) Any fence exceeding a height of six feet, and any retaining wall exceeding a height of 48 inches shall require the property owner to obtain a building permit; the provisions and conditions of this section shall not apply to fences required by state law to surround and enclose public utility installations, or to chain link fences enclosing school grounds and public playgrounds.

**Sec. 2. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

**Sec. 3. Effective date.** This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 28th day of June, 2012 and signed in authentication thereof this 28th day of June, 2012.

  
MAYOR

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk

Published: July 3, 2012

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1543, Adopted June 28, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to the Zoning Code and the regulation of fences in residential zones, adds new sections defining different fence types and amends DMMC 18.40.150 changing requirements for fence height and setbacks.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC  
City Clerk

Published: July 3, 2012