

Article 8

Supplementary District Regulations

10. Fences & Walls: Except as otherwise provided in other codes and regulations for the City of Basehor, the following regulations shall apply to the construction of fences & walls:

10.1. Intent: It is the intent of these regulations to improve the safety of city sidewalks and streets through the maintenance of adequate visibility into and from private property and within the public right-of-way and to allow property owners to adequately screen their property without undue negative impact to abutting properties.

10.2. General Requirements

10.2.1: All fences and walls must be maintained in good and sound condition, free of damage, breaks or missing structural members.

10.2.2: Fences and walls shall not restrict surface drainage or be constructed to divert or channel storm water flow.

10.2.3: In no case shall any fence be located within a private or public drainage easement or drainage way, nor shall any fence be erected in any floodplain as designated by the City of Basehor or FEMA.

10.2.4: Except in the R-O (Suburban Residential Districts), only decorative fences and walls are allowed in the established front yard of a residence. Decorative fences shall be designed so that they are at least forty (40%) percent transparent such as split-rail, picket, wrought-iron, or similar and no taller than forty-two (42") inches in height. **Decorative fences shall not include chain link fencing.**

10.2.5: Accepted Construction and Materials: Fences or walls shall be limited, or similar, to one of the following types of construction: brick or stone walls or pillars, solid board, shadow box, basket weave and lattice, crossed, chain-link, wood stockade, split rail, wood rail, wrought iron, spaced picket fence, imitation vinyl or other similar decorative material as approved by the Building Official.

10.2.6: All fences shall be constructed with a finished surface facing outward from the property. The posts and support beams shall be on the inside or be designed as an integral part of the finished surface.

10.2.7: Retaining walls may be permitted where they are reasonably necessary due to the topography of the lot, where the wall is located at least two (2') feet from any street right-of-way; where the wall does not extend more than six (6") inches above the ground level of the land being maintained and where the retaining wall does not restrict or divert the natural flow of water.

10.2.8: Any fence or wall constructed prior to the adoption of these regulations which does not conform to these standards may be reconstructed, replaced and maintained at its present location resulting in a fence of the same size and material; provided, however, that the following standards shall be met:

10.2.8.1. Where fifty (50%) percent or more of the linear length of the entire existing fence is being reconstructed or replaced, such fence shall comply with the design standards listed below; and

10.2.8.2. No fence shall be replaced or reconstructed in a manner which obstructs the sight distance triangles as defined in Design Criteria for Street Improvements (Section N) of the Technical Spec Manual of the City of Basehor.

10.2.8.3. In no case shall any fence be relocated within a private or public drainage easement or drainage way, nor shall any fence be erected in any floodplain as designated by the City of Basehor or FEMA.

Whenever any fence or fence section changes with respect to location, size or material, then the result shall be a fence or fence section that is in full compliance with all requirements for location and design, except for changes in location required for compliance with the above stated section.

10.3. Height

10.3.1: Except in the R-O (Suburban Residential Districts), fences in the established front yard of a residence shall not exceed forty-two (42") inches in height and meet the guidelines for a decorative fence as stated above. Fences in side or rear yards shall not exceed six (6') feet in height.

10.3.2: Fence height shall mean the maximum vertical dimension from the top of the fence façade to the ground.

10.3.3: Fences erected upon school grounds; in public parks or playgrounds; or for public or private recreational purposes may be constructed to a greater height when approved as part of an overall site plan or special use permit.

10.4. Fence and Wall Setbacks

10.4.1: Front Fence Line: In all areas fences shall be no closer than thirty (30') feet to the back of the curb or shall not encroach beyond the building line setback.

10.4.2: Corner Lots: Fences along the street sides of a corner lot shall observe the following:

10.4.2.1. Decorative fences as defined in 10.2.4 above may be placed in accordance with the Front Fence Line requirements as stated in 10.4.1.

10.4.2.2. Fences taller than forty-two (42") inches or fences that are non-decorative in nature shall be located no closer to the side joint property line/road right-of-way line than the interior side yard setback for that zoning district.

10.4.2.3. *On homes directly facing any street corner, the fencing shall not pass the building line setbacks.*

10.4.3: *Side Fence Line: On interior lots, fences may be placed on the property line.*

10.4.4: *Rear Fence Line: A fence may be constructed on the rear property line unless the lot is a thru lot.*

10.4.5: *Thru Lot: Fences must observe a front fence line along the rear of the lot as defined in 10.4.1 Front Fence Line above.*

10.4.6: *Fences proposed within utility easements may be prohibited by the easement holder and nothing herein, or a permit issued hereunder, shall be construed as modifying such prohibition.*

10.4.7: *In no case shall a fence be allowed within the road right-of-way.*

10.4.8: *In no case shall any fence be located within a private or public drainage easement or drainage way, nor shall any fence be erected in any floodplain as designated by the City of Basehor or FEMA.*

10.5. Fence and Wall Safety

10.5.1: *At least one gate must be placed in the fence for access to an enclosed area. A pedestrian gate that is the only access to an enclosed area must be at least three (3') feet wide to allow for passage of emergency personnel and equipment.*

10.5.2: *No fence shall be constructed, which in the opinion of the Building Official or his/her representative, will constitute a traffic hazard or obstruct visibility within the 'sight triangle' as defined by these and other city regulations.*

10.5.3: *No fence shall be constructed in such a manner or be of such design as to be hazardous or dangerous to persons or animals. Security wire, such as razor ribbon, ribbon wire or any other wire deemed dangerous by the Building Official or his/her representative may not be used in any other manner or Zoning District.*

10.5.4: *Residential swimming pool enclosures are regulated by the International Residential Code, the adopted building codes for the City.*

10.5.5: *Barbed wire and/or electric livestock fencing is allowed for agricultural detention purposes in R-O (Suburban Residential Districts) zoning districts only.*

10.5.6: *Electronic pet fencing in residential areas may be allowed according to the Section 2-113 of the City of Basehor Municipal Code.*

10.6. Permit

10.6.1: *No type of fence shall be constructed or placed without first obtaining a valid building permit from the City Building Official.*

10.6.2: *A fence permit shall also be required whenever extending an existing fence; or when replacing, moving or repairing an existing fence by fifty (50%) percent or more.*

10.6.3: *Said permit shall require a plot plan drawn to scale, indicating the location of the proposed fence, the construction materials to be used in the proposed fence, all property lines, easements, setbacks and existing buildings.*

10.6.4: *Fences used for agricultural purposes do not need a fence permit, but must still meet the stated regulations. Agricultural purposes shall include land zoned as R-O (Suburban Residential District) and used for the raising of crops, horticulture, animals and poultry husbandry.*

10.6.5: *Said fence permit fee shall be twenty-five (\$25.00) dollars, paid at the time of application approval.*

10.7. Variance

10.7.1: *These regulations or the decision of the Building Official may be appealed to the Board of Zoning Appeals. In reviewing the appeal, the Board of Zoning Appeals shall consider the following criteria:*

- 10.7.1.1.** *purpose and intent of the regulations;*
- 10.7.1.2.** *impact on adjacent properties;*
- 10.7.1.3.** *safety;*
- 10.7.1.4.** *unique site conditions and constraints;*
- 10.7.1.5.** *promotion of high quality or unique design; and*
- 10.7.1.6.** *character of the neighborhood.*

10.7.2: *The Planning Commission and/or City Council may, as part of a special use permit application or as part of a site plan review, vary from the stated fence regulations when it is found that the proposed fence meets the stated intent above and in consideration of the criteria in 10.7.1 above. All such variations from the regulations must be clearly cited and/or depicted on the site plan or permit.*

10.8. Violations

10.8.1: Notice: *Any person, corporation or partnership found by the Building Official to be installing, building or placing a fence in violation of the City of Basehor fence regulations, shall be served a notice of said violation. The notice shall be served by restricted mail, postage prepaid, return receipt requested; provided that if the owner or his or her agent in charge of the property is a resident of Leavenworth County, Kansas, the notice may personally be served by the public officer or a law enforcement officer.*

Said notice shall state the condition which is in violation of Article 8; Section 10. The notice shall also inform the person, corporation, partnership or association that:

10.8.2: *He, she or they shall have 10 days from the date of serving the notice to abate the condition in violation of section Article 8; Section 10; or he, she or they have 10 days from the date of serving the notice to request a hearing before the governing body of the matter as provided by section Article 8; Section 10;*

10.8.3: *Failure to abate the condition or to request a hearing within the time allowed may result in prosecution as provided by Section 10.9.*

10.9: Failure to Comply

Should the person, corporation, partnership or association fail to comply with the notice to abate the violation or request a hearing the Building Official shall file a complaint in the municipal court of the city against such person, corporation, partnership or association and upon conviction of any violation of provisions of Article 8; Section 10, be fined in an amount not to exceed \$100 or be imprisoned not to exceed 30 days or be both fined and imprisoned.

Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

10.11: Abatement

In addition to, or as an alternative to prosecution as provided in Section 10.9, the Building Official may seek to remedy violations of this section in the following manner. If a person to whom a notice has been sent pursuant to Section 10.8 has neither alleviated the conditions causing the alleged violation nor requested a hearing before the governing body within the time periods specified in Section 10.8, the Building Official may present a resolution to the governing body for adoption authorizing the Building Official or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided by Section 10.12. A copy of the resolution shall be served upon the person in violation in one of the following ways:

10.11.1 *Personal service upon the person in violation;*

10.11.2 *Service by restricted mail, postage prepaid, return receipt requested; or*

10.11.3 *In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.*

10.11: Hearing

If a hearing is requested within the 10 day period as provided in Section 10.8.2, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before

the governing body. The hearing shall be held by the governing body as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the governing body shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the matter provided in section 10.11.

10.12: Cost Assessed

If the city abates the nuisance pursuant to Section 10.10, the cost of abatement shall be charged against the lot or parcel of ground on which the fence or wall was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are.