

# Ordinance 25-09-01

**Introduced:** September 8, 2025

**Adopted:**

## AN ACT TO CREATE CHAPTER 48 IN THE TOWN OF MIDDLETOWN CODE OF ORDINANCES TO INCLUDE FENCE PERMITS AND INSPECTIONS

**BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN** (a majority of the members elected thereto concurring therein):

**Section 1.** That the Town of Middletown, Delaware, Code of ordinances is hereby amended by creating Chapter 48 and placing therein the following:

### “Chapter 48. REGULATION OF PERIMETER FENCES

#### **A. Purpose**

To establish consistent and enforceable standards for the placement and type of fences throughout the Town of Middletown, while preserving public safety, aesthetics, and access to utilities.

#### **B. Definitions**

- **Barrier** – A fence, wall, building wall, or combination thereof that completely surrounds a pool, spa, or hot tub and obstructs access to it.
- **Decorative Cutouts** – Openings incorporated into a fence panel design that may impact the allowable open space measurements under open-style or pool barrier requirements.
- **Easement** – A designated area on private property that grants access or use rights to utilities, drainage, or the public, where permanent structures like fences are not permitted.
- **Fence** – A man-made barrier, 2 feet or more in height, constructed to enclose, separate, or screen areas of land.
- **Front Yard** – The area between the front property line and the principal structure’s front wall, extending the full width of the lot.
- **Grade (Adjacent Grade)** – The ground level measured on the side of the fence or barrier facing away from the enclosed area, used to determine fence or barrier height.
- **Open Area Percentage** – The ratio of open space to total surface area for purposes of determining compliance with open-style fence requirements.
- **Open-Style Fence** – A fence with at least 50% open area allowing visibility, air, and light to pass through. Examples include picket, wrought iron, and split rail fences.
- **Pool/Spa** – Any structure intended for swimming, recreational bathing, or wading that contains water over 24 inches (610 mm) deep, including in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas.
- **Self-Closing Gate** – A gate that closes automatically after it has been opened.
- **Self-Latching Device** – A mechanical device or latch that secures a gate in the closed position and returns to the latched position when released without manual assistance.
- **Shared Fence** – A fence installed on or along a common property line between two properties, potentially benefiting both property owners.

- **Sight-Obscuring Fence** – A fence constructed so that visibility through it is substantially blocked from one side to the other.
- **Sight Triangle** – A clear area of visibility at intersections, typically 25 feet along each curb or property line, maintained to prevent visual obstructions.
- **Solid Fence** – A fence with less than 50% open space, typically made from solid panels such as vinyl, wood stockade, or privacy slats in chain link.
- **Temporary Fence** – A fence or barrier intended for short-term use during construction or special events, not to exceed the duration specified in the issued permit.

### C. Permit Requirement and Inspection

1. A fence permit is required for all new, replacement, or relocated fences 2 feet in height or greater.
2. Fence permits are for placement only. No formal plan review is conducted.
3. Final inspection is required and must be called in by the applicant.
4. The inspection will verify compliance with the approved permit (location, height, material, parcel boundaries). It will not assess code accuracy.
5. Fences placed without a permit or inspection are subject to removal or enforcement action.

### D. Fence Zoning Standards

The following zoning standards apply to fences within the Town of Middletown.

Zone Type	Max Height (Rear/Side Yard)	Max Height (Front Yard)	Material Restrictions	Permit Required?
R-1A	6 feet	4 feet	No barbed/electric; <b>no chain link in front yard</b>	Yes
R-1B	6 feet	4 feet	No barbed/electric; <b>no chain link in front yard</b>	Yes
R-2	6 feet	4 feet	Front fences over 3' must be open-style; <b>no chain link in front yard</b>	Yes
R-3	6 feet	4 feet	Decorative fencing encouraged; <b>no chain link in front yard</b>	Yes
R-MH	6 feet	4 feet	<b>No chain link in front yard</b>	Yes
C-2	8 feet (rear)	4 feet	No barbed wire	Yes

			streetside; <b>no chain link in front yard</b>	
C-3	8 feet	4 feet	Barbed wire above 6' allowed; <b>no chain link in front yard</b>	Yes
M-I	8 feet	4 feet	Chain link/barbed OK (rear/side); <b>no chain link in front yard</b>	Yes
AP	6 feet	4 feet	Agricultural fencing allowed; <b>no chain link in front yard</b>	Yes

**Additional Rule:** Chain link fences are prohibited in all front yards, regardless of zoning district.

**Historic District Disclaimer:** Properties located within the designated Historic District may require additional approvals from Mayor and Council, including review of fence height, placement, and materials, in order to preserve the historic character.



#### **E. General Fence Requirements (All Zones)**

1. Fences must be entirely within the owner's property.
2. Fences are prohibited in recorded easements, drainage areas, and required zoning setbacks.
3. Finished side of fence must face neighboring properties.

4. Corner lots must maintain a 30-foot clear sight triangle at intersections.
5. Prohibited materials include:
  - o Electric fencing (except agriculture)
  - o Barbed/razor wire (except permitted in M-I or C-3 zones)
  - o Dangerous or sharp materials (e.g., broken glass)
6. Shared Fences & Property Line Disputes:
  - o If a fence is to be installed directly along a property line and shared by adjoining property owners, the applicant is encouraged to submit a signed agreement.
  - o All property line disputes, including ownership, exact placement, or maintenance responsibilities, are civil matters between property owners.
  - o The Town of Middletown does not mediate, investigate, or determine responsibility in such cases.

## **F. Maintenance and Enforcement**

1. Fences must be kept structurally sound and in good condition.
2. Dilapidated, leaning, broken, rusted, or hazardous fences must be repaired or removed.
3. Replacement of 50% or more of a fence along a lot line is considered new construction and requires a new permit.

## **G. Permit Fees**

- Residential Fence: \$100 flat
- Commercial Fence: \$200 flat

## **H. Summary**

- All fences require a permit and a final placement inspection.
- No formal plan review is done, but zoning compliance is verified.
- Fences must be placed on the parcel, follow height/material standards, and stay out of easements.
- Violations may result in removal or enforcement by the Town.

## **I. Special Fence Requirements for Pools and Spas**

In addition to the standards listed above, fences or barriers constructed to enclose a swimming pool, spa, or hot tub must comply with the following:

- 1. Applicability**
  - Applies to all new or existing swimming pools, spas, and hot tubs, both in-ground and above-ground.
- 2. Barrier Height & Clearance**
  - Minimum barrier height: 48 inches (1219 mm) measured on the side facing away from the pool/spa.
  - Maximum clearance from grade to bottom of barrier:
    - o 2 inches (51 mm) over non-solid surfaces
    - o 4 inches (102 mm) over solid surfaces
- 3. Openings**
  - Must not permit passage of a 4-inch (102 mm) diameter sphere.
  - Solid barriers must be free of protrusions or indentations that could be used as footholds/handholds.
- 4. Horizontal & Vertical Members**
  - Horizontal members less than 45 inches (1143 mm) apart must be on the pool side; vertical spacing  $\leq$  1 $\frac{3}{4}$  inches (44mm).
  - Horizontal members 45 inches or more apart: vertical spacing  $\leq$  4 inches (102 mm).
  - Decorative cutouts  $\leq$  1 $\frac{3}{4}$  inches (44 mm).

## **5. Gates**

- Must be self-closing and self-latching, opening away from the pool/spa.
- Latch release:
  - $\geq 54$  inches (1372 mm) above grade, or
  - On pool side,  $\geq 3$  inches (76 mm) below top of gate, with no openings greater than  $\frac{1}{2}$  inch (12.7 mm) within 18 inches (457 mm) of the release.

## **6. Using Dwelling Walls as Barriers**

When a dwelling wall forms part of the barrier, one of the following must be provided:

- Alarm on all doors/windows with direct pool access (audible within 7 seconds, 85 dBA at 10 ft, auto-reset).
- Self-closing, self-latching doors with latch  $\geq 54$  inches above floor.
- ASTM F1346-compliant safety cover.

## **7. During Construction**

• Temporary fencing at least 48 inches (1219 mm) high must enclose the pool/spa area until the permanent barrier is installed and approved.

## **8. Prohibited Barrier Types**

- Mesh fencing is not permitted as a primary or permanent pool or spa barrier.
- Barriers that can be easily removed without tools or that fail to meet the durability requirements of Section E of this ordinance are prohibited.

## **J. Invisible Fences**

1. Invisible (underground electronic) fences are permitted in all zoning districts.
2. A permit is not required for the installation of an invisible fence.
3. Invisible fences must be fully contained within the property owner's parcel and may not extend into neighboring properties, easements, or public rights-of-way.

## **K. Disputes and Appeals**

1. The Town of Middletown does not mediate or decide property line disputes. All property line disputes are civil matters between property owners.
2. Any person aggrieved by a decision, interpretation, or enforcement action under this ordinance may file an appeal to the Mayor and Council of the Town of Middletown.
3. Appeals must be submitted in writing within 30 days of the decision or action being appealed.

**Section 2.** That the Town of Middletown, Delaware, Code of ordinances is hereby amended by deleting the following: 40-3 (B)(1)(a) Fences.

**Section 3.** That this ordinance goes into effect immediately following approval.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2025.

(SEAL)

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Kenneth L. Branner, Jr., MAYOR

ATTESTED TO BY:

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WITNESS, TOWN OF MIDDLETOWN