

1 **AN ORDINANCE TO AMEND ARTICLE V DIMENSIONAL REGULATIONS AND**
2 **ARTICLE VI HISTORIC PRESERVATION ARCHITECTURAL REVIEW**
3 **COMMISSION OF CHAPTER 197, ZONING, OF THE MUNICIPAL CODE OF THE**
4 **CITY OF LEWES, DELAWARE, BY AMENDING SECTION 197-54 FENCES, WALLS,**
5 **HEDGES, AND SHRUBBERY, SECTION 197-58 HISTORIC DISTRICT OR**
6 **PROPERTIES REVIEW PROCESS AND SECTION 197-59 HISTORIC DISTRICT OR**
7 **PROPERTIES CRITERIA; STANDARDS**

8
9 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
10 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
11 City of Lewes, Delaware, as amended, by amending provisions related to fence height and Historic
12 Preservation Architectural Review Commission discretion regarding height of fences, walls and
13 shrubbery;

14
15 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
16 the purpose of promoting health, safety, morals or the general welfare of the community, the
17 legislative body of cities and incorporated towns may regulate and restrict the height, number of
18 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
19 of yards, courts and other open spaces, the density of population, and the location and use of
20 buildings, structures and land for trade, industry, residence or other purposes”;

21
22 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
23 against fire, promoting health, safety, morals or the general welfare of the community, the City
24 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
25 stores [sic], size of buildings and other structures, the density of population and the location and
26 use of buildings, structures and lands for trade, industry, residence or other purposes”;

27
28 **WHEREAS**, Article XV, Chapter 197, Section 104, Text and map amendments, of the
29 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall
30 be made after a public hearing following fifteen (15) days’ notice by publication in an official
31 paper or a paper of general circulation in the City;

32
33 **WHEREAS**, a public hearing was conducted on [INSERT DATE];

34
35 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
36 notice of the time and place of such hearing in an official paper or newspaper of general circulation
37 in the City; and

38
39 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
40 of the Lewes community.

41
42 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
43 at all times thereto, in the manner following to-wit:

44
45 **Section 1.** Chapter 197, Section 197-54 of the Municipal Code of the City of Lewes,
46 Delaware, be the same and is hereby amended by amending 197-54 Fences, walls, hedges and

47 shrubbery by making insertions as indicated by underlining and deletions as indicated by
48 strikethrough as follows:

49

50 B. Residential Areas.

51 (1) Applicability: properties used for residential purposes

52 (2) All fences shall be “finished side out.”

53 (3) Maximum height: eight feet, except that the maximum height shall be ~~three~~ four feet in
54 the required front yard.

55 (4) Six feet or less: The entire fence may be solid except within the required front yard.

56 (5) Between six feet and eight feet. That portion of the fence or wall which exceeds six feet
57 in height shall contain openings equal to at least 50% of the area that the fence or wall
58 exceeds six feet.

59

60 **Section 2.** Chapter 197, Section 197-58 of the Municipal Code of the City of Lewes, Delaware,
61 be the same and is hereby amended by amending 197-58 Historic District or properties review
62 process by making insertions as indicated by underlining and deletions as indicated by
63 strikethrough as follows:

64

65 F. HPARC may either grant approval, grant approval with conditions, or deny the application. A
66 denial shall include the reasons that the proposal does not meet the criteria in § 190-59, Criteria;
67 standards (below). The applicant shall have the opportunity to resubmit his/her application
68 with modifications; such resubmissions shall meet the same requirements as the original. If the
69 second submission of the application is denied, the applicant may either modify the application
70 for another submission or appeal the denial to the Board of Adjustment. In no event may
71 HPARC make recommendations for changes that will require violation of other requirements
72 of this chapter: except as noted in 197-59B(9).

73

74 **Section 3.** Chapter 197, Section 197-59 of the Municipal Code of the City of Lewes, Delaware,
75 be the same and is hereby amended by amending 197-59 Historic District or properties criteria;
76 standards by making insertions as indicated by underlining and deletions as indicated by
77 strikethrough as follows:

78

79 A. Criteria. In reviewing the plans for any construction, change, or demolition, HPARC shall give
80 consideration to:

81

82 (9) A proposed new structure or any alteration to an existing structure or historic property
83 shall conform to the City Code: except as noted in 197-59B(9). However, it is the intent of
84 the HPARC, consistent with its purpose (197-56A) to assist in preserving the historic
85 character and the historic fabric of the City of Lewes to work in conjunction with applicants
86 to arrive at the most desirable and appropriate outcome of their application to maintain
87 harmony within the streetscape. To this end, HPARC may focus on height, rhythm, scale
88 and proportion as issues that the applicant will be asked to consider and, when appropriate,
89 to alter their plan and/or design.

90

91 B. Standards. The following standards shall be used by the HPARC in preserving the district’s
92 architectural integrity and insuring the compatibility of new construction and alterations within

93 the existing body of distinctive Lewes historic building styles. All materials used shall be
94 consistent with and appropriate in design, texture and other visual qualities to the style and
95 period of the structure. (The Secretary of the Interior’s regulations, “Standards for
96 Rehabilitation,” including reference drawings, as designated in Appendix C, include broad
97 guidelines covering rehabilitation projects of historic buildings and should be referred to in a
98 reasonable manner, taking into consideration economic and technical feasibility.) (NOTE: See
99 Appendix C on file and available for inspection in the City Manager’s office).

100
101 (9) Walls, fences and gates. Materials shall be of a type compatible with the architecture
102 of the Historic District and historic properties. Chain link, vinyl, and concrete block are
103 prohibited (Reference Drawing No. 7. [NOTE: See Appendix C on file and available for
104 inspection in the City Manager’s office.]). Height may exceed dimensional standards (197-
105 54) to ensure consistency with the Secretary of the Interior’s Standards and character of
106 the building.

107
108 **Section 4.** If any provision of this Ordinance shall be deemed or held to be invalid or
109 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
110 any other provision of this Ordinance which may be given effect without such invalid or
111 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
112 be severable.

113
114 **Section 5.** This Ordinance shall take effect immediately upon its adoption by the Mayor
115 and City Council of the City of Lewes.

116
117 Adopted by the Mayor and City Council
118 of the City of Lewes
119 _____, 2021

120
121
122 I, [INSERT NAME], Secretary of the City Council of the City of Lewes, do hereby certify that the
123 foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its
124 regular meeting on _____, at which a quorum was present and voting throughout and the
125 same is still in full force and effect.

126
127
128 _____
129 Secretary

130
131 **SYNOPSIS:** This Ordinance amends multiple sections related to fence height and
132 Historic Preservation Architectural Review Commission discretion regarding height of fences,
133 walls and shrubbery.