

## COMMISSION ACTION FORM

**SUBJECT: ZONING ORDINANCE TEXT AMENDMENT RELATED TO FENCES**

**BACKGROUND:**

The City Council recently reviewed work priorities for the Planning Division, one of which was “Zoning Code Clean-Up.” The zoning regulations for fences were amended partially in 2004, as a result of an increase in setback variances along street rights-of-way. However, there is still a lack of clarity and organized structure in the way that the regulations are formatted. Fences were one item listed within planning staff’s presentation to Council regarding zoning code clean-up. There are other subjects of the zoning code that will be brought forward as separate amendments.

Below is a summary of the proposed formatting and organization improvements of the fence zoning code:

- Headings added to each categorical standard instead of the broad standard with various subsequent exceptions and variations.
- Setback and landscaping requirements have been consolidated into one section instead of being repeated.
- Front yard openness potentially being blocked by a neighboring owner’s side yard fence is more concisely defined versus broadly referenced.
- The term “functional” as it pertains to front yard has been taken out because there is an existing definition for “yard” already in the zoning code that accomplishes the same policy.

Below is a summary of proposed changes which introduce new text. Most changes are housekeeping amendments to provide clarity. There are a few substantive changes pertaining to exemption of fences in industrial zones and also pertaining to fence heights on retaining walls.

- Prohibition of barbed wire, razor wire, and electric fences:
  - Urban zoning codes across the country typically have restrictions against fence materials that could injure people; particularly in densely populated areas where the likelihood of people coming in contact with fences is very high.
- Exemption of fence zoning code for industrial zones:
  - Fences for industrial sites are much different than for residential and commercial sites. Security and safety are the main objectives for industrial site fences, which frequently encompass front yards. Current code does not allow fences over four feet in the front yard, which conflicts with the common six-foot chain link security fence. The majority of the existing fence code is written to maintain open space in developed areas, particularly along street corridors. Exempting fence regulations in

industrial zones would accomplish the existing policy in non-industrial zones. It would also decrease the number of fence nonconformities for those that were previously installed in front yards. Additionally, the new prohibition of barbed wire would be allowed in industrial areas, which is a common addition on top of six-foot security fences.

- Clarification of retaining wall applicability:
  - Interpreting and enforcing maximum fence heights when fences are combined with retaining walls has been challenging for city staff. Establishing a more specific definition for the applicability of the maximum fence height will provide clear direction to the staff and the public. The existing fence code has no definition of a retaining wall or embankment in the zoning code. The existing and the proposed policies allow fences to be the same height on top of retaining walls as they would be if not on top of retaining walls. This policy allows the owner of an elevated lot with a retaining wall to be afforded the same fence provisions as an owner of a level lot. The proposed language specifies that the grade next to the retaining wall must extend at least 20 feet beyond the wall. Or if the available area is less than 20 feet, the grade would need to extend to the principle structure. This language prevents a berm from being erected in order to take advantage of an effectively taller overall fence, which would be contrary to the purpose of the fence regulations, particularly along front yards and street rights-of-way where there is an established policy of a four-foot maximum.

The draft amendments to *Municipal Code* Section 29.408(2) are included below in a ~~strikeout~~/underlined version and a formatted version for the Commission’s consideration. To assist the Commission in understanding the overall proposed revision, it should be noted that the number of overall words in the fence code is proposed to increase slightly from 371 words to 377 words.

**Strikeout/Underline Version**

Section 29.408(2)

. . . .

**(2) Fences.**

~~(a) Applicability. These standards apply to all zoning districts except General Industrial (GI) and Planned Industrial (PI).~~

~~(a)(b) Types of Fences. These standards apply to walls, fences and screens of all types whether open, solid, wood, metal, wire, masonry, earthen or other material.~~

~~(b)(c) Location and Height.~~

~~(i) The maximum height for fences in required front building setbacks, and the side yard setbacks adjacent to public~~

right-of-way, in the case of corner lots directly abutting the front yard area of an adjacent residential property, is four (4) feet, except:

- a. ~~In the case of through lots a maximum fence height of six (6) feet is permitted along the functional rear lot line, subject to a five-foot setback being provided with a landscaping element equal to one landscape tree for every 50 lineal feet and two high or three low shrubs for every ten lineal feet of area to be planted. The landscaping shall be planted within the five-foot setback area;~~
  - b. ~~In the case of fences located within the side yard setback adjacent to public right-of-way on a corner lot which is not directly abutting the front yard area of an adjacent residential property, a maximum fence height of six (6) feet is permitted subject to a five-foot setback being provided with a landscaping element equal to one landscape tree for every 50 lineal feet and two high or three low shrubs for every ten lineal feet of area to be planted. The landscaping shall be planted within the five-foot setback area.~~
  - c. ~~In no instance is a fence that is taller than four (4) feet in height permitted within the functional front yard. For the purposes of this section, the functional front yard is defined as the area located between the main front wall of the residence and the front lot line.~~
- (ii) ~~The maximum height for fences in required side or rear building setbacks is six (6) feet.~~
  - (iii) ~~The maximum height for fences that are not placed in required setbacks is eight (8) feet.~~
  - (i) Height in Front Setbacks & Yards. The maximum height of fences in front setbacks and front yards is four (4) feet.
  - (ii) Height in Side and Rear Setbacks. The maximum height for fences in side or rear setbacks is six (6) feet, except as further limited by this section in setbacks abutting street rights-of-way.
  - (iii) Height in Setbacks Abutting Rights-of-way. The maximum height of fences in any setback abutting a street right-of-way is four (4) feet, except that up to six (6) feet of fence is allowed in any side or rear setback if:
    - a. The lot does not abut the front yard of any other residential property along the same side of the street.
    - b. The fence is it is at least five (5) feet from the property line abutting a street right-of-way. Within this five (5) foot area, landscaping is required consisting of one landscape tree for every 50 lineal feet and two high or three low shrubs for every ten lineal feet of area to be planted.

- (iv) Height Outside of Setbacks. The maximum height for fences that are not placed in setbacks is eight (8) feet, except that in any portion of a front yard fences shall not exceed four (4) feet.
- ~~(iv)~~(v) Retaining Wall. In the case of retaining walls and supporting embankments, the above requirements shall apply only to that part of the wall above finished grade ~~ground surface~~ of the retained embankment, provided that the finished grade at the top of the wall or embankment extends at least 20 feet or if the available area is less than 20 feet, the grade extends to the principal structure. Otherwise, it will be considered an earthen berm and will be subject to the height limitation for fences.
- (vi) Visibility Triangle. All fencing shall meet the requirements of the visibility triangle as defined in section 29.408(5) of the *Municipal Code*.
- (d) Prohibited Materials. Barbed wire, razor wire, electric, and similar types of fences are prohibited.

**Formatted Version**

Section 29.408(2)

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(2) **Fences.**

- (a) Applicability. These standards apply to all zoning districts except General Industrial (GI) and Planned Industrial (PI).
- (b) Types of Fences. These standards apply to walls, fences and screens of all types whether open, solid, wood, metal, wire, masonry, earthen, or other material.
- (c) Location and Height.
  - (i) Height in Front Setbacks & Yards. The maximum height of fences in front setbacks and front yards is four (4) feet.
  - (ii) Height in Side and Rear Setbacks. The maximum height for fences in side or rear setbacks is six (6) feet, except as further limited by this section in setbacks abutting street rights-of-way.
  - (iii) Height in Setbacks Abutting Rights-of-way. The maximum height of fences in any setback abutting a street right-of-way is four (4) feet, except that up to six (6) feet of fence is allowed in any side or rear setback if:
    - (a) The lot does not abut the front yard of any other residential property along the same side of the street;
    - (b) The fence is at least five (5) feet from the property line abutting a street right-of-way. Within this five (5) foot area, landscaping is required consisting of one

landscape tree for every 50 lineal feet and two high or three low shrubs for every ten lineal feet of area to be planted.

- (iv) Height Outside of Setbacks. The maximum height for fences that are not placed in setbacks is eight (8) feet, except that in any portion of a front yard fences shall not exceed four (4) feet.
  - (v) Retaining Wall. In the case of retaining walls and supporting embankments, the above requirements shall apply only to that part of the wall above finished grade of the retained embankment, provided that the finished grade at the top of the wall or embankment extends at least 20 feet or if the available area is less than 20 feet, the grade extends to the principal structure. Otherwise, it will be considered an earthen berm and will be subject to the height limitation for fences.
  - (vi) Visibility Triangle. All fencing shall meet the requirements of the visibility triangle as defined in section 29.408(5) of the Municipal Code.
- (d) Prohibited Materials. Barbed wire, razor wire, electric, and similar types of fences are prohibited.

**ALTERNATIVES:**

1. The Planning and Zoning Commission may recommend to the City Council to adopt the amendments as proposed.
2. The Planning and Zoning Commission may recommend adoption of the proposed amendments, with modifications.
3. The Planning and Zoning Commission may recommend that the City Council not adopt the proposed amendments.
4. The Planning and Zoning Commission can refer this back to staff for additional analysis.

**RECOMMENDED ACTION:**

The proposed amendments provide needed organization and clarity on fence regulations. Staff believes that these changes would be in keeping with the intent of existing regulations, but would provide more easily defined provisions for their application. It is staff's recommendation that the Planning and Zoning Commission act in accordance with Alternative #1, which is to recommend that the City Council adopt the changes as proposed.