



**MAYOR AND COUNCIL COMMUNICATION**

DATE: 6/18/2013  
**REGULAR**  
ITEM #: 12  
**ORDINANCE**

**AGENDA ITEM:** Zoning Text Amendment – Fence Ordinance  
**SUBMITTED BY:** Kyle Klatt, Planning Director  
**THROUGH:** Dean Zuleger, City Administrator  
**REVIEWED BY:** Planning Commission  
Nick Johnson, City Planner

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**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item.....Staff
- Report/Presentation.....Staff
- Questions from Council to Staff.....Mayor Facilitates
- Public Input, if Appropriate.....Mayor Facilitates
- Call for Motion.....Mayor & City Council
- Discussion.....Mayor & City Council
- Action on Motion.....Mayor Facilitates

**SUMMARY AND ACTION REQUESTED:**

The City Council is asked to consider a Zoning Text Amendment, establishing new fencing regulations in Lake Elmo. These fencing provisions will be organized under Article 5 - General Regulations under the new organizational structure of the Zoning Code. This Zoning Text Amendment is part of the ongoing effort to reorganize and improve the Lake Elmo Zoning Code. The attached ordinance reflects changes that were recommended by the Council following its June 11<sup>th</sup> workshop.

*Staff and the Planning Commission recommend that the City Council approve Ordinance 08-083 through the following motion:*

***“Move to approve Ordinance 08-083, establishing new fencing regulations in the Lake Elmo Zoning Code”***

**BACKGROUND AND STAFF REPORT:**

Staff is continuing to progress on a large project aimed at incrementally reorganizing and improving the Lake Elmo Zoning Code in preparation of upcoming growth. One of the ordinances that was identified needing improvement was the Fence Ordinance. More specifically, the ordinance is poorly organized and unnecessarily complex in some areas. Therefore, Staff evaluated ways to make the fence ordinance more

straightforward and less complicated. In addition, the existing ordinance does not adequately address commercial fencing. Currently, commercial fencing is only addressed through required screening of various uses in specific zoning districts. In order to take a more comprehensive approach to commercial fencing, Staff determined that a base standard for commercial fencing should be included, as opposed to fencing only for required screening. These factors were the driving forces behind bringing forward a Zoning Text Amendment related to fencing regulations.

Regarding the proposed Fence Ordinance, there are multiple changes in policy pertaining to fencing regulations, including the following:

- **Fence Height:** The proposed ordinance allows a height of 6 feet for residential fences and 8 feet for commercial fencing. The exception to these heights is that fences within front and side (corner) yard setback areas must not exceed 42 inches in height and must be 50% open to air and light. This requirement in front and side (corner) yard setback areas is to prevent any safety concerns related to obstructed vision of motorists or pedestrians due to fencing. In addition, the ordinance addresses any requests for commercial fencing above 8 feet through the conditional use permit process. Addressing this request through the CUP process ensures that no adjacent properties are negatively impacted by such fencing.
- **Air and Light Provisions:** The existing fence ordinance currently requires that any residential fencing above 42 inches must be 75% open to air and light. In other words, the current ordinance does not allow for solid, or privacy, fencing in residential districts. Based upon multiple requests to Staff for this type of fencing in the past, as well as anticipated increased demand with future growth, Staff determined to allow for solid fencing in residential districts, as long as it was not located in the front or side (corner) yard setback areas. It should be noted that the 75% open to air and light provision in the existing ordinance was established to maintain long vistas and views in order to retain a rural character. However, it is important to note that this provision greatly limits the type of fencing that can be used in residential circumstances. Finally, of all the fence ordinances that Staff researched as part of formulating the proposed ordinance, none of the other ordinances had an air and light provision with the exception of front and side (corner) setback areas for safety reasons.
- **Additional Items:** The proposed Fence Ordinance also includes other subtle deviations from the existing ordinance. Provisions were added in the proposed ordinance pertaining to temporary fencing, including winter recreational fencing and size limitations. In addition, the existing Fence Ordinance contains provisions related to fences in shoreland districts. After review of a variety of other fence ordinances in the Twin Cities, it was determined that these provisions are unnecessary. Finally, the permitted fence materials from the existing ordinance were carried forward into the proposed ordinance. The only difference is that the allowed materials for commercial fencing do not include wood, with the exception of picket and split-rail decorative fencing. Related to commercial fencing, the Planning Commission expressed concern about the ongoing maintenance of wood plank fencing in commercial districts.

Overall, Staff has attempted to draft a Fence Ordinance that is more straightforward and easy to administer. The Planning Commission engaged in multiple discussions about the various provisions included in the proposed ordinance and have recommended it for approval. As part of adopting the proposed Fence Ordinance, the existing fence ordinance would be removed from the Code. All of the changes are outlined in Ordinance 08-083.

#### **PLANNING COMMISSION REPORT:**

The Planning Commission reviewed the proposed Fence Ordinance at a regular meeting on May 13, 2013. At this meeting, the Planning Commission made some recommendations related to minor

adjustment of the draft ordinance. Staff responded to this request by making minor refinements. After an initial review, the Planning Commission held a public hearing on the proposed Fence Ordinance on May 29, 2013. No one spoke in favor or against the ordinance at the public hearing. The Planning Commission recommended the proposed ordinance for approval (Vote: 4-1, with Commissioner Haggard voting no).

**CITY COUNCIL WORKSHOP UPDATE:**

The City Council reviewed the proposed fence ordinance at a workshop meeting on June 11, 2013. The Council discussion focused on four primary aspects of the proposed ordinance, which has resulted in the following modifications to the version recommended by the Planning Commission:

- Fence materials. The ordinance has been revised to allow wood as a permitted material in commercial districts. Staff has combined what were previously two separate sections for residential and commercial fences because the permitted materials in each district are the same.
- Temporary fencing. The earliest that snow fencing can be installed was moved up to October 1<sup>st</sup>.
- Fences on property lines. The “Location” section (154.205.D.5) has been completely revised to reflect the Council’s direction to allow fences on property lines, to require that monuments be exposed for inspection in these instances, and to specify that the City may require a survey in cases where a boundary line is in dispute.

The final section of the ordinance that was subject to debate by the City Council concerning solid wall fences on lots less than ½ acre in size has not been modified from earlier draft. The general direction from the Council workshop was to not make any changes to the draft; therefore, if the Council does not support the ordinance as presented Staff will seek specific changes from the Council at the meeting. Based on the workshop discussion, it is expected that Council Member Smith will be seeking language that requires fences on lots under ½ acre in size to maintain a certain percentage of openness to light and air (75% has been used in the past) for any fence over 4 feet in height.

**RECOMMENDATION:**

*Staff and the Planning Commission recommend that the City Council approve Ordinance 08-083 through the following motion:*

***“Move to approve Ordinance 08-083, establishing new fencing regulations in the Lake Elmo Zoning Code”***

**ATTACHMENT(S):**

1. Ordinance 08-083