



MAYOR AND COUNCIL COMMUNICATION

DATE: 9/20/2016

REGULAR

ITEM #: 30

AGENDA ITEM: Amending Solid Wall Fence Regulations

SUBMITTED BY: Emily Becker, City Planner

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

On August 16, 2016, City Council directed Staff to bring to the Planning Commission for discussion a text amendment to the City's fencing regulations that would amend the restrictions of solid wall fences over four feet in height on properties under half an acre.

On September 12, 2016, the Planning Commission held a public hearing and discussed the removal of this restriction and recommended approval of an amendment to the ordinance.

ISSUE BEFORE COUNCIL:

The Council is respectfully requested to review and approve an amendment to solid wall fence restrictions.

PROPOSAL DETAILS/ANALYSIS:

There are two Subdivisions within the City Code that are being proposed to be amended:

- First, Section 154.205: Fencing Regulations (E) (3) prohibits solid wall fences over four feet in height on lots under ½ and acre, except under certain circumstances, listed below:
 - a. *When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.*
 - b. *When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.*
 - c. *For screening of outdoor living space subject to the following criteria:*
 - i. *The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.*
 - ii. *A fence utilized to enclose and outdoor living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.*
 - iii. *A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.*

- d. *For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth (1/4) of the linear distance of the perimeter of a lot. Such fences may only be installed with the written consent of the adjacent property owner.*
- e. *Under other circumstances when a solid fence is warranted due to safety, health, animal containment or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.*

The proposed amendment specifically addresses the aforementioned exceptions “d.” and “e.” for the following reasons:

- **Exception d.** requires written consent of the adjacent property owner for fences erected for screening and privacy purposes. Privacy fences are so named because they provide concealment and sanctuary, and it should be considered that neighbors do not always get along. Whether or not a certain type of fence can be erected should not be the sole decision of an adjacent property owner. As such, this requirement is eliminated in the proposed amendment.
- **Exception e.** is subjective. Allowing one property owner to do this and not another could be considered discriminatory. As such, this exception is eliminated in the proposed amendment.
- Second, it is being recommended that the provision set forth in Section 154.081: Permitted Encroachments on Required Yards that requires that fences in side and rear yards need to be 30% open to air and light be eliminated for the following reasons:
 - Requiring a fence to be 30% open when erected in side and rear yard setbacks does not allow a property owner to adequately screen a certain portion of property.
 - This requirement is set forth in a completely different Section of the Code than other fencing regulations. This creates confusion.
 - Openness requirements would still be set forth for front and side (corner) yard setbacks so traffic sight lines are not inhibited.

FISCAL IMPACT:

The proposed amendment is not expected to create significant fiscal impact aside from a possible decrease in Staff time enforcing issues created by violations of this ordinance or preparing requests by property owners who request their properties to be considered as exceptions.

PLANNING COMMISSION/PUBLIC HEARING:

A public hearing was held on the proposed amendment on the 12th of September, 2016. Staff had presented to the Commission two options for this ordinance amendment. The first option considered eliminated the prohibition of solid wall fences over four feet in height on lots under half an acre altogether, as well as eliminating the 30% openness requirement for fences existing in the side and rear. The second proposed amendment is what is being proposed to be adopted herein.

The proposed amendment was recommended by 4-3 vote. Reasons for dissenting votes included that the proposed amendment is too complicated, and the first option was easier to understand (noted by

Commissioner Dodson). Additionally, the restriction of the fence being allowed to be erected on only 1/4th of the perimeter of the property was too restrictive (noted by Commissioner Williams). The reasons stated for recommending the ordinance amendment proposed herein included that it was a smaller change to an ordinance that has had a lot of history and changes over the years and would preserve site lines (noted by Commissioners Kraemer, Larson and Fields).

OPTIONS:

The Council may:

- Approve the recommended ordinance amendment.
- Make changes to and approve the ordinance amendment.
- Deny the recommended ordinance amendment.

RECOMMENDATION:

Staff respectfully requests that the Council approve, as recommended by the Planning Commission, the proposed ordinance amendment to the City's Fencing Regulations.

“Move to approve Ord. 08-154 amending the City’s Fencing Regulations regulating solid wall fences over four feet in height on properties less than half an acre by: removing the requirement of permission from an adjacent property owner to erect such a fence on ¼ the lineal measurement of the perimeter of the property; and removing the exception that allows such a fence be erected when warranted due to safety, health, animal containment or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.”

In addition, Staff is recommending that the City Council authorize summary publication of the approved ordinance through the following resolution:

“Move to adopt Resolution 2016-79, authorizing summary publication of Ordinance 08-154”

ATTACHMENTS:

- Ord. 08-154
- Resolution 2016-79
- Planning Commission meeting minutes, 9/12/16