



STAFF REPORT

DATE: 6/20/2017

REGULAR

ITEM #: 18

TO: City Council
FROM: Emily Becker, City Planner
AGENDA ITEM: Fence Ordinance
REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

The City's Zoning Code prohibits solid wall fences over four feet in height on lots under ½ acre in size. Any portion of a fence over four feet in height on such lots is to be at least 75% open to air and light, with certain provisions. A solid wall fence six feet in height was erroneously permitted on a lot within the Hunter's Crossing development on a lot under half an acre in size. The fence permit application was not signed by the Planning department, yet the permit was erroneously issued.

There are a number of issues with what transpired with this particular fence permit application, yet the ordinance that a solid wall fence that is over four feet in height is prohibited except under certain provisions still governs. The City has recently received a complaint by a property owner who has observed the aforementioned fence, also owns a lot that is under one half acre in size within the Hunter's Crossing development, and believes that he should be able to have a solid wall fence six feet in height or that the aforesaid fence should be required to be removed.

The City Council reviewed the City's fence ordinance at its May 9, 2017 workshop and recommended that the Planning Commission review Section 154.205 of the City's Zoning Code. The Planning Commission held a public hearing on June 12, 2017 and considered amendments to this Section and made recommendation to Council.

ISSUE BEFORE COUNCIL:

The Council is being asked to review proposed amendments to Section 154.205: Fencing Regulations of the City's Zoning Code.

PROPOSAL DETAILS/ANALYSIS:

Ordinance Review. The City's fence ordinance has been reviewed multiple times over the years. In 2013, a number of amendments were made to this Section. These amendments were thoroughly vetted over a number of meetings. While Council has asked that the Planning Commission review the City's Fencing Regulations, Staff recommends that the Planning Commission specifically focus on Subd. (E), and specifically Subsection (3), which requires any portion of a fence over four feet in height on a yard that is less than half an acre to be at least 75% open to air and light. The most recent version of this section of the ordinance is below:

3. Residential Fence Design Requirements. Solid wall fences over four (4) feet in height shall be prohibited on any lot under ½ acre (21,780 square feet) in size. Any portion of a fence over four (4)

feet on such lots shall be at least 75% open to light and air, except under one of the following circumstances:

- 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 an outdoor extended 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 ($\frac{1}{4}$) of the linear distance of the perimeter of a lot.

Recent Amendments to Fencing Regulations. The Council re-reviewed this requirement in September and October of 2016 and made certain amendments to these provisions, striking the following. The Council at that time was not amenable to removing the prohibition of solid wall fences over four feet in height on lots less than half an acre in size entirely.

d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth ($\frac{1}{4}$) 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 a similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.~~

Planning Analysis. When lot sizes decrease, so does privacy from abutting lots. With narrower lots and houses closer together, there are not as many opportunities to provide adequate privacy and separation between homes and yards through site design alone.

Fence Ordinances of Other Cities. Attached is a table that outlines fence ordinances of other cities. These cities were selected, as they were the cities used in the market analysis of the Job Classification and Compensation Study. This table shows that these cities generally allow a solid wall fence of up to six feet in height in side and rear yards.

Current Code Limitations on Fences within Front and Side (Corner) Yards. The Fence Height and Design Section currently already limits fences on any lot to be over 42 inches in height within front or side (corner) yards and mandates that they be at least 50% open to air and light. This is consistent with other cities' requirements and promotes public safety so as not to limit sight lines for drivers and pedestrians on streets. However, it should be considered that a rear yard may abut a public right-of-way, so it may be beneficial to change the language aforementioned language to the following:

Fences within Front and Side (Corner) Yards. Any fence within a front or side (corner) yard setback or any required setback from a public right-of-way may not exceed forty-two (42) inches in height and must be 50% open to air and light.

Additional Amendment Regarding Fences on Property Lines. There is currently a provision that requires that property owners wishing to erect a fence on a property line obtain permission from the adjacent property owner. The purpose of this provision is that typically erecting a fence on a property line will require access to a neighboring property for erection and maintenance of said fence. However, the provision only specifies that this permission is required if the fence is erected directly on the property line. This could mean that a fence that is erected even one inch off the property line would not require permission from the adjacent property owner. However, erecting and maintaining a fence set such a distance from the neighboring property line would still require access to the adjacent property. In order to provide clarification on this, Staff is recommending that language be amended to mandate that fences erected up to one foot off the property line require permission from the adjacent property owner.

PLANNING COMMISSION/PUBLIC HEARING:

The Planning Commission held a public hearing and considered this request at its June 12, 2017 meeting. No comments were received prior to the public hearing, and no one from the public spoke during the public hearing. The Planning Commission recommended that Staff-recommended amendments to Subd. (D) (5) and (E) (1) be made as well as striking Subd. (E) (3) of 154.205.

The Planning Commission made this recommendation with an affirmative vote of 3-2.

Affirmative comments included the following:

- Smaller lots increase the need for privacy, and so the need for taller solid wall fences is greater.

Dissenting comments included the following:

- There are already exceptions to the prohibition of solid wall fences within the Zoning Code.
- Seeing a wall of solid wall fences on smaller lots is not aesthetically pleasing.

FISCAL IMPACT:

None.

OPTIONS:

- Recommend adoption of Ord. 08-178, Staff and Planning Commission- recommended amendments to Section 154.205 of the Zoning Code.
- Make alternative amendments to Section 154.205 of the Zoning Code, and adopt Ord. 08-178 as amended.
- Not adopt Ord. 08-178.

RECOMMENDATION:

Staff and the Planning Commission recommend adoption of Ord. 08-178, amending Section 154.205 of the City's Zoning Code. The recommended amendments can may be adopted with the following motion:

“Move to recommend adoption of Ord. 08-178, amending Section 154.205: Fencing Regulations of the City's Zoning Code.”

If Council adopts the recommended Ordinance, Staff also recommends that Council adopt Resolution 2017-064, authorizing summary publication of Ord. 08-178 with the following motion:

“Move to recommend adoption of Resolution 2017-064 authorizing summary publication of Ord. 08-178.”

ATTACHMENTS:

- Ord. 08-178
- Fence Ordinance Comparison Table

City	6 Foot Solid Wall Fence Allowed?
Ham Lake	Yes, but not in front yard
Little Canada	Yes, but not in front yard or in visibility triangle
Mounds View	Yes (up to 8 feet), except within 30 feet of an intersection
Rogers	Yes, but not in front or corner side yards
Victoria	Yes, but not in front or corner side yards
Vadnais Heights	Yes, but must meet accessory structure setback requirements if less than 25% open
Orono	Yes, but not within shoreland setback or rear or side yard facing a street
Mound	Yes, but not in the front or side corner yard
Mahtomedi	Yes, but not in front yards
Albertville	Yes, but not in front yards
Waconia	Yes, but not in front yards

CITY OF LAKE ELMO

RESOLUTION NO. 2017-064

**RESOLUTION AUTHORIZING PUBLICATION OF
ORDINANCE NO. 08-178 BY TITLE AND SUMMARY**

WHEREAS, the City Council of the city of Lake Elmo has adopted Ordinance No. 08-178, an ordinance amending Section 154.205: Fencing Regulations of the Lake Elmo City Code; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo, that the City Administrator shall cause the following summary of Ordinance No. 08-178 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-178, which:

- Clarifies that fences may be installed with written permission from the adjacent property owner on or within one foot (12 inches) of property lines.
- Restricts fences within required setbacks from any public right-of-way to 42 inches in height and at least 50% open to air and light.
- Strikes residential fence design requirements prohibiting solid wall fences over four feet in height on properties under one-half acre in size or less.

BE IT FURTHER RESOLVED by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: June 20, 2017.

Mayor Mike Pearson

ATTEST:

Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member

_____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against same: _____

Whereupon said resolution was declared duly passed and adopted.