



STAFF REPORT

To: Legislative and Licensing
From: Julie Aquavia, Asst. City Attorney
Date: April 18, 2023
Meeting Date: May 2, 2023
Topic: Proposed Fence Code updates

When working with staff to update the provisions regarding special needs fences, I noticed other items in the fence code that should be considered for revision because of inconsistencies, incorrect procedures or unnecessary repetition. Working with Mr. Goudy, and reviewed by Mr. Ertl and Mr. VanDerWal, I have prepared changes for various provisions of §15.04.340. There are explanations for each proposal. There also will be some minor changes to Title 17 proposed¹ that will go hand in hand with a few of these proposals, but they will be presented to the Plan Commission at a later meeting as we are seeking some input from the Planning Department's consultant. We are presenting the Title 15 changes now since Mr. Goudy will be retiring May 3.

Request: That the Legislative and Licensing Committee recommend that the Common Council approve the proposed changes to §15.04.340 contained in the following pages with final action on these changes by the Council to wait until proposed changes to Title 17 are recommended for approval by the Plan Commission at a later date, so as to combine both in one ordinance as they are interrelated. If Title 17 changes are not recommended for approval, then these should be considered by the Council alone.

Proposed changes:

1. 15.04.340.B.1. – Decorative Fences.

Minor corrections are recommended for better grammar and meaning. As currently written, prohibits 4 foot high fences, but Staff allows fences 4 feet high.

¹ Regarding §17.120.040 Parking screening, §§17.80.020 & 17.82.020 Industrial and Northeast Industrial Districts.

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Proposed change.

1. Decorative Fences. Decorative fences which are more than 50% open such as picket fences and split rail fences and wrought iron used for ornamental purposes. A chain link fence is not a decorative fence. Decorative fences may not be more than four feet high.

2. §15.04.340.B.3. – Privacy or Patio Fence.

Recommend changing the title because this is one type of fence rather than two different kinds. This type of fences does not needs a building permit only a regular fence permit and which is already required in a separate provision.

Proposed changes:

Patio Privacy Fence.

3. Patio Privacy Fences. A fence designed to provide privacy for a patio, not over six feet in height nor more than 20 feet in total length, provided such fence is contiguous with the patio and not located in the front yard,

3. §15.04.340.B.5. - Pet enclosures.

Changes are proposed to clarify the type of materials and design and clean up grammar to clarify the size limitations. As currently written, it allows pet enclosures to encroach 5 feet into the offset which contradicts subsection G. which generally prohibits fences in the offset with some exceptions, but pet enclosures is not one of those. Therefore, the proposed change clears up the inconsistency.

Proposed changes:

5. Pet Enclosures. One pet enclosure is allowed, not more than 100 square feet nor more than six feet in height. Such enclosure shall be in the rear yard. Chain link fences are allowed, but not fences such as stockade, board on board or other similar solid fences.

4. §15.04.340.B.8. - I-94 and Train Track Corridors and .11 - Residential

A. Color, design, and materials

Proposing changes to make the color requirements uniform for fences with the same materials and uses. Masonry fences is proposed to be removed from because Staff believes it is cost prohibitive and for the residential fence in particular because any subsequent applicant is required to install the same type of fence as any existing, forcing that person to match a masonry fence if the first residential fence permittee chose that material.

Proposed changes:

8.e. Color. Wood must be left in its natural state or may be painted or stained either tan or brown.

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11.d. Color. Wood must be left in its natural state or may be painted or stained either tan or brown. Masonry or brick fences may not be painted and must remain the natural color of the product.

Materials & design

Proposed changes:

8. c. Design and materials. Only natural materials such as wood stockade or board on board fencing may be used.

Metal standing seam, chain link, with or without slats, plastic, and vinyl are prohibited.

11. b. Design and materials. Only natural materials such as wood stockade or board on board may be used. Metal standing seam, chain link, with or without slats, plastic, and vinyl are prohibited

B. Landscaping

Proposed changes: Staff suggested that landscaping requirements for these fences be eliminated. As written it requires landscaping on the road/track side of the fences. One could assume that the purpose of these fences is to shield the residents from the traffic and not the traveling public from viewing the fence. The other view as suggested by Planning is that the landscaping is to give the traveling public a better view and thus recommended retaining the landscaping requirement but making it less onerous.

8.Landscaping shall be designed and planted to achieve a vegetative screen achieving 50% coverage of fencing, dispersed across the length of the fence, in ten years' time for fences along the I-94 corridor only. Adequacy of landscaping to be determined by review and approval of landscaping plan by the Zoning and Building Administrator.

5. §15.04.340.B.7. – Non-residential fences (requested by the commercial property).

The stated purpose for this fence type is to buffer different residential and commercial uses types of uses when a landscape buffer alone cannot. Therefore, the applicant should not have to express a goal in their application and have it reviewed by the Plan Commission because the Council has already determined the “goal” by authorizing such fences in the Code. In a similar manner, “impact on neighborhood” is an unnecessary review criterium as well – the Council has already determined that the different uses next to each creates an impact that requires buffering.

Assuming these fences should be similar to other types of fences authorized elsewhere in the Chapter, it is recommended that objective standards for the fence materials, location, and design, be established. This would provide greater clarity, because current requirements are too vague, for example: 1) what constitutes fence architectural compatibility with the non-residential structure; 2) what is meant by uniform appearance; and 3) the design review process under §17.100, Plan and Method of Operation, does not provide a forum or guidance for reviewing fences.

Proposed changes:

7. Nonresidential Fences. Fences located between nonresidential and residential or public lands when the preferred method of buffering residential or public lands from the impacts of nonresidential uses with naturalized landscape features and/or the enhancement of existing natural landscape

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features is insufficient or impractical due to parcel configurations, building locations, or parcel use. The plan commission will review requests for the installation of buffering fences and determine whether the preferred method of natural landscape features is capable of accomplishing the buffering goals, and if not, authorize a fence. If approved, the fence shall comply with subsection F., be constructed of wood or other natural substance, shall be tan or brown, or if wood, left in its natural color, and no more than ** high. Concrete panels may be used but must be colored to match the non-residential building and stamped, textured, or poured to look like wood, stone or brick joined by mortar.

6. §15.04.340.B.10. - Located on property.

This can be deleted because it is already covered in subsections F. and G.

B.

7. §15.04.340.C. - Prohibited fences.

Changes are proposed because the definitions of barbed and razor wire are different so adding barbed wire as prohibited as well. Hog wire fences are being built in a more attractive manner and are useful for gardens as is chicken wire, so is proposed to be added.

Proposed changes:

D². Fence Materials.

1. No person shall install: a. Electric fences, or those with razor or barbed, wire. No part of a fence structure may use these materials

b. A fence composed solely of fence posts

or an incomplete fence, consisting only of posts and supporting members.

c. Surveyor's lot line posts shall be permitted at the intersections of lot lines only.

2. Hog wire may be used as a decorative fence under B.1. only when each metal fence panel is completely framed with wood posts and rails. Chicken and hog wire constructed with metal posts may only be used around a garden/activity fence under B.6.

8. §15.04.340.D. - Permit required and D.4. Items for submission

A. Recommend moving this to the beginning of the Chapter and renumbering as subsection B. (which would require re-lettering the following subsections). Additionally, some fences are not subject to

² See Item 9 below.

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a fence permit because they are approved as part of a different permit process and so they should be exempted from this permit. (They are: pools, tennis courts, dumpster enclosures, above ground storage tanks, and liquid petroleum storage tanks).

Proposed changes:

B. Permit Required. No person shall construct, erect, install, enlarge or alter any fence unless a permit has first been obtained from the director and all other provisions of this section are complied with, except no permit is required for fences under B.1., 5., and 6.³, or those regulated and approved as part of a permit under other provisions of the Code. Application for a permit shall be on forms provided by the director and shall be accompanied by the following:

B. 15.04.340.D.4. – Permit Required –

Proposed changes: The exception from the permit requirement for decorative fences is already covered in current sub. D.

4. Such other items required under Sections [15.04.140](#) through [15.04.260](#) as the director may deem applicable;

9. §15.04.340.D.3. - Permit Required - Survey

As written, the Code does not require a survey yet offers the option to submit one that is more than a year old. The general permit provision of the Chapter (15.04.160) states the Director may require one, but it is better to specifically require it.

Proposed changes:

3. a. Plans drawn to scale showing the type and height of the fence, the size and location of the fence with regard to existing buildings and lot lines, and the general appearance and design of the fence.

b. A current survey of the parcel that complies with §15.04.160.B. of this code. If the fence is to be located a minimum of five feet from the rear and side property lines, the applicant may submit a survey which is over one year old but the survey must accurately portray existing conditions. Any individual who is issued a permit with a survey which is over one year old shall, as a condition of accepting the permit, agree to indemnify and hold harmless the city, its officers and agents from all and any claims in the event that the fence is located within an easement, floodplain, drainage way or other similar encumbrance.

³ These are 1. Decorative, 5. Pet enclosure, 6. Garden/Activity and would need to be re-numbered if rename subsection to B.

10. §15.04.340.E. – Permit processing.

Propose deleting the requirement for Plan Commission review of certain fences: subsections B.(4) (Screening fences); B. (8) (I-94 and Train track corridors); and B.(11) (residential fences between commercial and/or industrial properties) because most of what the Plan Commission is to review is already established by the Code and therefore unnecessary.

First, the “purpose” was established when the Common Council authorized such fences in the Code. While the general purpose for limiting fences is to foster and promote the “Brookfield Concept”, by authorizing these types of fences the Common Council has already passed judgment on their “consistency with stated legislative purpose of this section”; and it would be redundant for the Plan Commission to do look at purpose and consistency each time a permit is applied for.

Next, the materials, appearance, design, location and height are already established with objective standards in the Code for each fence type. Therefore, the Plan Commission would not need to “pass upon” those particulars; City staff can check the permit applications or view fences if there are complaints about compliance.

Last, “harmony with principal structure on the subject lot and neighboring structures” is not applicable to any of these types of fences in part because they are already allowed and in part because their materials and construction are established by the Code.

Proposed changes:

11. §15.04.340.F – H. Setback areas, Offset areas and structural; B.10.

Fence locations are already covered in subsections F. & G., thus B.10. is unnecessary (it is also the third time it is stated in this Chapter). Subsections F and G can be combined because they are about the same topic, and in some contain duplicated provisions.

Proposed changes:

B. Fences Regulated. Fences shall not be constructed within the city, except as hereinafter provided:

F. Fence location and construction.

1. All fencing must be located on the subject property. No fencing shall be allowed in the right-of-way area.

2. Setback Areas. Fences or portions thereof within setback areas are prohibited except for those described in subsection (B)(1) and (B)(9)⁴ of this section.

⁴ (1) decorative fences; (9) sports netting

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3. Offset Areas. Fences are prohibited in offset areas except for fences in subsections (B)(1), (3), (4), (7), (8), (11)and (12)⁵ of this section, ..
4. Structural and support components of a fence shall face away from adjacent properties.

⁵ (3) patio privacy; (4) screening fence req'd by other code; (7) non-residential fence as buffer for residential neighbor; (8) I-94/train corridor (11) residential separation from commercial; and (12) special needs