



# Request for Council Action

Originator <b>Community Development</b>	Item <b>Ordinance Creating Fence Standards</b>		# <b>5.4A</b>
Agenda Section <b>HEARINGS/PUBLIC INPUT Ordinances</b>	By <b>EAS</b>	Approved	Date <b>October 6, 2008</b>

Description

Case 10000H-04

## GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: City Code amendments establishing fence standards

## PROPOSAL

While the City Code currently addresses some areas regulating the use of fences, the current standards are minimal and do not address several issues including materials, opacity, and front yard height, which have been the subject of neighbor complaints and safety concerns. As part of the Zoning Ordinance update project, the adopted Planning Division work plan for 2008 includes updating City Code fence standards.

The purpose of this item is to review and consider revisions proposed to comprehensively amend City Code provisions regulating fencing (see attached draft Ordinance establishing fence standards).

## APPLICABLE REGULATIONS

- Section 12.03. Property Conditions Constituting a Public Nuisance;
- Section 15.108. General Requirements, Private Residential Swimming Pools;
- Section 19.03. Zoning Definitions;
- Section 19.08. Permitted Encroachments into Required Yards and Setback Areas;
- Section 19.61. Service Station Performance Standards; and
- Section 21.301.08. Fences. (proposed)

## HISTORY

Planning Commission Meeting:	9/11/08 – Public hearing on ordinance establishing citywide fence standards. Action: Recommended approval of an ordinance establishing new fence standards citywide.
Focus Group Meeting:	8/20/08- Discuss fence standards update of City Code
Bloomington Chamber Meeting:	5/28/08- Discuss fence standards update of City Code
City Council Study Meeting:	5/12/08-Discuss fence standards update of City Code
Planning Commission Study Meeting:	4/10/08-Discuss fence standards update of City Code
City Council Study Meeting:	7/26/04-Discussed fence, and parking and loading standards update of City Code
Planning Commission Study Meeting:	7/15/04-Discussed fence, and parking and loading standards update of City Code
Planning Commission Study Meeting:	7/15/99-Discussed amendments to City ordinances regulating landscaping and screening requirements, and fences
Planning Commission Study Meeting:	5/13/99-Discussed amendments to City ordinances regulating landscaping and screening requirements, and fences

## CHRONOLOGY

City Council Study Meeting:	10/6/08 – Public hearing scheduled on an ordinance establishing new fence standards citywide.
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## ANALYSIS

Staff analysis has included a review of the fence standards of the top twelve population centers in the Twin City Metro Area (see enclosed summary). Input for the update was obtained through a series of study meetings with the Planning Commission and City Council to discuss fence standards. Meetings were also held with the Bloomington Chamber and a Fence Standards focus group to gather input.

The focus groups commented the proposed standards are reasonable and workable in their opinion (see enclosed meeting minutes and summaries). The Fence Standards focus group, comprised primarily of industry experts on fences, indicated that at most 25% of fences installed in the region are painted or stained. Most fences are left untreated. Cedar is a very common material used for fences and stands up well to weathering. The focus group advocated an alternative recommendation to opacity limits on corner lots desiring a privacy fence, namely to allow 6 foot opaque fences within 10 feet of the property line unless there are sight line issues. They also recommended the City not implement fence permits from the perspective that benefits do not outweigh costs and problems for City officials or its citizens.

In a public hearing before the Planning Commission on September 11, 2008, the Planning Commission recommended approval of the ordinance establishing new fence standards citywide.

The following are a summary of key issues for consideration. For each issue the current requirement if any is provided, along with staff's proposed recommendations and basis for recommendations.

- **Height**

Current requirement:

Between the property line and the setback line for structures, a six foot height limit has been applied by policy for fences, as measured from above the natural grade. This standard is not in the City Code but rather is an interpretation based on the Building Code that a fence becomes a structure when over six feet in height and is therefore subject to the required setbacks for structures.

Proposed requirement:

<b>Height Limits</b> <u>Type of Yard</u> <ul style="list-style-type: none"><li>▪ Adjacent to Street</li><li>▪ Not Adjacent to Street</li></ul>	<u>Maximum Height for Body of Fence</u> 4 feet maximum-Residential 6 feet maximum-Non-Residential  6 feet maximum-Residential 10 feet maximum-Non-Residential  <u>Exceptions:</u> (A) A residential fence in a yard adjacent to an arterial street as designated by the Comprehensive Plan may rise to a maximum height of six feet; (B) Any residential fence that meets the required setback from a specific property line for a principal structure
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	<p>in the applicable zoning district may rise to a height of eight feet;</p> <p>(C) A residential fence in the rear yard of a corner lot may rise to a height of six feet provided the fence meets the minimum setback from the street for a principal structure in the applicable zoning district or provided the fence is no closer to a street than an existing principal structure or garage;</p> <p>(D) A residential fence in the rear yard of a through lot when adjacent lots are also through lots may rise to a height of six feet; and</p> <p>(E) A residential fence adjacent to a nonresidential use may rise to the height of eight feet.</p>
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Basis for staff recommendation:

The above recommendations for fence height standards are designed to allow fences in limited situations, adjacent to streets when required for screening, security, or decorative purposes. This is balanced with the need for the City to provide for public safety i.e. for visibility at street intersections, or to ensure public safety scalability; and enhance the overall aesthetic conditions in the City i.e. boulevards that are not walled in with tall solid fences.

▪ **Setback, Opacity and Clear View Triangle**

Current requirement:

The Code currently has limited provisions regulating setback and opacity (where opacity is the degree to which light or views are blocked measured perpendicular to the fence for each fence section between supports). Currently the primary related provision is the Clear View Triangle restriction that a fence may not obstruct the clear view to a height greater than three feet above the level of the center of the adjacent intersection within the triangle formed on the corner lot, measured by a distance of fifteen feet along each lot line from the street-property line intersection.

Proposed requirement:

<b>Opacity Limits</b>	<p>50 % maximum opacity in a yard adjacent to a street where body of the fence is over 3 feet in height and does not meet the required setback for a principal structure from a street in the applicable zoning district.</p> <p><u>Exceptions:</u></p> <p>(A) Fences adjacent to an arterial street as designated by the Bloomington Comprehensive Plan;</p> <p>(B) Screening fences required by the City Code;</p> <p>(C) Screening fences required by a condition of approval for a development application;</p> <p>(D) Fences in the rear yard of a through lot when adjacent lots are also through lots;</p> <p>(E) Fences in the rear yard of a corner lot when the fence is no closer to the street than an existing</p>
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	principal structure or garage; and (F) Vegetation growing adjacent to or on a fence will not be considered in determining compliance with the opacity requirements for fences.
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<p><b>Clear View Triangle</b></p> <ul style="list-style-type: none"> <li>▪ At Street Intersections</li>   <li>▪ At Driveways</li> </ul>	<p>Fences placed on corner lots must maintain a clear view triangle for visibility at intersections of two streets, or at the intersection of an alley and street.</p> <p>Fences must maintain a clear view triangle from the street curb or street edge, not including alleys, for visibility from driveways on the lot or on an adjacent lot. The clear view triangle area for a driveway is formed on each side of the driveway by measuring a distance of 15 feet along the street curb or edge and 15 feet along the driveway edge.</p>
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Basis for staff recommendation:

Similar to height standards, the above recommendations for setback, opacity and clear view triangle standards are designed to allow fences in limited situations, adjacent to streets when required for screening, security, or decorative purposes, balanced with the need for the City to provide for public safety i.e. for visibility at street intersections, and enhance the overall aesthetic conditions in the City i.e. boulevards that are not walled in with tall solid fences.

- **Materials**

Current requirement:

The Code is currently silent about prohibiting certain materials for use in fencing, such as plywood. Electric fences are not permitted.

Proposed requirement:

<b>Materials</b>	No plywood, razor wire, snow fence, or materials originally intended for other uses. No above ground electric wire. Chicken wire is permitted only for residential garden uses. Barbed wire is permitted only on top of fences in non-residential districts, a minimum six feet from the natural grade.
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Basis for staff recommendation:

The above recommendations regulating fence materials are designed to preserve the economic value of real property and neighborhoods, avoid hazards due to dangerous materials, and enhance the overall aesthetic conditions in the City.

▪ **Fence Permit**

Current requirement:

The City currently does not require a fence permit.

Proposed requirement:

<b>Fence Permit</b>	Not required. Revisit after one to two years of enforcement experience under the proposed standards.
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Basis for staff recommendation:

Staff's recommendation not to create a new fence permit process is based on a review of the benefits vs. the costs for the additional time and expense to administer fence permits, for the City and for property owners. There are other standards that Bloomington enforces that do not require permits. Beginning a fence permitting process raises the question, why would permits be a prerequisite for enforcement for fences but not for other regulated items to include: home occupations; accessory structures (120 sq. ft. or smaller); RV storage; outdoor storage; patios; play apparatus; decks (detached, less than 30 inches above grade); and retaining walls (4 feet tall or less)?

In a comparative survey of other cities (the 12 highest population centers in the Metropolitan Area), only two currently require a fence permit (St. Paul and Plymouth). Maple Grove previously required a fence permit but eliminated the permit requirement after experience with it. Among smaller cities (not within the 12 highest population centers), some require fence permits while other do not.

Staff would recommend that the City not require fence permits at this time, and instead revisit after the City has experienced the new standards after one to two years time to evaluate whether the City should consider other options such as a fence permit requirement for enforcement purposes.

▪ **Additional Comment on Impact of Proposed Fence Standards:**

The proposed regulations apply to new fence installations. Fences currently in place may continue in a legally nonconforming status, so long as legal when installed.

**DEADLINE FOR AGENCY ACTION**

Application Date: 08/06/08  
60 Days: 10/03/08  
Extension Letter mailed: 09/29/08  
120 Days: 12/02/08

## **RECOMMENDED CITY COUNCIL ACTION**

In Case 10000H-04, the Planning Division Staff and the Planning Commission recommend approval of the enclosed ordinance adopting new fence standards.

Staff recommends one modification to the ordinance since the Planning Commission's review, namely to add an effective date of December 31, 2008. This would enable staff to have greater ease of administration and enforcement, where all fences subject to the new fence requirements would go into effect at the beginning of 2009. Since fences are not installed in the winter, it would also enable staff time to prepare new informational handouts and engage in public education concerning the new requirements.

The following is the proposed ordinance text revision:

Section 21.301.08(n). Effective date. This ordinance will be effective on December 31, 2008.

If the Council prefers not to change the proposed ordinance with the addition of the above effective date, Section 21.301.08(n) can simply be deleted from the proposed ordinance. The ordinance if adopted would then take effect upon publication.

Given that the City Charter does not allow an ordinance to go into effect more than 30 days after adoption, staff also recommends that the Council take public testimony and engage in discussion on the ordinance but then continue it to the December 1, 2008 meeting for adoption. Adoption on 12/01/08 would allow it to go into effect on 12/31/08.