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File # ZT-20-004

Planning Commission Staff Report

Meeting Date: May 20, 2020
Applicant: Millcreek City

Request: Adoption of a Fencing Ordinance for Millcreek

Prepared By: Blaine Gehring, AICP, Legislative Analyst

SYNOPSIS AND SCOPE OF DECISION

Why do we build fences? To hold something in or to keep something out? To block unsavory sights or to prevent neighbors from spying? To provide a type of security for our property? Maybe – just maybe – we build fences for all of these reasons and more. The fact is, there are dozens of reasons for a fence to exist: security, privacy, decoration, etc. And more and more people are wanting to build fences in Millcreek. The problem is Millcreek has not had a defined fencing ordinance since its incorporation. Millcreek staff have been working on this ordinance for over a year to make sure all necessary provisions were covered, and fencing was adequately regulated while balancing private property rights. Members of the city’s Planning and Engineering Departments have researched and put together the new ordinance to better serve Millcreek residents specifically.

Here is a summary of the ordinance provisions (see the attached draft):

What is considered a fence? (See 19.95.030.B.)

“Fence” includes any man-made fence, wall, screen, retaining wall and any living fence such as a hedge.

Is a building permit required for a fence? (See 19.95.040.A)

Generally, fences do not require a building permit. However, a building permit is required by the building code for any fence over 7 feet high or any retaining wall over 4 feet high. Other requirements may apply to fences in commercial and industrial areas.

What about fences on corner lots? (See 19.95.040.B.1.)

A corner lot abuts 2 streets that intersect each other. Adequate vision for drivers of cars to see approaching traffic at the intersection has to be maintained. The ordinance requires that no view-obstructing fence that exceeds 3 feet shall be placed in what is called the clear view area on any corner.

What about fences in front yards and next to driveways? (See 19.95.040.C.2.)

Like necessary vision at a corner, drivers need to be able to see or be seen by traffic approaching on the street while backing out of a driveway. The ordinance requires that no view-obstructing fence over 3 feet high shall be placed at any driveway, parkstrip, or automobile accessway in a defined clear-view area.

What materials are allowed for fences? (See 19.95.050.C. & D.)

Fences shall be made of high-quality materials that require minimal maintenance. Materials such as brick or stone, decorative precast concrete, heavy gauge vinyl, composite materials, wood, stucco, chainlink, split rails are all permitted. Prohibited materials include used metal roofing panels, pallets, tarps, chip-board or plywood, scrap lumber, metal or glass, security barbed or razor wire, and electrified fencing.

Maintenance of fences required. (See 19.95.040.C.)

All fencing must be continually maintained in good repair, structurally sound and in safe condition. Graffiti shall be removed within 10 days after receiving a notice from a city code inspector.

Where can I build a fence and how high? (See 19.95.040.D.)

Fences for Single-Family, Two-Family and Agricultural Properties. (See 19.95.050.B.)

Height for Front and Corner Side Yards. Chainlink or open-style fencing no higher than 4 feet within 10 feet of the front yard property line or 3 feet for a sight obscuring fence or hedge. All other fencing installed within the minimum front or corner side yard setbacks may not exceed 6 feet in height.

Height for Interior Side and Rear Yards may not exceed 8 feet in height.

Fences for Multi-family, Commercial, Industrial and Institutional Developments. (See 19.95.060)

Fencing for multi-family, commercial, industrial and institutional development is not allowed in any front yard area except as provided in the Manufacturing Zone.

Fencing may not exceed 8 feet in height.

What if there is a grade difference between properties? (See 19.95.040.D.3.)

When a difference in grade exists on either side of a fence or wall, the height of the fence or wall shall be measured from the height of the higher property grade within five (5) feet of the property line and

shall not exceed 12 feet in total height as measured from the lower property grade.

What about retaining walls? (See 19.95.030.H., 191.95.040.D.4., 19.95.100)

Use of retaining walls is encouraged to reduce the steepness of man-made slopes and provide landscaping pockets.

A building permit along with drawings stamped and signed by a professional engineer will be required for retaining walls over 4 feet in height. There are specific requirements for single and terraced retaining walls.

No fences shall be installed on a front yard retaining wall or within 4 feet parallel to the top of a retaining wall.

Other Requirements for Certain Uses

Fencing for private recreational uses may be up to 14 feet and must be located at least 10 feet from any property line. *(See 19.95.070)*

Fencing between residential and agricultural uses and commercial or office uses shall be a minimum 6 feet high decorative precast or textured brick, stone or other masonry fence. *(See 19.95.080.C.)*

Fencing on properties east of I-215 or in the FCOZ Zone, shall not have any pickets or sharp points that could impale wildlife. *(See 19.95.090)*

No fence shall be installed within 3 feet of a fire hydrant or within 1 foot of any streetlight or utility cabinet. *(See 19.95.040.E.)*

PROPOSED ORDINANCE

Chapter 19.95 FENCING, WALLS, AND RETAINING WALLS

19.95.010 Purpose

19.95.020 Applicability

19.95.030 Definitions

19.95.040 General Requirements

19.95.050 Fencing for Single-Family and Two-Family Dwellings and Agricultural Properties

19.95.060 Fencing for Multifamily, Commercial, Industrial, and Institutional Development

19.95.070 Fencing for Private Recreational Uses

19.95.080 Fencing Between Incompatible Uses and Zones

19.95.090 Wildlife Protection

19.95.100 Retaining Walls

19.95.010 Purpose

The purpose of this chapter is to promote the use of high-quality materials in fences, screens, walls, and retaining walls, while providing for privacy and safety for individual properties, vehicles, and pedestrians through fence and wall design, height, and placement. For this Chapter the term, “fence”, “fences”, and “fencing”, includes walls, screens, and retaining walls, which are defined as man-made, and a hedge or a living fence, which is also considered a barrier.

19.95.020 Applicability

The standards of this chapter apply to all new construction of fencing, and reconstruction of existing fencing. Existing non-conforming fences are only subject to the provisions of this chapter if their location or height impacts the safety or clear view for pedestrians, bicyclists, and/or vehicles. Such fences shall always be properly maintained in terms of structural integrity and finish surfaces.

The provisions of this ordinance may be superseded by specific regulations found in other chapters.

19.95.030 Definitions – See definitions in 19.04

- A.** Decorative Wall. An architecturally designed wall that may be precast, integrally colored, or textured. A decorative wall shall not retain more than six (6) inches of soil on one side or the other.
- B.** Fence. A fence is a structure that encloses or screens an area, typically outdoors, and is usually constructed from posts that are connected by boards, wire, rails, or netting. A fence differs from a wall in not having a solid foundation along its entire length. A fence shall not retain more than six (6) inches of soil on one side or the other.
- C.** Finished grade means the average finished grade (ground level) of the property nearest the fence.
- D.** Front yard. The portion of residential lot that extends from the designated front of the residence to the street.
- E.** Hedge. A hedge is a living fence made of closely planted bushes, which, as they grow and get trimmed and shaped, form a wall of vegetation.
- F.** Open-style fencing. A fence constructed with openings of fifty (50) percent or more in order to see through the fence more easily.
- G.** Parkstrip. A narrow strip of land between the sidewalk and the street often used as a right of way for public utilities and traditionally planted with street trees and turf.

- H. Retaining wall. A retaining wall is a relatively rigid wall used for laterally supporting the soil mass so that the soil can be retained at different levels on each of the two sides. A retaining wall is a structure designed to restrain soil to a slope that would not naturally be sustained (typically a steep, near vertical, or vertical slope). Retaining walls include any wall or other similar system, including stacked blocks/rocks/boulders, intended to resist the lateral displacement of earth or other materials.
- I. Recreational uses. Tennis, sports, basketball, or volleyball courts, and other similar private outdoor recreation uses enclosed with fencing.
- J. Scrap material. Recyclable materials left over from product manufacturing and consumption, such as parts of vehicles, building supplies, and surplus materials.
- K. Slope. The level of inclination from the horizontal, determined by dividing, in fifty (50) foot intervals, the average horizontal run of the slope into the average vertical rise of the same slope and converting the resulting figure into a percentage value.
- L. Sound wall. A wall installed parallel to a state highway with the intent of minimizing the traffic noise for nearby residential dwelling units.

19.95.040 General Requirements

- A. **Permit Requirements.** A building permit is required for any fence over seven (7) feet in height, or as required by the currently adopted version of the International Building Code or International Residential Code. A building permit is required for all retaining walls four (4) feet in height or greater (measured from the bottom of the foundation or footing to the top of the wall) and must be designed by a licensed professional engineer in the State of Utah.
- B. **Visual Obstructions.**
 - 1. **Corner Lot Visual Obstructions.** No view-obstructing fence (a fence that does not allow for clear visual access through its construction materials) or wall that exceeds thirty-six (36) inches in height shall be placed in the clear view area as set forth in sections 14.12.040 and 19.76.160. An open-style fence may be a maximum of four (4) feet in height if at least the upper twelve (12) inches, shall be open-style fencing. The bottom three (3) feet may be solid fencing.
 - 2. **Driveway or Lane Visual Obstructions.** No view-obstructing fence in excess of thirty-six (36) inches in height shall be placed at any driveway, parkstrip, or automobile accessway within a specified triangular area. The clear-view area for the intersection of a driveway and a street shall be determined by first establishing the point of intersection of the driveway edge and the street edge of pavement or, if there is an existing curb, back of curb, then measuring ten (10) feet along the edge of pavement or curb away from the driveway, and twenty (20) feet along the edge of the driveway in toward the property. A line is then drawn from the termini of the two lines, forming a triangle. This is accomplished on both sides of the driveway. Within the triangles and the area between them, the following shall apply:
 - a. An open-style fence may be a maximum of four (4) feet in height. At least fifty (50) percent of the fence, or at least the upper twelve (12) inches, shall be open-style fencing. The bottom three (3) feet may be solid fencing,
 - b. Any wall or other type of solid fence or sight obscuring growth shall be a maximum of three (3) feet in height.
 - c. Tree trunks may be located within this clear view triangle; however, tree canopies ~~within the clear view area shall trimmed to a minimum of eight (8) feet above the~~

sidewalk and fourteen and one half (14.5) feet above the street as set forth in section 14.12.050.

- d. Tree canopies or other growth shall not block street signs or signals in view from the approaching street within one hundred (100) feet.
- e. Sight obscuring growth (hedge, etc.) shall be a maximum of three (3) feet in height in the parkstrip.
- f. The driveway clearview fencing provisions may not be required on corner and double frontage lots for a secondary drive access that is gated, locked, or that accesses the rear yard, if it is determined by the Planning Director that the drive access is not a primary access.

C. Fence Maintenance. All fencing shall be continually maintained in good repair, structurally sound, and safe condition, including appropriate and regular maintenance of the fence surfaces, by the property owners abutting the fence. Repairs and patching shall consist of similar fencing materials and shall blend with the fence. Graffiti shall be removed within 10 days after receiving a notice from a city code inspector.

D. Fence Height Measurement.

- 1. Fence height shall be measured from the finished grade to the highest point of the fence.
- 2. Berms, or other means to raise the elevation of the ground upon which a fence is proposed to be located, shall be included in the measurement of fence height.
- 3. When a difference in grade exists on either side of a fence or wall, the height of the fence or wall shall be measured from the height of the higher property grade within five (5) feet of the property line but shall not exceed twelve (12) feet in total height as measured from the lower property grade.
- 4. Use of retaining walls (for front yard retaining walls – see note 5 below) is encouraged to reduce the steepness of man-made slopes and to provide planting pockets conducive to re-vegetation.
 - a) If a single retaining wall is used, one (1) vertical retaining wall up to eight (8) feet in height is permitted to reduce excavation and embankment.
 - b) Terracing is limited to two (2) walls with a maximum vertical height of six (6) feet each. The width of a terrace shall be a minimum of a one to one (1:1) ratio with the height of the wall. Terraces are measured from the back of the lower wall to the face of the upper wall. Terraces created between retaining walls shall be permanently landscaped or revegetated as required by this Chapter.
- 5. For front or corner side yards with slopes less than 30 percent, front yard retaining walls shall be no more than four (4) feet in height and shall include planting terraces of at least four (4) feet in width.
- 6. For front yards or corner side yards with slopes greater than 30 percent, retaining walls shall meet the requirements of sections (4)(a) and (4)(b) above.
- 7. Retaining walls are considered a part of the fence height. No fences shall be installed on the top of a front yard retaining wall or within four (4) feet parallel to the top of a retaining wall.

- E. **Clearance.** No fence, wall, hedge, or other structure shall be installed or maintained within thirty-six (36) inches of any fire hydrant and no closer than 12 inches to any utility (e.g., streetlights) or utility cabinet.

19.95.050 Fencing for Single-Family and Two-Family Dwellings and Agricultural Properties

- A. **Applicability.** This section shall apply to any fence serving a single-family or two-family dwelling or a property containing an agricultural use, with the exception of lots or parcels in the Foothills and Canyons Overlay Zone (FCOZ), or perimeter fencing as required by the City's Planned Unit Development Standards. Fencing in the FCOZ is regulated under MKC 19.72.100 and perimeter fencing for PUD's is regulated under MKC 19.78.030.H.

- B. **Height.**

- 1. **Front and Corner Side Yards.** Chainlink fencing or open-style fencing within ten (10) feet of the front yard property line (property line which is parallel to the street which is not considered a corner side yard), shall be no more than four (4) feet in height. Any wall or other type of sight obscuring fence or vegetation shall be a maximum of three (3) feet in height. All other fencing installed within the minimum front or corner side yard setbacks may not exceed six (6) feet in height. Also, refer to section 19.95.040 (B).
- 2. **Interior Side and Rear Yards.** Fencing in interior side or rear yards may not exceed eight (8) feet in height, subject to the visual obstruction requirements established below.

- C. **Allowed Materials.** Fences shall be made of high-quality, durable materials that require minimal maintenance. The following fencing materials shall be allowed for properties containing single-family and two-family dwellings, except as otherwise provided below or by a more restrictive provision in this chapter:

- 1. Brick, block, or stone;
- 2. Architecturally designed pre-cast concrete, decorative precast concrete or integrally colored and textured block, brick, stone, or other masonry materials;
- 3. Solid or private heavy gauge vinyl, polyethylene, or similar materials;
- 4. Composite materials, wood, cement, stucco, corrugated metal with wood or contrasting posts;
- 5. Visually permeable fencing, such as chainlink, mesh, picket, or split rail fences constructed of metal, vinyl, wood, or composite;
- 6. Chainlink fencing in interior side or rear yards that may contain slats; or
- 7. Hedges or vines on fences and walls where visual obstruction requirements do not apply, see MKC 19.95.040 B.

- D. **Prohibited Materials.** The following fencing materials shall be prohibited on properties containing single-family or two family-dwellings or on properties containing an agricultural use:

- 1. Materials not typically used or designated/manufactured for fencing such as, but not limited to, used metal roofing panels, pallets, tarps, chipboard, or plywood;
- 2. Scrap material, such as scrap lumber, metal or glass;
- 3. Security wire, such as barbed wire, concertina wire, or razor wire; or
- 4. Electrified fencing, except for legally established agricultural uses.

19.95.060 Fencing for Multi-family, Commercial, Industrial, and Institutional Development

- A. Applicability.** This section shall apply to any fence serving multi-family, commercial, industrial, or institutional development, with the exception of specific requirements found in the MD (19.55), M (19.66), or C (19.60) zones, or in lots or parcels in the Foothills and Canyons Overlay Zone (FCOZ), or perimeter fencing as required by the City’s Planned Unit Development (PUD) Standards. Fencing in the FCOZ is regulated under MKC 19.72.100 and perimeter fencing for PUD’s is regulated under MKC 19.78.030.H.
- B. Prohibited Locations.** Fencing for multi-family, commercial, industrial, and institutional development is not allowed in any front yard area, except as provided for in the Manufacturing Zone.
- C. Height.** Fencing may not exceed eight feet in height, except when the section includes terracing as per 19.95.040 (D).
- D. Allowed Materials as per sections 19.44.050(E)(7), 19.60.060(C)(11) and 19.66.0-50(C)(8).**

E. Prohibited Materials. The following fencing materials shall be prohibited on properties single-family or two family-dwellings or on properties containing an agricultural use:

- 1. Materials not typically used or designated/manufactured for fencing such as, but not limited to, used metal roofing panels, pallets, tarps, chipboard, or plywood;
- 2. Scrap material, such as scrap lumber, metal or glass;
- 3. Security wire, such as barbed wire, concertina wire, or razor wire; or
- 4. Electrified fencing, except for legally established agricultural uses.-

19.95.070 Fencing for Private Recreational Uses.

Open-style fences for uses such as tennis court enclosures, sport courts, hot tubs, swimming pools (includes a self-closing locking gate), and ball diamond backstops, may be erected to a height greater than eight feet, but shall not exceed a height of fourteen (14) feet and shall be located at least 10 feet from any property line.

19.95.080 Fencing Between Incompatible Uses and Zones

- A. Applicability.** Whenever a lot is developed with a use that is different than a use located on an abutting lot or parcel, the new development shall include installation of a fence or wall along the property line between the different uses as provided in this section, or as provided in the PUD standards (19.78), or the RM (19.44), MD (19.55), M (19.66), or C (19.60) zones.
- B. Fencing Between Commercial or Office, and Agricultural or Residential Zones.** A minimum six (6) feet tall decorative precast or integrally colored and textured block, brick, stone, or other masonry wall is required between commercial or office zones and agricultural or residential zones, where there may be resulting detrimental effects as determined by the Planning Director or designee. Vinyl may be allowed with a minimum two foot wide, six foot tall brick or stone pillars spaced every ten feet on center.
- B. Landscape Buffering for Waterways, Trails, Parks, and Open Space may be substituted from fencing.** Intensive landscaping techniques may be used to buffer waterways, trails, parks, open spaces or other uses. Persons wishing to substitute landscape buffering for fencing requirements shall provide plans to the Planning Director for approval.

- C. **Noise Walls for Properties Abutting the I-15 and I-215 Corridors.** Any development abutting the I-215 Corridor shall include construction of a noise wall along the corridor right-of-way line if the Utah Department of Transportation determines such wall is necessary pursuant to an environmental study. Noise walls are exempt from the height and location requirements of this Chapter.

19.95.090 Wildlife Protection

Applicability and Requirement. For all properties East of I-215 and any property in the FCOZ zone, the top of fencing shall not have any pickets or sharp points that could impale wildlife.

19.95.100 Retaining Walls

1. A building permit is required for all retaining walls with a height greater than four (4) feet (measured from the bottom of the foundation, footing, or wall system, to the top of the wall). The submittals for a building permit shall include drawings stamped and signed by a professional engineer licensed by the State of Utah, details of the wall design, and a site plan depicting existing and proposed elevations. The design engineer shall inspect the construction of the wall and certify in writing that the wall was built per the approved design and shall submit that certification to the City within fourteen (14) days of the completion of the retaining wall.
2. Height and terracing shall conform to the requirements of section 19.95.40.D.
3. Retaining walls are not considered double fences.
4. Retaining walls are subject to all requirements of this chapter and any other applicable requirements including setbacks.
5. Retaining walls may not be used to create additional surface parking or vehicular access on a residential lot.

COMMUNITY COUNCIL RESPONSE

The proposed fencing ordinance was sent to all community council chairs on April 23, 2020 asking for their input in light of the current pandemic. A couple of members of the Millcreek Community Council and the Mount Olympus Community council responded and their suggestions have been incorporated in this attached draft. Specifically, members of the Mount Olympus Community Council asked for consideration to be given for retaining walls for front yards with slopes greater than 30 percent.

The East Mill Creek Community Council made a recommendation regarding adoption of the fencing ordinance, which is attached to this staff report.

PLANNING STAFF RECOMMENDATION AND DRAFT MOTION

Staff recommends the Planning Commission send a favorable approval recommendation to the

City Council on this ordinance.



May 11, 2020

To: Blaine Gehring, AICP, Legislative Analyst
Millcreek City Planning Commission

Subject: ZT-20-004 Adoption of New Fencing Ordinance

The EMCCC forwards a positive recommendation for the new fencing ordinance.

We had a couple of questions/clarification:

1. We assume that existing fencing that is out of compliance will be grandfathered in ? But, what if way out of compliance; e.g., a 20 foot fence?
2. On 19.95.050 Fencing:
B Height.
 - a. **Front and Corner Side Yards.** Chainlink fencing or open-style fencing within ten (10) feet of the front yard property line (property line which is parallel to the street which is not considered a corner side yard), shall be no more than four (4) feet in height. Any wall or other type of sight obscuring fence or vegetation (**anything other than chainlink or open-style ?**) shall be a maximum of three (3) feet in height. All other fencing installed within the minimum front (**ten feet ?**) or corner side yard setbacks may not exceed six (6) feet in height. Also, refer to section 19.95.040 (B).
3. On 19.95.090. The west side of I-215 has areas in the FCOZ zone and wildlife/deer, but ordinance says east of I-215 only. Should west side, FCOZ be included?

//s//

Nancy Carlson-Gotts
Chair