

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING TITLE 18, UNIFIED DEVELOPMENT CODE, SUBSECTION 18.40.060.C PROPERTY PROTECTION STANDARDS, OF THE OLYMPIA MUNICIPAL CODE TO ALLOW ELECTRIC FENCES TO PROTECT CERTAIN OUTDOOR STORAGE AREAS

WHEREAS, on March 9, 2022, the City of Olympia accepted an application from AMAROK LLC (Applicant) to amend fence standards in Chapter 18.40.060.C.10 of the Olympia Municipal Code (OMC) allowing the use of electric fences for security purposes (Proposed Amendments); and

WHEREAS, the Applicant requested the Proposed Amendments to address an increase in theft and vandalism of personal property in outdoor storage areas; and

WHEREAS, on May 20, 2022, Notice of Application for the Proposed Amendments was routed to state and local agencies, Recognized Neighborhood Associations, and the Council of Neighborhood Associations; and

WHEREAS, on July 18, 2022, the Olympia Planning Commission received a briefing on the Proposed Amendments; and

WHEREAS, on August 4, 2022, notice of the public hearing for the Proposed Amendments was provide to Parties of Record, Recognized Neighborhood Associations, and the Council of Neighborhood Associations pursuant to Chapter 18.78 OMC, Public Notification; and

WHEREAS, on August 5, 2022, a legal notice was published in The Olympian newspaper regarding the date of the Olympia Planning Commission’s public hearing on the Proposed Amendments pursuant to 18.78 OMC, Public Notification; and

WHEREAS, on August 11, 2022, the City of Olympia issued a Determination of Non-Significance pursuant to the State Environmental Policy Act (SEPA) on the proposed amendments; and

WHEREAS, on August 15, 2022, the Olympia Planning Commission held a public hearing and commenced deliberations on the Proposed Amendments, requesting that Community Planning and Development Staff provide additional informational regarding the Proposed Amendments; and

WHEREAS, on September 19, 2022, the Olympia Planning Commission received a briefing, deliberated, and provided to City Council its recommendation on the Proposed Amendments to amend Chapter 18.40.060.C.10 OMC, as modified by Staff (Modified Amendments); and

WHEREAS, on September 21, 2022, the Modified Amendments were sent to the Washington State Department of Commerce Growth Management Services with the Notice of Intent to Adopt Development Regulation amendments as required by RCW 36.70A.106 and no comments were received from state agencies during the comment period; and

WHEREAS, the Proposed Amendments, as modified, are consistent with the Olympia Comprehensive Plan and other chapters of Title 18 OMC; and

WHEREAS, the Proposed Amendments have been reviewed pursuant to the Rezones and Text Amendments process outlined in chapter 18.58 OMC; and

WHEREAS, Chapters 35A.63 and 36.70A RCW and Article 11, section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 18.40.060.C, Olympia Municipal Code Subsection 18.40.060.C is hereby amended to read as follows:

C. Fences/Hedges, Walls and Site Perimeter Grading. It shall be the responsibility of property owners to ensure fences are within property lines and that a building permit is obtained when required. "Fences" as used in this section includes walls and similar above-grade unenclosed structures forming a continuous or nearly continuous line or row exceeding six feet in length. Also see definition, OMC 18.02.180(F)

For the purpose of fencing, the front yard is considered to be the first 10 feet of any lot, tract, or parcel that abuts a public street or right of way, excluding alleys. Corner lots adjacent to two public rights of way shall have a front yard and a flanking side yard.

1. Fence Heights:

a. Fences, when located within a required yard, shall not exceed the following height limits:

- i. Front yard = 48" (4'-0");
- ii. Side yards = 72" (6'-0"), Flanking side yards = 72" (6'-0");
- iii. Rear yards = 72" (6'-0");
- iv. Clear Sight Triangle = 30" (2'-6").

b. Agricultural uses. Rear and side yard fences for legally established agricultural uses may be permitted to a maximum height of eight feet from the ground; provided, at a minimum, the portion of the fence above six feet is composed of a fence material that is of a deer fence-type design.

Examples of deer fence designs include wire with rectangular openings generally four inches by four inches in size. Additionally, the eight-foot fences shall not be constructed of chain link or chicken wire.

c. Gardens. Front yard fences surrounding a defined garden bed may be permitted to a maximum height of eight feet from the ground and shall be composed of a fence material that is of a deer fence-type design.

Examples of deer fence designs include wire with rectangular openings generally four inches by four inches in size. Additionally, the eight-foot fences shall not be constructed of chain link or chicken wire.

For purposes of this section, a front yard shall not exceed 10 feet in depth, regardless of any other provision found in this Title.

2. Fence height is measured to the top of the fence, excluding posts. Point of ground measurement shall be the high point of the adjacent final grade.
3. Fences, walls, and hedges are permitted within all yard areas provided that regardless of yard requirements, no closed gate, garage door, bollard or other feature shall obstruct a driveway or other motor vehicle private ingress within 20 feet of a street right-of-way nor obstruct automobile views exiting driveways and alleys (see clear vision triangle). This 20-foot requirement is not applicable within the downtown exempt parking area as illustrated at Figure 38-2. Additional exceptions may be granted in accordance with OMC 18.38.220(A)(2).
4. Front yard fences of any common areas, such as tree, open space, park, and stormwater tracts, must be a minimum of 25 percent unobstructed, i.e., must provide for visibility through the fence.
5. Fence pillars, posts, and similar features may project a maximum of two feet above maximum fence height.
6. Site Perimeter Grading. Within required yard areas, no single retaining wall (nor combination of walls within five horizontal feet of each other) shall exceed a height of 30 inches as measured from the lowest adjacent grade, nor shall any modification of grades or combination of retaining walls result in grade changes exceeding 30 inches within five feet of a property line nor 60 inches within 10 feet of an existing or proposed property line.
7. An administrative exception may be approved by the Department to exceed maximum fence height and other provisions of these standards where all of the following conditions exist.
 - a. Variation of existing grade on either side of the fence results in a fence lower than the maximum height as measured from the highest point of grade within five feet of either side of the fence; or other special circumstances relating to the size, shape, topography, location, or surroundings of the subject property warrant an exception to permit a fence comparable with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
 - b. The special conditions and circumstances do not result from the actions of the applicant;
 - c. Granting of the exception will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property is located;
 - d. The granting of the exception will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated; and
 - e. The exception is the minimum necessary to provide the rights and privileges described above.

Applications for additional fence height or other exceptions shall include an explanation of the exception sought and its purpose; and fence illustrations and plan drawing that depicts proposed fence location and height, other structures, landscaping, and proposed grades in relation to existing grades.

[NOTE: A building permit is required for all fences exceeding seven feet in height. Fences and hedges may exceed maximum heights if located outside of required yards. But see Design Guidelines.]

8. Hedges. Hedges are allowed in all required yard areas subject to the following maximum height limits:

- a. Front yard = 48" (4'0")
- b. Side yard, Flanking side yard = Unlimited
- c. Rear yard = Unlimited

[Note: Clear Sight Triangle = 30" (2'-6"), see OMC 18.40.060(B)]

9. Barbed and/or razor wire fences. No person or persons being the owner of or agent for or in possession and control of any property within the city limits shall construct or permit to exist any fence around or in front of such premises, consisting wholly or partially of barbed and/or razor wire, except to provide security at a government-owned property or privately owned utility where security for the property is mandated by law; provided that the provisions of this section shall only extend to fences that are within 10 feet of a street or alley or other public place within the City.

10. Electric fences. It is unlawful to ~~erect or install or maintain any electric fence within the city limits except as follows: for low voltage, solar fences installed atop a six-foot non-electric fence for the purposes of protecting farms or agricultural animals. "Electric fence" means any fence with above-ground electric conductors carrying electric current supplied by batteries, commercial power or any other source of electricity, erected for the purpose of retaining or excluding any animals, livestock, or persons.~~

a. For the purposes of protecting farms or agricultural animals using ~~for~~ low-voltage, solar fences installed atop a six-foot non-electric fence; or

b. For securing an outdoor storage area, subject to the provisions below.

c. For purposes of this subsection:

i. "electric fence" means a fence, including an electric security fence, with above-ground electric conductors carrying electric current supplied by batteries, commercial power, or any other source of electricity, installed for the purpose of retaining or excluding any animals, livestock, or persons.

ii. "Electric security fence" means an electric fence installed to protect an outdoor storage area.

iii. "Outdoor storage area" includes an area used for automobile and recreational vehicle repair and service, equipment storage, lumber yards, fleet storage, landscape supplies, or similar uses.

iv. "Responsible person" means a person or entity that owns or controls property on which an electric security fence is sought to be installed or is installed and used pursuant to this section.

v. The installation and use of an electric security fence is permitted within the following zoning -districts:

1. Auto Services (AS)
2. Industrial (I)
3. Light Industrial (LI)

d. The Director may, on a case-by-case basis, authorize the installation and use of an electric security fence to secure an outdoor storage area in the following zoning districts if the Director finds there has been an increase in theft and vandalism at the outdoor storage area and finds that use of an electric security fence is warranted because the responsible person has taken reasonable measures to prevent theft and vandalism, but such measures have not been effective:

- i. General Commercial (GC)
- ii. Downtown Business (DB)
- iii. High Density Corridor 1 (HDC-1)
- iv. High Density Corridor 2 (HDC-2)
- v. High Density Corridor 3 (HDC-3)
- vi. High Density Corridor 4 (HDC-4)

e. An electric security fence is only permitted to be installed and used if the outdoor storage area it protects was established and is operated in conformance with City code.

f. An electric security fence installed and used pursuant to this subsection must meet the following electrical requirements:

- i. The electrical charge for the electric security fence must be noncontinuous and the electric fence controllers must be approved by a Nationally Recognized Testing Laboratory (NRTL).
- ii. The energy source (energizer) for the electric security fence must be provided by a storage battery not to exceed 12 volts DC. The storage battery must be charged primarily by a solar panel. However, the charge from the solar panel may be augmented by a trickle charger.
- iii. The electric charge produced by the electric security fence upon contact may not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electrotechnical Commission (IEC) Standard No. 60335-2-76.

g. An electric security fence installed and used pursuant to this subsection must meet the following height and location requirements:

- i. An electric security fence must be completely surrounded by a non-electric perimeter fence or wall that is not less than five feet in height and no more than eight inches from the electric security fence to prevent entrapment.
- ii. An electric security fence may not exceed the higher of eight feet or two feet higher than the perimeter fence or wall.
- iii. Exceptions:

1. Where a non-electrified perimeter fence or wall already exists within a required yard setback (as defined in OMC 18.02.180 Y) and if such fence or wall was lawfully installed, such fence or wall need not be modified in height or location to meet the requirements of this subsection. The electric security fence may be located within the required yard setback and may not exceed eight feet in height.

2. Rear and side yards: Where a non-electrified perimeter fence does not exist within a required rear or side yard setback, it may not exceed six feet in height and the electric security fence may not exceed eight feet in height.

3. Front yards: The first priority is to place both the non-electrified perimeter fence and the electric security fence outside the required yard setback. If this is not practical due to existing improvements such as paved parking, curbing, or landscaping, both fences can be placed in the required front yard setback. In these instances, the non-electrified perimeter fence may be up to five feet in height and must be transparent, for example, chain link or metal picket fencing. The electrified portion may extend up to eight feet in height. Both fences must be placed as far back as site conditions allow to avoid being at the edge of an adjacent street or sidewalk.

h. The responsible person shall clearly identify an electric security fence with warning signs 30 square inches in size per IEC standards, posted at intervals less than 30 feet. Such warning signs must read "Warning – Electric Fence" and contain an imager or symbol (e.g. a lightning bolt) that allows non-English speaking individuals to understand that the fence is electrically charged.

i. The permitting process for electric security fences is governed and regulated in accordance with the City's construction and burglar alarm codes. A building permit is required for an electric fence exceeding seven feet in height.

j. Gates, bollards, or other features of an electric security fence must comply with the provisions in OMC 18.38.060.C.3 and provide emergency access in a manner acceptable to the Fire Marshal.

k. Electric security fences must comply with the City's design and landscape and screening standards as applicable. The responsible person shall submit plans to the Community Planning and Development Department for review and approval prior to fence installation.

Section 2. Olympia Municipal Code. Copies of the Olympia Municipal Code are and must be retained on file with the office of the City Clerk.

Section 3. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances remains unaffected.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Effective Date. This Ordinance takes effect five days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Michael M. Young

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: