

 <p>CITY OF ST. CHARLES ILLINOIS • 1834</p>	AGENDA ITEM EXECUTIVE SUMMARY		Agenda Item number: 4e
	Title:	Recommendation to approve an amendment to Title 18 “Stormwater Management Ordinance”, Section 18.04.010 “– Stormwater Management Ordinance - Adopted – Modifications”, Section C (Fences)	
	Presenter:	Russell Colby, Community Development Director	
Meeting: Planning & Development Committee		Date: December 11, 2023	
Proposed Cost:		Budgeted Amount:	Not Budgeted: <input type="checkbox"/>
TIF District: None			
Executive Summary (if not budgeted, please explain):			
<u>Background</u>			
<p>Construction of a fence requires a building permit and all fences are subject to zoning standards for size and location. Fences proposed for locations in floodplains and drainage easements are also subject to further restrictions regarding the design of the fence panel, including limitations on fence style and ground clearance. The intent of these regulations is to prevent fences from adversely impacting drainage.</p> <p>The City imposes these regulations as a local amendment to the Kane County Stormwater Ordinance. The codes were last revised in 2019 to try to simplify the requirements, but the code continues to be difficult to consistently administer.</p> <p>For privacy-style fences located within easements, the current code requires a ground clearance of 4” below the fence panel. This 4” clearance has received frequent push back from homeowners who are unable to install a fence that meets their needs. A fence at 4” clearance may not be effective at keeping pets in a yard or may be aesthetically appealing, as the fence changes height around a yard, or crosses in and out of easements.</p> <p>Staff consistently receives requests to vary from this 4” clearance standard, which requires an engineering evaluation to determine if there would be any drainage impact. This exercise is time consuming for staff, and/or an added cost for a homeowner. Additionally, in many cases, a homeowner may later add chicken wire or screening within this 4” gap, or simply lower the fence later after the permit has been closed out. Neither are desirable outcomes.</p> <p>In evaluating yard drainage complaints, staff has rarely encountered an issue caused by a fence. Most yard drainage issues result from a lack of engineering or grading when a neighborhood was built, or modifications to engineered drainage ways from berms and landscaping.</p>			
<u>Proposal</u>			
<p>The proposal is to lower the clearance requirements for privacy fences to 2”, and adjust other fence clearance requirements accordingly. This height is sufficient to not block surface drainage, and is low enough to meet the needs of most homeowners seeking to enclose their yards for pets. This will also hopefully prevent fences from being later modified after a permit is closed out.</p> <p>As a back up to deal with potential drainage issues, the standard “Release and Indemnity Agreement” required to place fences within easements will be expanded to address drainage concerns from fences or other improvements that may impede drainage. This language is already in the City Code, but has not previously been part of the standard form agreement for fences within easements.</p>			
Attachments (please list):			
Redlined code amendment draft, Redline Release and Indemnity Agreement			
Recommendation/Suggested Action (briefly explain):			
Recommendation to approve an amendment to Title 18 “Stormwater Management Ordinance”, Section 18.04.010 “– Stormwater Management Ordinance - Adopted – Modifications”, Section C (Fences).			

Title 18 Stormwater

18.04.010 – Stormwater Management Ordinance - Adopted – Modifications

C. Article IV, 9-83.L shall be appended to Article IV, 9-83 and shall read as follows:

“Fences.”

1. Fences within drainage routes: Fences shall ~~not be permitted~~ be restricted or prohibited:
 - a. where they have the potential to impede the flow of storm water, or drainage; or,
 - b. when below the high water elevation of a detention storage facility; and/or,
 - ~~b.c. within regulatory floodplain.~~
2. Fences within Easements – Affidavit and Release Certificate: Applications for fences installed in or across ~~an a drainage or utility~~ easement containing drainage rights shall have an affidavit and release attached, prepared by the property owner, stating that ~~he has~~ they have read the requirements for fences located in easements and ~~that he~~ agrees to comply with them and that ~~he does for himself~~ they as owner, his-their heirs, successors and assigns indemnify and hold harmless the City from any liability asserted by others in connection with the placement of the fence and that they permit the removal of any fence or any other structure or form of landscaping or patio structures within the easement area by the City if the fence ~~or~~ landscaping or patio impedes the flow of storm water or drainage. The affidavit ~~may shall~~ be recorded at the owner's expense by the City in the County Recorder of Deeds Office. In the event the City shall determine it necessary to excavate or have access across the easement, or require the fence to be modified or removed to provide for necessary flow of stormwater, the owner shall modify or remove the fence at the City's direction and in the event of failure thereof, the City may remove the same at owner's expense and the City shall not be required to replace same.
- ~~3. Fences within Easements – Vertical Clearance: If the fence lies within an easement which contains drainage rights, a~~ A ~~minimum vertical clearance of four (4") inches~~ from the ground surface to the bottom of the fence ~~must shall~~ be maintained per Table 9-83.L. The vertical clearance shall be maintained for the entire length of that portion of the fence that is ~~installed in or across the Easements~~ subject to the Vertical Clearance requirement. ~~Requests for a reduced vertical clearance requirement may be submitted and will be considered in accordance with this section. Notwithstanding any guideline given herein, the City Administrator may deny or approve a reduced vertical clearance which is in the interest of public health and safety as he/she deems appropriate.~~
 - a. ~~The vertical clearance may not be reduced in the following instances:~~
 - i. ~~Fence around a storm water management basin or perpendicular to the emergency overflow route of a storm water management basin.~~
 - ii. ~~Fences that will impede the flow of storm water or drainage.~~
 - b. ~~For purposes of this section, the following definitions apply:~~

- i. ~~Privacy fence – less than 50% open surface area~~
- ii. ~~Non-Privacy fence – more than 50% open surface area and able to pass a one (1") inch diameter sphere~~
- iii. ~~Chainlink – more than 50% open surface area and able to pass a two (2") inch diameter sphere~~
- c. ~~Screening placed across the vertical clearances shall be more than 50% open surface area and able to pass a two (2") inch diameter sphere~~
- d. ~~The minimum vertical clearances shall be in accordance with the following:~~

Table 9-83.L

Minimum Vertical Clearance above ground			
Fence Type	Inside Easement	Outside Easement	In Floodplain
Privacy: <u>Less than 50% open surface area</u>	<u>4"2"</u>	<u>2"None</u>	not allowed
Non-Privacy: <u>More than 50% open surface area and able to pass a one (1") inch diameter sphere</u>	<u>2"None</u>	<u>0None</u>	2"
Chainlink: <u>More than 50% open surface area and able to pass a two (2") inch diameter sphere</u>	<u>0None</u>	<u>0None</u>	<u>0None</u>

Release and Indemnity Agreement
For Fences, ~~and~~ Patios, Other Structures and Landscaping Located in Utility and/or
Drainage Easements in the City of St. Charles

I (We), the undersigned, certify that ~~I (we) am~~ (are) the owner(s) of record of the real estate described herein, that I (we) have read Section 17.22.030 and Section 18.04.010.C, "Fences", of the St. Charles Municipal Code and agree to comply with its requirements regarding fence and patios located in utility or drainage easement areas.

I (We) hereby release and agree to hold harmless the City of St. Charles, its officers, agents and employees from any liability or loss, including reasonable attorneys' fees, arising out of or in connection with the moving or removal of any fence, patio, or any other structure of form or landscaping within the easement area.

I (We) hereby agree to maintain the fence or patio so that flow of stormwater or drainage is not impeded at any time.

I (We) hereby further agree that in the event the City shall determine it necessary to excavate or have access across the easement, or require the fence or patio to be modified or removed to provide for necessary flow of stormwater, the owner shall modify or remove the fence or patio at the City's direction and in the event of failure thereof, the City may remove the same at owner's expense and the City shall not be required to replace same.

I (We) further agree that the City of St. Charles, its officers, agents, and employees shall not be required to replace any such fence, patio, structure or landscaping. If the fence, patio or landscaping impedes the flow of storm water or drainage at any time the owner of said real estate shall be responsible to remediate and maintain the structure so it does not continue to occur.

I (We) further agree ~~If the fence lies within an easement which contains drainage rights,~~ that the required minimum vertical clearance shall be provided from the ground surface to the bottom of the fence and ~~must~~ shall be maintained at all times.

This release and indemnity agreement shall be binding upon and inure to the benefit of my (our) heirs, successors, and assigns.

Signature(s) of Owners

Address

Date

This instrument prepared by:
Community Development Department
City of St. Charles, 2 East Main Street, St. Charles, IL 60174-1984

State of Illinois)
) SS
County of Kane)

I, the undersigned, a Notary Public, in and for said County and State, DO HEREBY CERTIFY
that _____

_____ personally known to me to be the same person(s) whose name(s) subscribed to the foregoing instrument,
appeared before me this day in person and acknowledged that

_____ signed, sealed and delivered the said instrument as
_____ free and voluntary act, for the uses and purposes therein set forth.

Given under my hand notarial seal this _____ day of _____, _____

Notary Public
My Commission Expires: _____