



# COMMUNITY DEVELOPMENT DEPARTMENT

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Planning • Zoning • Building Safety • Construction Inspection Services • Public Health • Housing Inspections • Code Enforcement

## MEMORANDUM

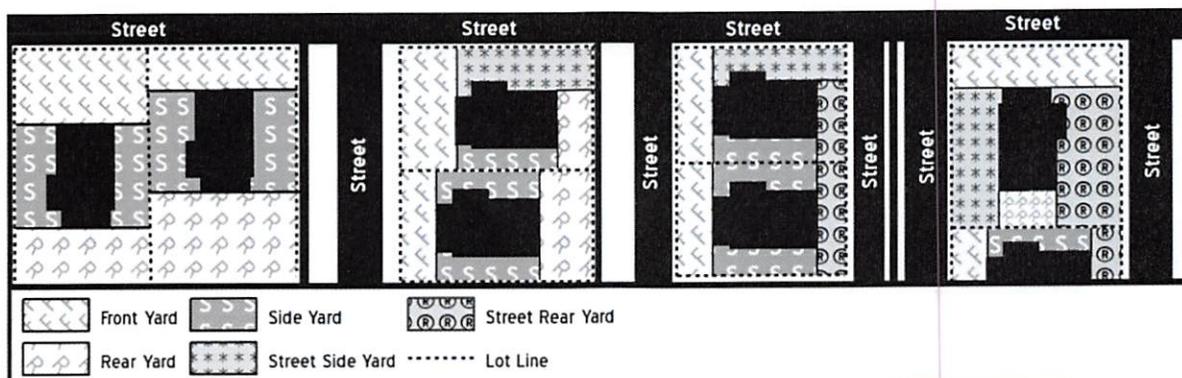
**To:** Mayor & City Council  
**From:** Andrew Fangman, Assistant Community Development  
**Date:** June 4, 2020  
**Re:** An Ordinance Correcting a Drafting Error in Section 10-22-1(B)(5)(b) of City Code, Maximum Fence Height in the Portion of the Street Side Yard that is Less than Six Feet from the Public Right of Way

On April 6, 2017 a major revision of the Zoning Ordinance was adopted. Included in this revision were major changes to regulations regarding fencing. The intent of fencing regulations is to balance the safety and aesthetic needs of the community as whole, with the need for property owners to create a more private outdoor space through the use of visual screening. For many lots that front more than one street, like corner lots, the previous regulations made it nearly impossible for some property owners to create a usable outdoor space that is not visible from the street. This is because under the previous rules any fence that was within 25 feet of any street could not exceed 3 feet in height, unless was an open type of fence (at least 75% open), such as chain link, this resulted in numerous properties in which there was no a very little portions on which a solid fence over three feet in height could be constructed.

These regulations were revised with the intent of striking a better balance between the competing needs of safety and aesthetic needs of the community as whole, with the need to give residents the ability to create a more private outdoor space. This was accomplished by creating for parcels adjoining more than one street, a new definition of a front yard; and definitions for "street side yards" and "street rear yards". The intent of the 2017 revision to was to establish the maximum height for solid fences (those fences more than 25% opaque) in street side yards as follows:

### Distance from property line

- Within 6 feet of the property line: 3'
- Between 6 feet and 25 feet of the property (or the distance to the building line, whichever is less): 4.5'
- Beyond 25 from the property or the distance to the building line (whichever is less): 6'



It has recently come to light that there was a drafting error in the 2017 revision to the Zoning Ordinance, as such City Code does not correctly implement the intended changes to fencing regulations. Currently Section 10-22-1(B)(5)(b), which regulates maximum fence height for areas of a street side yard that are less than 6 feet from the property line, reads as follows:

**5. Street Side Yards:**

- a. All portions of a street side yard that are more than 25 feet from the street side lot line: 6 feet
- b. Portion of street side yards that are less than 6 feet from the street side lot line:
  - i. Fences that are more than 25% opaque: 6 feet.
  - ii. Fences that are less than 25% opaque: 3 feet.

The maximum fence heights in subsections (i) and (ii) of Section 10-22-1(B)(5)(b) were inadvertently reversed. As currently adopted in City Code, within the portion of street side yards that are located less than six feet from the public right of way, solid fences (fences that are more than 25% opaque) are permitted to be up to six feet height, but open fences (those fences less than 25% opaque), such a chain link fences, are permitted only be up to 3 feet height. This is the opposite of what the limits were intended to be. The proposed ordinance would correct this drafting error by making the following change to Section 10-22-1(B)(5)(b), of City Code.

- b. Portion of street side yards that are less than 6 feet from the street side lot line:
  - i. Fences that are more than 25% opaque: **3 feet.**
  - ii. Fences that are less than 25% opaque: **6 feet.**

Staff recommends approval of this ordinance as corrects a drafting error and allows of the for the intent of the 2017 revisions to the fencing regulations be fully implemented. It their May meeting, the Planning and Zoning Commission unanimously voted to recommend approval of this ordinance.

**ORDINANCE NO. .**

**AN ORDINANCE CORRECTING A DRAFTING ERROR IN  
SECTION 10-22-1(B)(5)(b) OF CITY CODE, MAXIMUM FENCE HEIGHT IN  
THE PORTION OF THE STREET SIDE YARD THAT IS LESS THAN SIX FEET  
FROM THE PUBLIC RIGHT OF WAY**

**WHEREAS**, on April 6, 2017 a major revision of the Zoning Ordinance was adopted. Included in this revision were major changes to regulations regarding fencing;

**WHEREAS**, with intent of better balancing the safety and aesthetic needs of the community as whole, with the need, for the owners of lots fronting more than one street, to create a more private outdoor space through the use of visual screening, the 2017 revision to fencing regulations made changes to maximum height of fences more than 25% opaque on lots that front more than one street;

**WHEREAS**, Section 10-22-1(B)(5)(b) established the maximum height for fences that are located both in street side yards and are less than six feet from the public right of way; and

**WHEREAS**, there was a drafting area error in 2017 revision to the fencing regulations, the maximum fence heights in subsections (i) and (ii) of Section 10-22-1(B)(5)(b) were inadvertently reversed. As currently adopted in City Code, within the portion of street side yards that are located less than six feet from the public right of way, solid fences (fences that are more than 25% opaque) are permitted to be up to six feet height, but open fences (those fences less than 25% opaque), such a chain link fences, are permitted only be up to 3 feet height. This is the opposite of what the intended height limits were to be; and

**WHEREAS**, it is necessary to correct this error and as establish that the maximum heights of fences located in the portion of street side yards that are less than 6 feet from the street side lot line to be three feet for fences that are more than 25% opaque, and six feet for fences that are less than 25% opaque; and

**WHEREAS**, the Planning and Zoning Commission on May 12, 2020 voted to recommend approval of an ordinance amending Section 10-22-1(B)(5)(b) to correct these draft errors and;

**WHEREAS**, a public hearing, on June 4, 2020, was conducted by the City Council of Muscatine prior to the adoption this ordinance

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA:**

SECTION 1. Section 10-22-1(B)(5)(b) is hereby amended to read as follows:

- b. Portion of street side yards that are less than 6 feet from the street side lot line:***
  - i. Fences that are more than 25% opaque: 3 feet.***
  - ii. Fences that are less than 25% opaque: 6 feet.***

SECTION 2. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is repealed.

SECTION 4. This ordinance shall be in effect from and after the passage and approval and publication of this ordinance, as provided by law

**PASSED, APPROVED AND ADOPTED** this 4<sup>th</sup> day of June, 2020.

Attest

**By the City Council of the City of  
Muscatine, Iowa**

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**Diana L. Broderson, Mayor**

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**Greg Jenkins  
Interim City Clerk**

First Reading:  
Second Reading:  
Third Reading:  
Publication: