



# STAFF REPORT

## Planning Commission

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### ORDINANCE #2061

<b>PC Date:</b>	June 16, 2015	<b>Case Planner:</b>	Jared Draper
<b>CC Date:</b>	July 20, 2015		
<b>Location:</b>	City-Wide		
<b>Applicant:</b>	City of Commerce City		
<b>Address:</b>	7887 East 60 <sup>th</sup> Avenue, Commerce City, CO 80022		

### Case Summary

<b>Request:</b>	Commerce City Staff is requesting an amendment to electric fence regulations within Sec. 21-7730 of the Land Development Code.
<b>Project Description:</b>	<p>The Land Development Code (LDC) (Ordinance #1798) was adopted by City Council in January 2009 and went into effect on March 1, 2009. This Land Development Code was a comprehensive update to the Commerce City Zoning Ordinance, which included a wide variety of topics dealing with development and land use, such as application types, zoning districts, use standards, subdivision procedures, design standards and signs. Thousands of items are included within the Land Development Code and overall, the updated code has been a tremendous help to staff and applicants when reviewing development proposals.</p> <p>Since that time, there have been annual amendments to this document to reflect changing development trends and community needs. The electric fence amendment was part of the annual updates but was removed for additional research based upon discussion with City Council at a January 2015 meeting. Based on City Council feedback and additional research, revisions have been made to the proposed electric fencing language.</p>

<b>Staff Recommendation:</b>	Approval
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**Attachments for Review:** *Checked if applicable to case.*

☒ Ordinance #2061

## Background Information

The Land Development Code is a “living document” that acts as a tool to guide future development of a community, protect neighborhoods, focus development, and enhance the environment. As a part of the public review process for the LDC, it was mentioned that the code would be an “on-going work in progress,” and that this document would continually evolve to reflect the needs and desires of the city. To implement this, changes or amendments are implemented periodically.

On January 5, 2015, amendments to the electric fencing section of the Land Development Code (LDC) were presented along with several other minor amendments. Based on discussion surrounding the electric fencing standards by City Council, as well as Mr. Pate from Electric Guard Dog fence company, the amendments to the electric fence section of the code were removed for additional revision and research.

The key issues that were identified during the initial hearing in January were the height of the electric fencing, setbacks from adjacent residential and public zone districts, separation between the perimeter and electric fencing for gates, and backup power source in case of battery failure. Revisions to the draft language were made with regards to each of the key issues identified above. The revised language has been attached showing the original proposed amendments in black text and the revisions based upon City Council discussion in red. In addition, the draft language has been sent to the Electric Guard Dog fence company for review and staff has contacted the representative regarding all concerns.

However, one additional issue was identified with regards to safety standards and the standard practices for the Building and Safety Division. The Building and Safety Division relies on the listing and labeling of products by the Underwriter’s Laboratories (UL), an internationally recognized laboratory that certifies, validates, tests, inspects and audits products. A UL listing and labeling of a product ensures that the appropriate testing and safety regulations have been completed before use within the market. The Electric Guard Dog fencing company sites a different standard that is not general accepted by the Building and Safety Division within Commerce City. This difference required additional research to identify standards within other jurisdictions that allow for electric fencing.

Based upon staff’s research with several municipalities along with discussion with the City’s legal department, staff is recommending an indemnification provision to be included with the building permit application for all electric fencing.

## Request and Analysis

The DRT is recommending approval of the proposed language for electric fencing standards. The following gives a summary of the previous study sessions and hearings along with the proposed language for the electric fencing regulations and the proposed indemnification provision that would be included with any building permit for electric fencing.

### **Study Sessions:**

On October 7, 2014, staff held a study session with Planning Commission to discuss the proposed amendments. During the course of this study session, Planning Commission expressed their support

for the proposed amendments and did not have any major changes. This study session included several minor amendments to the LDC, one of which was to the electric fencing regulations.

On November 10, 2014, staff held a study session with City Council to discuss the proposed amendments, with the feedback from Planning Commission incorporated. City Council expressed their support for the proposed amendments and did not have any changes. This study session included all of the minor amendments presented to the Planning Commission, including the amendment to the electric fencing regulations.

**Amendment Hearings:**

On December 3, 2014, staff presented an ordinance with the proposed LDC amendments to the Planning Commission. The Planning Commission voted to forward a recommendation of approval to the City Council. The ordinance included language for changes to the electric fencing regulations.

On January 5, 2015, staff presented the Planning Commission's recommendation for the LDC amendments to City Council. After discussion and comment from a representative from an electric fencing company, the City Council requested that a few issues be addressed within the electric fencing regulations by staff before approval of the ordinance.

On February 2, 2015, City Council adopted the ordinance amending several parts of the LDC. However, the amendment to the electric fencing regulation was removed from the ordinance to be brought back before Planning Commission and City Council after issues were resolved and research was completed.

**Additional Study Session:**

On June 8, 2015, staff presented the revised language for the electric fencing regulations to City Council in a study session. City Council directed staff to include properties zoned AG in the permitted zone districts for electric fencing for security purposes. City Council also directed staff to prepare the amendment for Planning Commission as a next step.

**Proposed Electric Fencing Regulations:**

SECTION 1. Section 21-7730(4) of the Land Development Code of the City of Commerce City is hereby amended to read as follows:

(4) Electric Fences. Electrified fences are permitted in agricultural zoned districts for agricultural and security purposes and in industrial districts for security purposes. For purposes of this section, an electric fence shall not include electric systems that use an electrified buried cable, so long as no part of the electrified cable protrudes above the surface of the ground. Except as specifically provided herein, electric fences shall comply with the standards contained in section 21-7732 of this land development code as well as the following standards.

- a) Agricultural Zone District Requirement. No electric fence used for the containment of livestock shall have more than two (2) electric strands. Electric fences that are installed for the purpose of securing farm equipment shall be permitted provided that they comply with each of the elements outlined in paragraph b of this section relating to electric fences installed in industrial zone districts and further provided that they do not enclose any structure used as a primary residence.
- b) Industrial Zone District Requirements.
  - i. A perimeter non-electric fence must surround the exterior of an electric fence. Except for gates, the perimeter fence shall be located not less than six (6) inches from the electric fence.

At gates, the perimeter fence shall be located not less than three (3) inches from the electric fence.

- ii. Warning signs, notifying the public of the existence of the electric fence shall be posted in a conspicuous manner on the property and at intervals of not less than 25 feet on any property line that abuts either a residential or public zone district and not less than 50 feet on any property line abutting any other zone district.
- iii. A key box with an entry key shall be installed at one or more locations, as determined by the fire department.
- iv. No electric fence shall be installed or operated with a power source other than a storage battery not exceeding 12 volts direct current. Notwithstanding the foregoing, a backup system to maintain security in case of battery failure shall be permitted provided such system will not result in higher voltage being delivered upon contact with the fence.
- v. It shall be unlawful to place an electric fence along any property line adjacent to a residential or public zone district or use unless:
  - a. the electric fence and the perimeter fence required by paragraph (i) above are set back a minimum of 20 feet from the property line and an additional perimeter fence is erected on the property line; or
  - b. a solid style fence or wall is constructed as the perimeter fence.
- vi. The maximum height for an electric fence in each of the categories contained in table VII-18 shall be no more than 2-feet higher perimeter fence.

**Proposed Indemnification Provision:**

Applicant shall be solely liable and responsible for any and all damages to persons or property caused by or arising out of the installation, maintenance, or keeping of this electric fence. Applicant hereby agrees to indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the installation, maintenance, or keeping of this electric fence.

**Summary:**

Staff is proposing the revised regulations for electric fencing within the LDC. Based on feedback from the City Council and additional research, staff concludes that the proposed language meets the intent of providing an alternative for security fencing within industrially and agriculturally zoned properties. Therefore, the DRT is recommending approval of the amendment to the LDC for electric fencing.

## **Development Review Team Recommendation**

Based upon the analysis above, the Development Review Team recommends that the Planning Commission forward the requested amendment to the LDC to the City Council with a recommendation of approval.

## **\*Recommended Motion\***

### **To recommend approval:**

I move that the Planning Commission recommend that City Council approve Ordinance #2061, an ordinance amending the Commerce City Land Development Code.

## **Alternative Motions**

### **To recommend approval subject to condition(s):**

I move that the Planning Commission recommend that City Council approve Ordinance #2061, an ordinance amending the Commerce City Land Development Code subject to the following conditions:

*Insert Condition(s)*

### **To recommend denial:**

I move that the Planning Commission recommend that City Council deny Ordinance #2061, an ordinance amending the Commerce City Land Development Code because it fails to meet the following criteria:

*List the criteria not met*

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny Ordinance #2061.