

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2325

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING THE CITY'S DEVELOPMENT CODE BY AMENDING SMC SECTION 14.100.020 - DEFINITIONS; REPEALING SMC SECTION 14.240.060 – FENCE AND WALL REGULATIONS; ADOPTING A NEW SMC SECTION 14.240.060 – FENCE AND FREESTANDING WALL REGULATIONS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the City has the authority under RCW Title 35A to adopt regulations related to construction of fences, retaining walls, and rockeries; and

WHEREAS, the City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

WHEREAS, SMC 14.240.060 regulates the construction of fences, retaining walls, and rockeries; and

WHEREAS, the City Council desires to amend SMC 14.240.060 regarding the placement of fences in the right-of-way for residential uses; and

WHEREAS, the City Council desires the language in SMC 14.240.060 and SMC 14.100.020 to be consistent and to be clarified to make the regulations easier to understand and administer; and

WHEREAS, the intent to amend development regulations was noticed in accordance with City of Snohomish procedures and regulations as provided for in SMC 14.15.070 and on January 3, 2017 a 60-day notice was sent to the Washington State Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, the proposed amendments to the City’s Development Code were publicly noticed and circulated for review and comment in accordance with the City’s normal review and permitting procedures on January 13, 2017; and

WHEREAS, pursuant to the State Environmental Policy Act, the City of Snohomish was designated as the lead agency for review of the proposed amendment. A Determination of Non-Significance was issued pursuant to WAC 197-11-355 on January 13, 2017. No appeal of the determination was received so the determination stands; and

WHEREAS, on January 4, 2017, the Planning Commission conducted a work session which was open to the public to discuss the proposed amendments; and

WHEREAS, on February 1, 2017, a public hearing on the proposed amendments set forth herein was held before the Planning Commission and all persons wishing to be heard were heard; and

WHEREAS, following the public hearing and pursuant to SMC 14.15.090, the Planning Commission made written findings and issued a recommendation to the City Council to approve the proposed amendments as set forth herein, finding the proposed amendments are internally consistent with the City of Comprehensive Plan, the Growth Management Act, and the State Environmental Policy Act, and are in the interest of the public health, safety, and welfare of Snohomish residents; and

WHEREAS, on March 7, 2017, a public hearing on the proposed amendments was held by the City Council, and all persons wishing to be heard were heard; and

WHEREAS, the City Council found the proposed amendments to be consistent with the City of Snohomish Comprehensive Plan, the Washington State Growth Management Act and State Environmental Policy Act, and is in the interest of the public health, safety, and welfare of Snohomish residents.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. SMC 14.100.020 – Definitions, Amended. The following definitions in SMC 14.100.020 are hereby repealed:

- **Contiguous lots**
- **Front lot line**
- **Front setback**
- **Front yard**
- **Interior lot**
- **Parent lot**
- **Rear yard**
- **Rear lot line**
- **Side lot line**
- **Side yard**
- **Side yard setback**
- **Unit lot**

The following new definitions are hereby added to SMC 14.100.020 to read as follows:

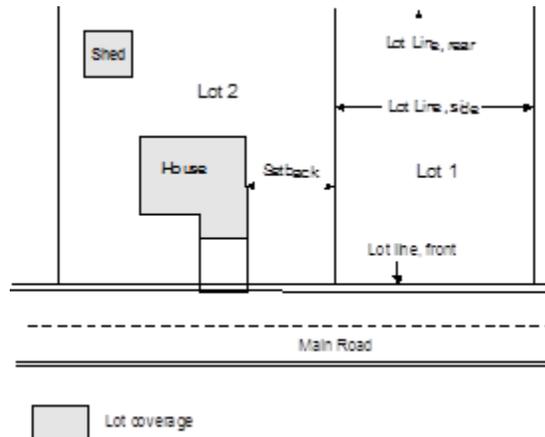
- **Buildable area** means the portion of a lot free of special restrictions that can be developed subject only to the dimensional and other requirements established in Chapter 14.210 Snohomish Municipal Code. Buildable area does not include setback areas established by this Development Code for the land use designation area in which the lot is located nor any easements, Native Growth Protection Areas, open space tracts, drainage facilities, or other similar restrictions on construction.
- **Fence** means a manmade barrier erected to enclose, screen or separate areas of land. Vegetation, such as a hedge, is not a fence.

- **Fence, solid** means a fence with no openings or openings less than one (1) inch wide or with less than one (1) inch opening for every two (2) inches of solid material.
- **Fence, open** means a chain link fence without slats or a fence where there is a minimum of one (1) inch opening for every two (2) inches of solid material evenly distributed across the length of the fence.
- **Freestanding wall** means a stand-alone wall not attached to a structure. Freestanding walls can be decorative or functional.
- **Freestanding wall, decorative** means a wall with a primary purpose other than to resist the lateral displacement of soil. For the most part, the primary purpose of decorative freestanding walls is to serve an aesthetic, screening, or buffering purpose.
- **Freestanding wall, functional** means a wall whose primary purpose is to resist the lateral displacement of soil. Retaining walls and rockeries are functional freestanding walls.
- **Front yard area or front yard setback area** means the space between the front property line and the front setback line and between the side property lines.
- **Lots, contiguous (“Contiguous lots”)** means lots with a common property line.
- **Lot, corner (“Corner lot”)** means a lot bounded by more than one street, road or, private road.
- **Lot, interior (“Interior lot”)** means a lot bounded by no more than one street, road, or private road with the remainder of the lot lines abutting other lots, tracts, or alleys.
- **Lot, parent (“Parent lot”)** means the initial lot from which unit lots are subdivided pursuant to Section 14.215.125 SMC.
- **Lot, unit (“Unit lot”)** means one of the individual lots created by the subdivision of a parent lot pursuant to Section 14.215.125 SMC.
- **Planning Director** means the manager of the City of Snohomish Department of Planning & Development Services. It means the same as City Planner as provided for in Chapter 2.34 Snohomish Municipal Code.
- **Property line** means the same as “lot line”.
- **Property line, front** means the property line separating the lot from the street. In the case of corner lots where there are two or more property lines that abut streets, the front property line shall be the property line abutting the street from which the primary pedestrian entrance is taken.
- **Property line, rear** means the property line which is opposite and most distant from the front property line. In the case of triangular or other irregularly shaped lots, an imaginary line twenty (20) feet in length located entirely within the lot, parallel to and at a maximum distance from the front lot line. When a lot extends into and beyond the mean low water line of a body of water, the rear property line shall be the mean low water line.

- **Property line, side** means any property line other than a front or rear property line.
- **Rear yard area or Rear yard setback area** means the space between the rear property line and the rear setback line and between the side property lines.
- **Rockery** means the same as “retaining wall.” Rockeries are a type of functional Freestanding Wall.
- **Side yard area or Side yard setback area** means the space between a side property line and the nearest side yard setback line and between the front setback line and the rear setback line.

The following definitions in SMC 14.100.020 are hereby amended to read as follows:

- **City Planner** means the same as Planning Director.
- **Lot line** means a boundary of a lot, as shown in the following diagram. Property line means the same as lot line.



- **Retaining wall** means a wall of any material to resist the lateral displacement of soil, the slope of which is greater than 1.5 horizontal to 1 vertical. Retaining walls are not subject to the setback requirements in Chapter 14.210 SMC. Retaining walls are a type of functional Freestanding Wall. Rockeries are a type of retaining wall.
- **Setback** means the required minimum distance between structures on a lot and a property line, measured horizontally and at a ninety-degree angle to the property line if straight or to a tangent thereto if curved.

Section 2. SMC 14.240.060 – Fence and Wall Regulations Repealed. SMC 14.240.060 is hereby repealed.

Section 3. SMC 14.240.060 – Fence and Freestanding Wall Regulations New. A new SMC Section 14.240.260 entitled “Fence and Freestanding Wall Regulations” is hereby adopted and shall read as follows:

14.240.060 Fence and Freestanding Wall Regulations

- A. General regulations. Installation of fences and freestanding walls, except for public utility purposes, shall comply with the following general requirements:
1. The design of all fences and freestanding walls shall be consistent with the City of Snohomish *Design Standards and Guidelines for the City's Historic District* and the *Design Standards and Guidelines for Areas Outside of the Historic District*, whichever is applicable to the site.
 2. A building permit issued by the Building Official shall be required prior to installation of a fence or freestanding wall, except for when the fence or freestanding wall is located in the Single Family Land Use Designation Area outside of the Historic District.
 3. All fences and freestanding walls shall meet the requirements for height, setback, sight obstruction, maintenance, and special location provisions as set forth in this section.
 4. The type, size, location, and height of fencing proposed for tennis courts, parks, or athletic fields shall be categorically exempt from the requirements outlined in this chapter and will be reviewed and approved by the Planning and Development Services Department on a project-by-project basis.
 5. No fence or freestanding wall shall create a safety hazard or sight obstruction as described in SMC 14.210.160.
 6. Fence and freestanding wall height shall be measured from the ground level where the fence/freestanding wall touches the ground (or if it does not touch the ground, the ground level where it would touch if extended straight down to the ground) to the highest point on of the fence/freestanding wall. Where the ground levels on either side of a fence/freestanding wall differ, the height shall be measured from the lowest ground level elevation.
 7. The maximum allowed height of fences and freestanding walls located in the buildable area of the lot shall be the same as the maximum height allowed for the land use designation area where it is located.
 8. Decorative features, artwork, or trellises placed on top of a fence or freestanding wall that do not add to the screening effect or opaqueness of the fence/freestanding wall shall not be included when calculating the height of the fence/freestanding wall.
- B. Fences in the Right-of-way. Freestanding walls shall not be allowed in the public right-of-way. Fences shall not be allowed in the public right-of-way except under the following conditions:
1. The proposed fence is on a lot with a residential use on the ground floor.
 2. The right-of-way is equal to or in excess of sixty (60) feet.
 3. There will be no obstruction to the operation of utility equipment and the maintenance of utility lines.
 4. The fence is located on the non-street side of the sidewalk, or otherwise in the opinion of the Director, does not impede the normal flow of the public's use of the right of way.

5. The property owner-applicant proposing the fence executes and records an agreement, approved by the Planning Director or designee, to maintain the fence at the said owner-applicant's expense and remove the fence at the said owner-applicant's expense if required by the City for any reason, or a public utility in order to work in the right-of-way.
6. The owner-applicant proposing the fence shall also comply with all requirements of Chapter 12.12 SMC- Right-of-Way Use Permit

C. Electrical fences. All electrical fences shall:

1. Be located at least two (2) feet from the property line and shall not be located in the right-of-way;
2. Use an interrupted flow of current at intervals of one second on and two seconds off.
3. Be limited to two thousand (2,000) volts at seventeen (17) mill amperes current.
4. Require an "U.L. Approved" seal.
5. Be posted with permanent signs with a minimum area of thirty-six (36) square inches at intervals of not more than fifty (50) feet stating that the fence is electrified.

D. Fences and decorative freestanding walls in Single Family, Residential, Parks, and Open Space land use designation areas. Fences/freestanding walls constructed in Single Family, Residential, Parks and Open Space use designation areas shall comply with the following requirements:

1. Electrical fences and fences with barbed wire, razor wire, concertina wire, or similar products are prohibited.
2. Within Front Yard Setback Area.
 - a. Solid Fence. No higher than three (3) feet unless it connects side fences to the structure.
 - b. Open Fence. Up to five (5) feet if it does not create a sight obstruction.
3. If located within a Side Yard Setback Area the maximum allowed height shall be six (6) feet except fences located in a Side Yard Setback Area on the street side of a corner lot shall also be required to meet the sight clearance requirements for intersections as set forth in SMC 14.210.160.

E. Fences and decorative freestanding walls in Commercial and Industrial land use designation areas. The maximum allowed height of fences/freestanding walls constructed in Commercial and Industrial land use designation areas shall be eight (8) feet and shall comply with the adopted design standards applicable to where the fence/freestanding wall is located.

F. Fences and decorative freestanding walls in the Urban Horticulture land use designation area. The maximum allowed height of fences/freestanding walls in the Urban Horticulture land use designation area shall be seven (7) feet on any part of the lot (including within the buildable area).

G. Fences and decorative freestanding walls in the Historic District. Fences constructed in the Historic District shall comply with the *Design Standards and Guidelines for the City's Historic District*.

H. Retaining walls and rockeries.

1. Retaining wall and rockery installations in all land use designation areas shall comply with the adopted City of Snohomish Design Standards and development regulations which are applicable to the area where the retaining wall is located, except that:
 - a. There shall not be a maximum height limit on retaining walls and rockeries located in the buildable area of a lot. However, the height of retaining walls and rockeries in the buildable area of a lot shall be the lowest necessary to achieve its intended functional purpose. If the proposed wall or rockery height exceeds the height limitation for the land use designation area where it is located it must be reviewed and approved by the Planning Director or designee on a project-by-project basis.
 - b. The maximum height limit on retaining walls and rockeries located in a setback area shall be six (6) feet.
2. Except as otherwise provided below, retaining wall permits shall be required for all retaining walls. The permit application shall include a site plan, drawn to scale which shows:
 - a. The entire project site and all property lines; and
 - b. Areas within fifty (50) feet of the proposed retaining wall/rockery even if that includes adjacent properties; and
 - c. All structures, including existing retaining walls and rockeries, within fifty (50) feet of the proposed wall/rockery; and
 - d. Existing topography with contour lines at two (2)-foot vertical intervals. Topographical data obtained from public records is acceptable; and
 - e. The materials proposed for use in construction; and
 - f. The location of the proposed wall/rockery with all dimensions necessary to describe its location, depth, and height; and
 - g. A cross-section showing the wall/rockery and provisions for drainage.
3. If the Building Official determines it is necessary, structural calculations and/or a geotechnical report prepared by a licensed professional engineer legally entitled to practice in the State of Washington shall be submitted with the application.
4. A Type 1 retaining wall permit shall be required for retaining walls/rockeries four (4) feet or less in height.
 - a. Only retaining walls/rockeries that do not require structural calculation and/or a drainage system are eligible for a Type 1 permit.

- b. If a series of retaining walls/rockeries four (4) feet or less in height where the slope measured from the bottom of the lowest retaining wall/rockery to the top of the highest retaining wall/rockery is greater than 1.5 feet horizontal to 1.0 feet vertical then a Type 2 retaining wall permit shall be required.
- 5. A Type 2 retaining wall permit may be required for all retaining walls/rockeries greater than four (4) feet in height.
 - a. Type 2 retaining wall permits shall require submittal of a:
 - i. geotechnical report; and
 - ii. structural calculations; and
 - iii. drainage system behind wall
 - b. The City Engineer may require additional submittals for Type 2 retaining wall permits.
- 6. Private retaining walls/rockeries shall not be located in City rights-of-way except as may be otherwise provided in the Snohomish Municipal Code.
- 7. The height of a retaining wall/rockery shall be measured from the lowest part of the wall/rockery or wall/rockery footing to the highest part of the wall/rockery at every location along the wall/rockery.
- 8. No part of a retaining wall/rockery may extend into an adjacent lot.
- 9. Guardrails required to be placed at the top of retaining walls/rockeries, pursuant to the City-adopted building codes, shall be permitted as part of the wall/rockery, and shall not be considered to be a fence or part of the wall/rockery height.
- 10. A retaining wall may terminate at a property line, provided that it must abut a retaining wall on the adjacent property and is structurally independent from such wall.
- 11. Exemptions.
 - a. Permits shall not be required for fences or freestanding walls two (2) feet or less in height.
 - b. The City may waive the requirement for a retaining wall permit when:
 - i. Every part of the wall/rockery is set back at least five (5) feet from all property lines; and
 - ii. The wall/rockery is no greater than four (4) feet in height; and
 - iii. The wall/rockery is not load bearing; and
 - iv. The wall/rockery does not affect the structural integrity of adjacent structures; and
 - v. Such waiver is made in writing by the Planning Director or designee.
 - c. Permits shall not be required for retaining walls within new plats that are reviewed and approved by the City as part of the plat improvements.
- I. Variances. All requests for variances from the requirements of this chapter shall be processed as a Minor Variance as provided for in SMC 14.70.020.

Section 4. Findings, Conclusions, and Analysis. In support of the amendments approved in this ordinance, the Snohomish City Council adopts the findings, conclusions, and analysis contained in the Planning Commission’s Findings of Fact and Conclusions, attached hereto as Exhibit “A” and incorporated herein by reference.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 6. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance and attachments including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 7. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 7th day of March, 2017.

CITY OF SNOHOMISH

By _____
TOM HAMILTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

By _____
PAT ADAMS, CITY CLERK

By _____
GRANT K. WEED, CITY ATTORNEY

Date of Publication: March 11, 2017

Effective Date (5 days after publication): _____

Exhibit A

Snohomish Planning Commission Findings of Fact

Based on the review of the proposed changes to fence and freestanding walls regulations and to related definitions, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

1. The proposed amendments implement the following goals and policies contained in the Snohomish Comprehensive Plan:
 - **LU 2.4:** Innovative design. Consider innovative design concepts for public and private sites, buildings, and infrastructure to distinguish districts and to continue, improve, and promote the livability of the City and its districts.
 - **GOAL LU 3:** Preserve and enhance the quality of character of and connections between the City's residential and mixed-use neighborhoods.
 - **GOAL LU 14:** Encourage a network of public and private open spaces.
2. A Notice of Proposed Code Amendment was issued on Jan. 13, 2017 with a two-week comment period. The notice also included a notice of Planning Commission public hearing on Feb. 1, 2017. All notices were circulated and published pursuant to City and State requirements.
3. Pursuant to RCW 36.70A.106 the State of Washington Department of Commerce was notified on Jan. 3, 2017 of the City's intent to amend its development regulations for fences and freestanding walls. An acknowledgment letter from the Department of Commerce stating the procedural requirement was met was received on Jan. 5, 2017.
4. Pursuant to WAC 197-11-310, a Determination of Non-Significance (DNS) was issued on Jan. 13, 2017. The appeal/comment period ended Jan. 31, 2017. No appeals were submitted so the determination stands.
5. The Planning Commission discussed the proposed code amendments at their Jan. 4, 2017 meeting.
6. The Planning Commission held a public hearing on the proposed code amendments on Feb. 1, 2017.
7. At the conclusion of the public hearing on Feb. 1, 2017, the Planning Commission voted to recommend City Council approval of the proposed amendments.
8. The proposed amendments will revise Snohomish Municipal Code 14.240.060, Fence and Wall Regulations.
9. The proposed amendments will revise Chapter 14.100 Snohomish Municipal Code, Definitions.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions:

1. The proposed amendments meet the original intent of the code to allow residential uses to fence in their front yards even if that requires constructing a fence in the right-of-way.

2. The proposed amendments clarify the regulations and definitions which will make the code easier to understand and administer.
3. The proposed amendments are consistent with Washington State law.
4. The proposed amendments implement and are consistent with the goals and policies of the City of Snohomish Comprehensive Plan.
5. The proposed amendments protect the public health, safety, and general welfare.
6. The proposed amendments do not result in an unconstitutional taking of private property for a public purpose and they do not violate substantive due process guarantees.

Date: Feb. 9, 2017

By: Hank Eskridge
Hank Eskridge, Planning Commission Chair