

ORDINANCE 1546

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, AMENDING PAYETTE MUNICIPAL ZONING CODE CHAPTER 12.17 RELATING TO FENCES, BY THE ADDITION OF A NEW SUBSECTION 12.17.010(A) (18) PROVIDING THAT THE PROHIBITION AGAINST THE USE OF BARBED WIRE SHALL NOT APPLY TO THE PROTECTION OF GOVERNMENTAL INFRASTRUCTURE OR SECURE FACILITIES; SETTING AN EFFECTIVE DATE; ALLOWING PUBLICATION IN SUMMARY FORM; ESTABLISHING SEVERABILITY; AND ESTABLISHING A REPEALER.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF PAYETTE, IDAHO:

Section 1. Section 12.17.010(A), related to fences, of the Payette Municipal Code is hereby amended to read as follows:

12.17.010: FENCE REGULATIONS:

A. It shall be unlawful to construct a fence in any front yard, side yard, back yard or in any open space except as allowed by this chapter.

1. For purposes of this chapter, the word "fence" shall include fences, hedges, walls, berms or any other structures designed to separate or isolate an open area or a building.

2. No fence shall be constructed adjacent to a public street which would interfere with the free movement of pedestrian traffic over or along a public sidewalk.

3. No fence shall be installed, constructed, planted, created, maintained, or allowed on any city right of way. If a fence or any structure is built upon or across any city easement or right of way, the city may immediately remove the fence or structure. If the city allows a fence or other structure to be built over a public easement or right of way, in the event it becomes necessary to perform work upon that easement or right of way, the landowner shall be responsible for removal of the structure to ensure access by a city crew.

4. Fences shall not be constructed of discarded plastic materials, fiberglass panels, wood paneling, metal paneling, barbed wire, woven wire, hog wire, chicken wire, mesh wire, electric fencing wire, rayon wire, concertina wire, or any single wire or woven wire or any hazardous or dangerous material.

5. Fences located within a yard area in residential districts shall not exceed six feet (6') in height. Front setbacks for a six-foot (6') fence shall be the same as the setbacks for the residential portion of a structure in accordance with the underlying zoning requirement. A three foot

(3') high privacy fence shall be allowed in the front and side street setbacks. For purposes of this chapter, a corner lot which abuts against two (2) intersecting streets, shall be allowed to place a six-foot (6') fence 10' from back of sidewalk which shall not encroach within the front setback. Nothing herein shall permit an obstruction of vision at an intersection as is prohibited in subsections A7 and A8 of this section or as defined by Idaho Code.

6. Unless otherwise provided, fences located within the property boundaries in commercial or industrial districts shall not exceed six feet (6') in height. In the case of security fences, when a barbed wire top section is utilized, the six foot (6') maximum height limitation may be exceeded by up to thirty inches (30") only by the barbed wire security top section. In no instance shall barbed wire be used below the height of six feet (6'). Fences adjacent to residential areas must be sight/site obscuring and shall not be allowed the use of a barbed wire security top section. Property which is zoned as commercial or industrial, but which is being used for residential purposes, shall adhere to the fencing restrictions as outlined in subsection A5 of this section. All fences erected on a boundary or property line shall comply with vision clearance requirements located at intersections, driveways and public roadways. Nothing herein shall permit an obstruction of vision at an intersection as is prohibited in subsections A7 and A8 of this section.

7. Metal chain link or woven wire fencing shall be permitted, provided such fencing:

- a. Does not cross a public sidewalk.
- b. Does not interfere with automobile operator's visibility along a public street.
- c. Does not interfere with visibility at the intersection of a private drive and a public roadway or create a blind spot.
- d. Does not interfere with visibility at the intersection of public roadways.
- e. Is no smaller than 11¹/₂-gauge, but no larger than 9-gauge wire.

8. Wooden or vinyl fencing shall be permitted, provided such fencing:

- a. Does not cross a public sidewalk.
- b. Does not interfere with automobile operator's visibility along a public street.
- c. Does not interfere with visibility at the intersection of a private drive and a public roadway or create a blind spot.
- d. Does not interfere with visibility at the intersection of public roadways.

9. All fences permitted by this chapter shall be kept in good order and repair and shall not be allowed to become rundown or in such a state of disrepair as to constitute a private or public nuisance. No fence shall be built until a permit is first obtained from the city clerk or his/her designee.

10. All fences permitted by this chapter shall be kept free of weeds and grasses exceeding eight inches (8") in height.

11. In the event a fence interferes with direct and unrestricted access to a water meter, the landowner at the landowner's expense, shall provide a remote reading device which device is approved by the city or a "man" gate. In the instance a "man" gate is provided, it shall be clearly marked indicating the presence of animals. In addition, no fence shall be built within thirty-six inches (36") of a fire hydrant.

12. No fence permitted by this chapter and constructed after its adoption shall be used as evidence to establish a boundary line, unless said fence was placed upon a boundary line designated by a licensed surveyor of the state of Idaho, after a survey has been conducted and the boundary line established thereby. All expenses incurred in establishing said boundary shall be at the property owner's expense. No permit issued by the city nor any representation made by a city employee or a city official shall be used as evidence in establishing a property boundary.

13. A person who places a fence on a boundary line, or his successor or tenant, shall be solely responsible for its maintenance and upkeep, but shall not acquire any rights to trespass on adjoining lands to maintain the same, unless the fence has been set back at least three feet (3') from the property line. Setting a fence back pursuant to this chapter in order that the same may be properly maintained shall not be construed as forfeiting any property to adjoining landowners in the event any suit is filed for taking by adverse possession or under a similar theory.

14. Any fence which is constructed in such a manner as to be in violation of this chapter, or any fence which is allowed to become in violation after construction, shall be subject to removal in accordance with the following terms:

a. Any fence which is being constructed in such a manner so that, upon completion, the fence would violate this chapter, shall be subject to injunctive action.

b. Any fence which is constructed in violation of this chapter is a nuisance per se and shall be subject to immediate removal by the city, if after ten (10) working days' notice sent registered mail return receipt to either the landowner, a tenant or occupant of the premises, the violation has not been eliminated or the fence removed.

c. Any fence which shall fall into a state of disrepair so as to constitute a public or private nuisance shall be subject to repair or removal, if ten (10) working days after notice has been mailed, as above, the condition has not been corrected.

d. Any fence which has been constructed in such a manner so that it obstructs the visibility of a driver at an intersection on public roadway shall be subject to immediate removal, without notice of any kind.

15. Should it be necessary to enforce any provisions of this chapter, all costs incurred shall be borne by the property owner, tenant or occupant, jointly or severally. Costs shall include costs of notice, removal, repair, cleaning, court costs and attorney fees. The costs and expenses shall then be assessed against the property with the owner of the property responsible therefor.

16. Any individual whose property is affected by this section may, upon written application, apply to the planning and zoning commission of the city for conditional use to allow a variation in the height of any fence. The planning and zoning commission of the city may upon investigation grant to the applicant the requested conditional use. Any affected party may appeal to the city council. The granting of such permit shall continue with each successive owner provided the original conditions are maintained as presented.

17. The terms of this chapter may be varied by a conditional use permit after public hearing by the planning and zoning commission.

18. Notwithstanding the prohibitions regarding the use of barbed wire contained within this section, such prohibitions shall not apply to the protection of governmental infrastructure or secure facilities regardless of the zone within which the infrastructure or secure facilities may exist nor shall a conditional use permit be required for the use of such materials for fences for these purposes.

Section 2. This Ordinance may be published in summary form allowed by Idaho Code.

Section 3. This Ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho.

Section 4. Any ordinances or resolutions which are in conflict with this Ordinance are hereby repealed, but only insofar as the conflict exists.

Section 5. If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall be applied to effectuate the purposes of this Ordinance.

PASSED and APPROVED by the Mayor and City Council of the City of Payette, Idaho this 2nd day of January, 2024.

CITY OF PAYETTE, IDAHO

BY Craig L. Jensen

Craig L Jensen, Mayor

ATTEST: [Signature]
City Clerk

