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**Title:** Consideration of Text Amendment Application No. P21-05809 and related Environmental Finding for Environmental Assessment No. P21-05809, amending Section 15-2010 of the Fresno Municipal Code, relating to the Zone Districts where Electrified Fences are permitted. (Referred back to Planning Commission by City Council in accordance with Fresno Municipal Code Section 15-5810(b).)

1. RECOMMEND APPROVAL (to the City Council), of a finding set forth in Environmental Assessment No. P21-05809 dated April 20, 2022, that Text Amendment Application No. P21-05809 is exempt from the California Environmental Quality Act (CEQA) pursuant to the Common Sense Exemption that it can be seen with certainty that there is no possibility that the proposed text amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).

1. RECOMMEND APPROVAL (to the City Council) as set forth by the Planning Commission and staff of Text Amendment Application No. P21-05809, to amend Section 15-2010 of the Fresno Municipal Code relating to the Zone Districts where Electrified Fences are permitted.

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Resolution 2017-174, 2. Exhibit B - Text Amendment Application P21-05809, 3. Exhibit C - Maps of Current/Proposed Land Use Districts Allowing Electric Fences, 4. Exhibit D - Fresno Municipal Code Findings from Staff, 5. Exhibit E - Public Notice, 6. Exhibit F - Environmental Assessment, 7. Exhibit G - Applicant First Proposed Revision, 8. Supplemental Exhibit H - Presentation, 9. Exhibit I - Text Amendment Modified with PC Recommendations, 10. Exhibit J - Text Amendment Modified with Staff recommendations, 11. Exhibit K- Fresno Municipal Code Findings from Applicant, 12. Exhibit L - Planning Commission Resolution, 13. Exhibit M - Text Amendment referred back to PC, 14. Exhibit N - Public Comments

Date	Ver.	Action By	Action	Result
8/17/2022	1	Planning Commission		

**REPORT TO THE PLANNING COMMISSION**

**August 17, 2022**

**FROM:** JENNIFER K. CLARK, AICP, Director  
Planning and Development Department

**THROUGH:** SOPHIA PAGOULATOS, Planning Manager  
Planning and Development Department

**BY:** DREW WILSON, Supervising Planner  
Planning and Development Department

## **SUBJECT**

Consideration of Text Amendment Application No. P21-05809 and related Environmental Finding for Environmental Assessment No. P21-05809, amending Section 15-2010 of the Fresno Municipal Code, relating to the Zone Districts where Electrified Fences are permitted. (Referred back to Planning Commission by City Council in accordance with Fresno Municipal Code Section 15-5810 (b).)

1. **RECOMMEND APPROVAL** (to the City Council), of a finding set forth in Environmental Assessment No. P21-05809 dated April 20, 2022, that Text Amendment Application No. P21-05809 is exempt from the California Environmental Quality Act (CEQA) pursuant to the Common Sense Exemption that it can be seen with certainty that there is no possibility that the proposed text amendment may have a significant effect on the environment pursuant to CEQA Guidelines Section 15061(b)(3).
1. **RECOMMEND APPROVAL** (to the City Council) as set forth by the Planning Commission and staff of Text Amendment Application No. P21-05809, to amend Section 15-2010 of the Fresno Municipal Code relating to the Zone Districts where Electrified Fences are permitted.

## **STAFF RECOMMENDATION**

Approve Text Amendment Application No. P21-05809, to amend Section 15-2010 of the Fresno Municipal Code relating to the Zone Districts where Electrified Fences are permitted with modifications the Conditions as described in the attached Text Amendment Modified by Planning Commission (**Exhibit I**) and additional conditions of approval discussed more fully in the following report and shown in **Exhibit J**.

## **EXECUTIVE SUMMARY**

Precision Civil Engineering, Inc. submitted a proposed Text Amendment on behalf of Amarak, LLC (formerly known as Electric Guard Dog) to amend Section 15-2010 of the Fresno Municipal Code, relating to the Zone Districts where Electrified Fences are permitted.

## **BACKGROUND**

Two prior text amendments on this topic have been considered by the Planning Commission and City Council. A Text Amendment Application was initiated by City Council on June 22, 2017 (see **Exhibit A**) to reduce the requirements and risk for property and business owners to have a security or electric fence installed. The changes allowed for an agreement to be established between the City and the owner of a security or electric fence that defends, hold harmless, and indemnifies the City related to the fencing. The amendment was necessary because previously the Development Code only allowed for agreements to be made between the City and the property owner. In 2018, staff initiated a text amendment to the Development Code to clarify the locations electric fences were permitted as part of a group of minor changes to improve functionality, clarity, and internal consistency.

Precision Civil Engineering, Inc. submitted a proposed Text Amendment (see **Exhibit B**) on behalf of Amarak, LLC (formerly known as Electric Guard Dog) to amend Section 15-2010 of the Fresno Municipal Code, relating to the to the zone districts where electrified fences are permitted. The submitted Text Amendment proposes to expand the zone districts where electric fences are permitted from Industrial and Commercial Districts to all Mixed-Use Districts, all Commercial Districts, all Employment Districts, the Public and Institutional District, and all Downtown Districts with the exception of the Downtown Core. A map of the area that the proposed text amendment would affect can be found in **Exhibit C**

#### Planning Commission Recommendation

The Planning Commission considered the proposed applications at a regularly scheduled public hearing held on June 15, 2022, and recommended approval with modifications by a 6-1 vote. Four members of the public testified in support of the item and two members of the public testified in opposition. The modifications to the proposed Text Amendment by Planning Commission were the following (See **Exhibit I**):

- An 18-inch separation is required between the perimeter fence and the electrified fence.
- All Mixed-Use Districts and the Public and Institutional Districts shall be removed from permitted locations.
- Electric Fences shall not be permitted within 500 feet of sensitive uses, such as schools and childcare facilities.

Staff agrees with the previously proposed modifications from Planning Commission, and offered further modifications to fully implement Planning Commission's intent of not allowing electric fences in zone districts that permit residential use or near sensitive uses (See **Exhibit J**):

- Commercial Main Street District should be removed from permitted locations (this district allows residential uses).
- Regional Commercial District should be removed from permitted locations (this district allows residential uses).
- Downtown Districts should be removed from permitted locations except in locations east of State Route 41 (these districts allow residential uses).

In addition, staff recommended permitting electric fences for one set of uses within the Public and Institutional zone districts, because these uses would not include residential development or sensitive uses. The proposed modifications are:

- Permitted in Public and Institutional District when the uses fall under the Transportation, Communication, and Utilities Use Classifications.

All the modifications recommended for approval by the Planning Commission on June 15, 2022, and those described above were incorporated into revised versions of the Text Amendment included in **Exhibit I** and **Exhibit J**.

#### Recent Council Direction based on New Submittal from Applicant

On July 21, 2022, the City Council voted to refer a new alternative modification of the Text Amendment submitted by the applicant back to Planning Commission. The City Council requested that all electric fence applications be reviewed by the appropriate Council District Project Review

Committees. The proposed modifications reflect City Council's intent and are based on the applicant's interpretation of the Planning Commission recommendation (see **Exhibit M**). The proposed modifications are:

- The Mixed-Use Districts and Public and Intentional Districts would not be removed, but limitations would be placed on the Use Classification where electrified fences can be installed. The permitted Use Classifications where an electrified fence can be installed in those districts would be:
  - Public and Semi-Public Use Classifications
    - Parking, Public or Private
    - Public Safety Facilities
  - Commercial Use Classifications
    - Automobile/Vehicle Sales and Services:
      - Automobile/Vehicle Sales and Leasing
      - Automobile Rentals
      - Automobile/Vehicle Repair, Major
      - Automobile/Vehicle Service and Repair, Minor
    - Retail Sales - Building Materials and Services
  - Industrial Use Classifications
    - Custom Manufacturing
    - Limited Industrial
    - Personal Storage
  - Transportation, Communication, and Utilities Use Classifications
    - Airports and Heliports
    - Communication Facilities - Antenna and Transmission Towers
    - Utilities, Minor
- Would allow existing legal non-conforming uses in Mixed-Use Districts to install electrified fences if the existing use is permitted in Employment Districts (Office, Business Park, Regional Business Park, Light Industrial, and Heavy Industrial Districts).
- Electrified Fences would be processed as a Development Permit to ensure that all permits go to the appropriate Council District Project Review Committees and within 3 days of the Director's decision, a notice would be sent from the Director or designee via e-mail to the Councilmember whose district the approved electrified fence is located.

This alternative would deviate from the structure of the Development Code, as it would base regulations on the use and not the zone district. This approach is not used anywhere else in the Development Code. As noted below, staff is not able to make the findings.

#### Development Code Findings

The Planning Commission shall not recommend, and the City Council shall not approve an application unless the proposed amendment meets the following criteria, as set forth in Fresno Municipal Code section 15-5811. Staff's analysis of findings for the original text amendment (**Exhibit B**) submitted by the applicant on November 19, 2021, are included in **Exhibit D**. The findings have not changed for this latest July 2022 recommendation from the City Council; staff finds the recommendation to be inconsistent with the General Plan and the Development Code, as noted in **Exhibit D**.

However, findings to support the text amendment as originally modified by Planning Commission are included in **Exhibit K**.

#### Public Notice and Comment

Notice was provided by the following methods pursuant to Fresno Municipal Code (FMC) Sections 15-5007-C and D (See **Exhibit E**):

1. A legal notice was published in the Fresno Bee on May 20, 2022.
2. The proposed amendments were posted on the city's website on the City Clerk's page.

To date, three public comment letters have been received, which are included in **Exhibit N**.

#### Review by Committees and Commissions

The active Council District Plan Implementation Committees, the Tower District Design Review and the Fulton-Lowell Specific Plan Committees all reviewed the proposed plan amendments and rezones in their respective areas and the text amendment, which applies city-wide. Their recommendations are listed below.

- District 1: On February 1, 2022, the Committee recommended staff meet with the applicant to discuss potential modification to the Text Amendment.
- District 2: On March 14, 2022, the Committee recommended approval of the proposed application.
- District 3: On February 22, 2022, the Committee recommended denial of the proposed application.
- District 4: The Committee is currently inactive.
- District 5: On March 7, 2022, the recommended approval of the proposed application.
- District 6: On February 7, 2022, the Committee recommended approval of the proposed application.
- District 7: The Committee is currently inactive.
- Fulton-Lowell Design Review: On February 14, 2022, the Committee recommended approval of the proposed application.
- Tower District Design Review Committee: On February 8, 2022, the recommended approval of the proposed application.
- The Planning Commission recommended approval with modifications to the City Council on June 15, 2022.

The proposed text amendment was provided to the Fresno County Airport Land Use Commission staff to determine if the proposed amendment required the Airport Land Use Commission's review, but it was determined that review was not necessary.

An environmental assessment was prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA) Guidelines (See **Exhibit F**).

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA if it is “covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Staff has conducted a preliminary review of the project and has determined that it is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) under the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Text Amendment changes the zoning code and modifies an existing, established framework for future land use planning and approvals and does not commit the City to any specific project or development on any particular site. The regulations of the proposed Text Amendment will not intensify the use of any establishment. The application process already exists within the Fresno Municipal Code and the proposed Text Amendment expands the Zone Districts where electrified fences can be installed. As such, the proposed Text Amendment will not intensify any existing uses. All individual projects under the proposed Text Amendment will be subject to discretionary review. Each individual application will be evaluated pursuant to the requirements of CEQA, and the appropriate level of environmental review will be completed when the scope and impacts of each individual entitlement are known. Because the text amendment proposes to expand the zone districts where electric fences are permitted, it can be seen with certainty that there is no possibility that the adoption of the Text Amendment may have a significant effect on the environment. Therefore, this action is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3); the Environmental Assessment is attached as **Exhibit F**.

## **LOCAL PREFERENCE**

Local preference was not considered because this project does not include a bid or award of a construction or service contract.

## **FISCAL IMPACT**

N/A

## **CONCLUSION**

The appropriateness of the proposed project as recommended by staff has been examined with respect to its consistency with goals and policies of the Fresno General Plan, and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Action by the Planning Commission will be a recommendation to City Council.

## **Attachments:**

- Exhibit A - Resolution 2017-174
- Exhibit B - Text Amendment Application P21-05809
- Exhibit C - Maps of Current/Proposed Land Use Districts Allowing Electric Fences
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- Exhibit E - Public Notice
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