



**MONTCLAIR
REGULAR MEETING OF THE
MONTCLAIR PLANNING COMMISSION**

to be held in the Council Chambers
5111 Benito Street, Montclair, California

Monday, November 27, 2023
7:00 P.M.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/95858571900>

Dial Number: 1-(669)-900-6833

Meeting ID: 95858571900

*To make a public comment or speak on an agenda item, including a public hearing, please complete a Speaker Card located in the Council Chambers or online before the meeting at <https://www.cityofmontclair.org/public-comment/>. Written comments (200-word limit per agenda item and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to pcclerk@cityofmontclair.org at least one hour before the meeting begins. The chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate time during the meeting. Those participating remotely may request to speak using the "raise hand" function in Zoom (dial *9 if on the phone, and then *6 to un-mute when called on to speak).*

Please be advised that those participating via Zoom do so at their own risk. The meeting will not be suspended or cancelled if any technical issues occur during the meeting.

AGENDA

- 1. **CALL TO ORDER**
- 2. **PLEDGE OF ALLEGIANCE**
- 3. **ROLL CALL**
- 4. **APPROVAL OF MINUTES**

August 14, 2023

August 28, 2023

- 5. **ORAL AND WRITTEN COMMUNICATIONS ON NON-AGENDA ITEMS**

The public is invited to address the Planning Commission regarding any items that are not on the agenda. Comments should be limited to matters under the jurisdiction of the Planning Commission. It is respectfully requested that speakers limit their comments to no more than three minutes in length.

Any person wishing to address the Planning Commission on an agenda or non-agenda item should complete an online public comment form as described above.

- 6. **AGENDA ITEMS**

A. CASE NUMBER	2023-35
Location of Property	Citywide
Project Applicant	Amarok, LLC
Project Planner	Michael Diaz

Request:

A request for a Zoning Code Amendment to allow Electrified Security Fencing within the City of Montclair

CEQA Determination:

The Planning Division has determined this project to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines.

B. CASE NUMBER 2023-39

Location of Property Single Family Residential Zones

Project Applicant City of Montclair

Project Planner Silvia Gutiérrez

Request:

A request for a Zoning Code Amendment allowing Urban Lots Splits and Two-Unit residential projects in single family residential zones in compliance with Senate Bill 9 ("SB 9")

CEQA Determination:

The proposed Zoning Code Amendment Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to California Government Code sections 65852.21, subdivision. (j), and 66411.7, subdivision. (n), the adoption of an ordinance by a city or county implementing the provisions of Government Code section 66411. 7 and 65852.21, which is California's SB 9 Law and which regulates urban lot splits and two-unit projects, is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA").

7. INFORMATION ITEMS

Although the Planning Commission is prohibited from taking action on or discussing items not on the posted agenda, a member of the Planning Commission may ask for information, request a report back, or place a matter of business on the agenda for a subsequent meeting, ask a question for clarification, make a brief announcement, or briefly, report on his or her own activities, provided the foregoing are related to, or within the jurisdiction of, the Planning Commission.

8. ADJOURNMENT

The next regular meeting of the Planning Commission will be held on December 11, 2023, at 7:00 P.M.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Planning Commission after the publication of the agenda packet are available for public inspection on the City's website at www.cityofmontclair.org/agendas or at Montclair City Hall in the Community Development Department located at 5111 Benito Street, Montclair, from 7:00 A.M. to 6:00 P.M., Monday through Thursday.

If you need special assistance to participate in this meeting, please call (909) 625-9477 or e-mail pcclerk@cityofmontclair.org. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

CERTIFICATION OF AGENDA POSTING

I, Michael Diaz, Secretary of the Montclair Planning Commission, hereby certify that a copy of this agenda was posted on the bulletin board adjacent to the north door of Montclair City Hall on November 22, 2023.

CASE NUMBER 2023-35

APPLICATION TYPE	Ordinance No. 24-1005, a Zoning Code Amendment to allow Electrified Security Fencing within the City of Montclair.
NAME OF APPLICANT	Amarok, LLC
LOCATION OF PROPERTY	Selected Areas of the City
ENVIRONMENTAL DETERMINATION	Categorically exempt from the requirements of the California Environmental Quality Act (CEQA), per Sections 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines.
PROJECT PLANNER	Michael Diaz, Director

Amarok, LLC, a nationwide electrified security fence system company (applicant), is requesting a zoning code amendment to allow the use of monitored electrified security fences within specified commercial and industrial locations of the City. Currently, electrified security fences of any kind are not permitted in the City. The proposed ordinance would allow the use of monitored electrified security fence systems in certain commercial and industrial areas in the City.

The request to allow monitored electrified security fencing originated from two industrial businesses located on the south side of Brooks Street abutting the railroad that have had ongoing difficulties in effectively securing their properties from trespassing and theft.

The Planning Commission is requested to review proposed Ordinance No. 24-1005 and forward its recommendations to the City Council for their consideration. The City Council will consider the Planning Commission's recommendations and determine at a public hearing whether to approve, modify, or deny the proposed Ordinance.

Proposed Zoning Code Amendments

The proposed Ordinance requires changes to Title 11- Zoning and Development - of the Montclair Municipal Code (MMC). The full text of the proposed changes is contained in the draft Ordinance provided in Exhibit A, attached to this report. A summary of the key provisions of the proposed Ordinance is as follows:

New Definitions added to Section 11.02 Definitions:

“Electrified Fence” means any fence, barrier, or enclosure partially or totally enclosing a building, field, or yard, carrying any electrical pulse or charge through any part, section, or element.

“Monitored Electrified Security Fence” - means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary with an assembly of battery-powered equipment, including but not limited to:

1. A monitored alarm device and energizer that is intended to periodically deliver non-lethal electric pulses to a security fence; and
2. A battery charging device used exclusively to charge the system's battery; and
3. Audible and video surveillance equipment; and
4. Other integrated components.

“Key Box (e.g., “Knox Box”) means a secure device with a lock operable only by emergency personnel and containing entry keys that may be required for access to the site or building in an emergency.

New Chapter at 11.38.100 - Monitored Electrified Security Fence

The addition of Chapter 11.38.100 is intended to provide the regulations and procedure necessary for considering the approval of a permit to use an electrified security fencing system as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities. The following are selected portions from the proposed text in Chapter 11.38.100.

- Components of a Monitored Electrified Security Fence
 1. *Physical Barrier*: An electric fence consisting of 12.5 gauge galvanized steel wires running horizontally and supported by regularly spaced vertical support poles. The wires would be no higher than 10 feet or two feet higher than an existing permitted wall or decorative fence, whichever is lower. The electric fence system would be installed 4-8 inches behind a minimum 6-foot-high non-electrified perimeter fence/wall.
 2. *Power Source*: The primary power source for this system is a 12V/DC battery, charged primarily with a solar panel. No part of the system connects to the electrical grid, and it does not carry continuous current.
 3. *Shock*: If a breach occurs, the electric fence delivers a 7,000-volt non-lethal shock to the trespasser. Electrified fences would only be activated after business hours.
 4. *Alarms and Lights*: Any attempt to scale or touch the fence triggers an alarm and bright LED lights. When activated, the system will go into alarm mode and notify the monitoring operator.
 5. *Signs*: Warning signs that read "Warning - Electric Fence" are posted at intervals of not more than 30 linear feet.
 6. *Certification*: Electrified security fence systems are required to be constructed and operated in conformance with the specifications outlined in International Electrotechnical Commission (IEC) Standard No. 60335-2-76, current edition.

- Locations
 1. Allowed in the Commercial and Industrial zones as specified in the Ordinance (e.g., outdoor storage, vehicle and large equipment rental, parking lots, etc.) and when deemed essential to supplement existing security measures.
 2. Prohibited within the *North Montclair Downtown Specific Plan* (NMDSP) and *Montclair Place District Specific Plan* (MPDSP) areas.
 3. Prohibited within 10 feet of a front or street side property line or any public right-of-way.
 4. Prohibited within 300 feet of a public park/open space, church, and/or school facility (public or private).

Amendment of Chapter 11.77 – Administrative Permit

To review and approve requests for electrified fences, Chapter 11.77 would be amended to add electrified security fence requests as a type of application subject to the approval and issuance of an Administrative Permit. As such, Chapter 11.77 of Title 11 (Administrative Permit) of the Montclair Municipal Code shall be amended to add the following application type at Section 11.77.020 (Scope) as follows:

“C. Applications to install electrified security fences pursuant to the requirements and findings contained in Chapter 11.38.100 of the MMC.”

As part of the review process, the party requesting approval to install an electrified security fence is required to demonstrate the need for its use as a supplemental measure to bolster existing security measures on the property. In granting an Administrative Permit for the use of an electrified security fence, the Director of Community Development may require additional conditions than those required by the provisions of Chapter 11.38.100, to protect both the health and safety of members of the public and property values in the area.

A copy of the draft Ordinance No. 24-1005 is attached to this report, and the entire agenda is available on the City's website @ <https://www.cityofmontclair.org/planning-commission-meetings/>

Plans and information on a monitored electrified system are included in the Commission packets for reference.

Background

- California Civil Code Section 835 allows the use of a low-voltage “electrified security fence” to protect and secure commercial, manufacturing, or industrial property, if permitted by a local ordinance, and subject to specified minimum requirements. Moreover, Civil Code Section 835 (b) (1) does not allow the installation and operation of an “electrified security fence” in a residential zone.
- Currently, electric fences of any kind are not a permitted use in any location within the City of Montclair.
- Amarok, LLC, is a nationwide provider of electrified security fence systems, which serve as an alert surveillance system for businesses.

- Section 11.38 of the Montclair Municipal Code (Development Standards Generally) addresses site improvements on private property and includes general provisions for walls and fences, except for electrified fences.
- On July 17, 2023, the code amendment proposal for electrified fences was presented to the City Council's Real Estate Subcommittee.

Planning Division Comments

The discussion about electrified security fences was initiated a few years ago by the applicant at the behest of existing businesses within an industrial area of the City located on Brooks Street along the Union Pacific Rail corridor. The proposal intended to provide an additional option for these businesses to utilize in handling excessive trespassing on and theft from their properties. At that time, City staff did not support the use of electrified fencing. Like other local cities that have considered electrified security fences, City staff had concerns over the aesthetics of such systems, the inadvertent perception of crime, and safety to the general public.

In 2023, following years of continued increase in problems with trespassing and theft, the issue of electrified security fencing was revived. The businesses with a particular interest in electric security fencing are businesses along the railroad corridor that have fleet vehicles and/or outdoor storage of high-value equipment (e.g., boom and scissor lifts, mini excavators, trailers, etc.) or materials used by construction and industrial users in Montclair and adjacent cities. Properties on the south side of Brooks Street abut the north side of the Union Pacific (UP) railroad corridor, which makes them easily accessible to thieves already active in urban rail yards.

Ordinance

In addition to aligning with state law, the proposed Ordinance considers how allowing electrified security fences could be accommodated for use in Montclair as a supplemental security measure with the least impact on the community. The proposed electrified security fence standards are designed to ensure public safety and to address aesthetic and security concerns raised by existing property and business owners within the City. The proposed standards would regulate the location and height of electric fences and include provisions to guarantee emergency responder access. The Ordinance would also require warning signs that read "Warning - Electric Fence" to be posted on the fence at intervals of not more than 30 linear feet.

The type of electrified fence system permitted under the Ordinance is a "monitored" system, meaning that it is designed to operate like a burglar alarm designed for open outdoor areas. When the fence is contacted or breached in

some fashion (by a trespasser or by a fallen branch), an audible alarm is triggered, and a signal is sent to a monitoring station, which, in turn, contacts the business to let them know they had an alarm event. When the type of breach is verified, the alarm can be silenced by the business, or if a trespassing event is confirmed, the monitoring station or owner would call for emergency services.

Although an electric security fence can provide an additional layer of protection, it will not fully deter a person with a determined interest in trespassing or stealing. However, even if an intruder uses an insulated bolt cutter or another way to cut or defeat the electrified security fence, the monitoring component of the system would immediately detect the breach and notify the monitoring company for verification before contacting law enforcement. Lastly, as part of the approved permit, applicants would be required to comply with existing City provisions for alarm systems in the City.

Regarding the appearance of electrified security fences, the requirement to allow them only behind legally permitted decorative or solid fences or walls will significantly screen their presence. Existing or proposed chain link fencing that directly faces a public or private street would not be considered to be a decorative fence for the proposed Ordinance. The visible wires extending above a fence or wall are slender and of a color that will somewhat blend into the sky behind them. The Ordinance gives the Director the discretion to require a modification in a proposal and the ability to add conditions that could help to mitigate any potential site-specific visibility or aesthetic concerns that may arise. Each application and site will be different from another site, so the ability to fine-tune the proposal in consultation with an applicant is desirable.

Safety

Any approved electrified security fence must be placed behind a legally permitted fence or wall at the prescribed or approved setback for the district. The wall or fence is also required to be at least 6 feet in height to mitigate its presence and prevent accidental contact. When an existing or required setback of a zone would be less than 10 feet, any approved electrified fence must be setback at least 10 feet from any street property line and separated by at least 5 feet from a sidewalk, including the perimeter fence, to prevent accidental contact.

The electric fence contemplated by this Ordinance is a low-voltage system run by a 12 Volt battery charged by a solar panel. The fences will not be connected to the electrical grid or have a continuous current. The system is designed to provide a brief shock to repulse a person making contact with the wires when the fence is activated. During regular business hours, the system is required to be off, only to be activated after the property is closed for the day/evening. Police and Fire Department personnel will be able to deactivate the fence to respond to calls for service.

Staff believes the above standards, in addition to required warning signs, are appropriate measures to prevent inadvertent contact and risk of shock from an electrified security fence.

Indemnification

All applicants issued permits to install or use an electrified security fence, as a condition of permit issuance, are required to agree to defend, indemnify, and hold harmless the City from all claims, actions, or proceedings arising out of any personal injury, including death, or property damage caused by the electric fence.

Locations

State law already prohibits the use of an electrified security fence in residential areas, so these fences would not be permitted in residential areas of the City. In addition, the Ordinance would prohibit the installation of any electrified security fence within 300 feet of a public park/open space, church, and/or school facility (public or private). The ordinance would also prohibit the use of electrified security fences within existing or future mixed-use zones of the City. In recent years, the City has approved specific plans that introduce mixed-use development opportunities to combine residential and commercial uses in attractive and well-designed neighborhoods. Given the compact nature of most mixed-use developments, electrified security fence systems would detract from the visual character of an area and be at odds with the goal of well-designed neighborhoods. Moreover, mixed-use development projects can be designed in such a way as to deter criminal behavior utilizing “defensible space” principles and techniques recommended by such sources as *Crime Prevention Through Environmental Design* (CPTED).

Thus, electrified security fences would be limited to specific types of uses in the commercial and industrial areas of the City. Montclair’s industrial base is modest in size and, for the most part, located adjacent to the two major railway corridors that cut across the City. The northern rail line is now primarily a commuter route utilized by Metrolink and, eventually, Gold Line light rail trains. By contrast, the Union Pacific (UP) rail corridor, located between Brooks and State Streets, is a busy major regional east/west railway with at least three tracks and a corridor width that is approximately 100 feet on the west end of the City and is over 300 feet wide at the City of Ontario border. The wider portions of the corridor have historically been used as a staging and switchyard, where freight cars are often temporarily stored, which has made them susceptible to “cargo theft” in recent years.

The close proximity of the UP railroad corridor to the industrial properties abutting the corridor and nearby street overpasses have made them susceptible to vandalism and theft. Restricted access and lack of adequate visibility to the

corridor contribute to the problem of adequately securing their properties. If the Ordinance is approved, several properties along the UP railroad corridor are likely to submit applications. In staff's opinion, this is the area of the City that will benefit the most by being able to utilize an electrified security fence. Although these properties have existing walls and fences, they have not been effective in reducing the occurrence of unlawful acts on their properties.

Survey of Local Jurisdictions

Like Montclair, many of the cities in the local area have dealt with the issue of electrified security fences in one way or another. Some cities prohibit their use or have adopted an Ordinance or other way to allow electrified security fences with restrictions. Staff surveyed nearby cities to determine how they address the use of electrified fence systems, as indicated in the table below:

Survey of Local Jurisdictions: Electrified Security Fences		
<i>Jurisdiction</i>	<i>Allowed: Yes or No</i>	<i>Review Process¹</i>
Claremont	No	N/A
Upland	No	N/A
La Verne	Yes	Administrative Approval or CUP
Ontario	Yes	Administrative Approval or CUP
Chino	Yes	Administrative Approval
Colton	Yes	Administrative Approval or CUP
Fontana	Yes	Administrative Approval for Industrial Areas
Rialto	Yes	Administrative Approval Admin or CUP
Riverside	Yes	Administrative Approval
San Bernardino	Yes	Industrial zones are located behind a primary fence.
SB County	Yes	Industrial districts and other limited circumstances when required by City, County, State, or Federal agency

¹ CUP is required in some jurisdictions when requested for a location out of industrial areas where only an Administrative Review would be required.

Cities that allow electrical security fences in their jurisdictions limit their use to industrial or rural areas consistent with State law. Montclair's proposed Ordinance would do the same.

Review Process

Allowing electrified security fencing by right is not proposed because of the potential to negatively impact the character of the City without proper consideration of the aesthetic and character impacts of each proposed fence. As

such, staff recommends that proposals be reviewed and approved through an Administrative Permit review process. As such, staff is recommending an amendment to Chapter 11.77 – Administrative Permit (AP) as suggested above in the project description. Many cities use a similar administrative process which is less complicated than processing a CUP approval, which runs with the land in perpetuity. While the process to approve an electrified security fence would be an administrative action, approval would not be guaranteed. Lastly, the AP process offers an easier path than a CUP to revoke a permit for failure to fully comply with the requirements of the Ordinance.

Finally, the use of an electrified security fence is not expected to be widespread in the community due to the requirements of the proposed Ordinance and the cost of installing and operating such systems. In addition, an electric security fence is not designed to make a site impenetrable but would serve as a major deterrent for some businesses in need of addressing persistent criminal activity.

Public Notice and Comment

On November 17, 2023, a notice of a public hearing on proposed Ordinance No. 24-1005 was published in the Daily Bulletin per State law. At the time this report was prepared, no comments regarding the project were received.

Environmental Assessment

The Planning Division has determined this project to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines. As such, there is no substantial evidence that the proposed Ordinance will potentially significantly impact the environment.

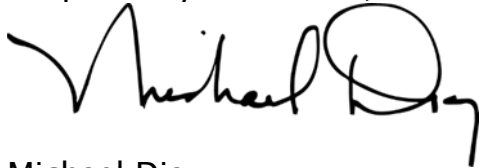
Planning Division Recommendation

Staff recommends the Planning Commission approve the proposed Ordinance project by taking the following actions:

- A. Move that, based upon evidence submitted, the Planning Commission finds proposed Ordinance No. 24-1005 to be categorically exempt from the requirements of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines. As such, there is no substantial evidence the proposed Ordinance will pose a potentially significant impact on the environment.

- B. Approve Planning Commission Resolution No. 23-1988 recommending City Council approval of Ordinance No. 24-1005 under Case No. 2023-35, a Zoning Code Text Amendment to allow Electrified Security Fencing within the City of Montclair.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Diaz". The signature is fluid and cursive, with a large, stylized "D" at the end.

Michael Diaz
Director of Community Development

MD/sg

Attachments: Exhibit A - Draft Ordinance No. 24-1005
Draft Resolution No. 23-1988

- c: Luis Frias, AMAROK LLC, 550 Assembly Street, Fifth Floor, Columbia,
South Carolina, 29201
Nelson Blanco, Stotz Equipment, 4811 Brooks Street, Montclair, CA 91763
J. Monteleone, United Rentals, 10632 Monte Vista Avenue, Montclair, CA 91763

Z:\COMMDEV\MD\CASES\CASE 2023-35 PC RPT

Exhibit A

ORDINANCE NO. 24-1005

ORDINANCE NO. 24-1005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 11.02 OF THE MONTCLAIR MUNICIPAL CODE ADDING NEW DEFINITIONS INCLUDING A DEFINITION FOR MONITORED ELECTRIFIED SECURITY FENCE AND AMENDING CHAPTERS 11.38 AND 11.77 TO ADD TO ESTABLISH NEW STANDARDS AND PROCEDURE FOR ALLOWING MONITORED ELECTRIFIED SECURITY FENCES IN SPECIFIED COMMERCIAL AND INDUSTRIAL ZONES WITHIN THE CITY

WHEREAS, on October 2, 2023, AMAROK, LLC, a full-perimeter security company based in Columbia, South Carolina, submitted an application requesting a zoning code amendment to allow monitored electrified security fence systems within the City boundaries; and

WHEREAS, AMAROK, LLC, is seeking a code amendment to the Montclair Municipal Code, that would allow business owners located on properties zoned C-3 (General Commercial Zone), MIP (Manufacturing Industrial Park Zone), M-1 (Limited Manufacturing Zone, and M-2 (General Manufacturing Zone) to install monitored electric fence security systems inside their existing perimeter fence or wall; and

WHEREAS, a “Monitored Electrified Security Fence System” means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary; and

WHEREAS, California Civil Code Section 835, allows the use of a low-voltage “electrified security fence” to protect and secure commercial, manufacturing, or industrial property, if permitted by a local ordinance, and subject to specified minimum requirements; and

WHEREAS, California Civil Code Section 835 (b) (1), does not allow the installation and operation of an “electrified security fence” in a residential zone; and

WHEREAS, the City has received reports of several incidents involving trespassing, burglary, and major theft on properties located on the south side of Brooks Street adjacent to the Union Pacific Railroad right-of-way; and

WHEREAS, on June 20, 2023, City staff met with the owners of two businesses on Brooks Street to discuss issues regarding incidents of trespassing, burglary, and major theft on properties occurring on their properties and their desire to enhance security by means of an electric fence; and

WHEREAS, on July 17, 2023, the City Council Real Estate Committee staff discussed the potential use of electric security fences within specific areas within City; and

WHEREAS, the Montclair Municipal Code currently has no provisions addressing the use of electrified fence systems within the City, and is, therefore, not a permitted use; and

WHEREAS, the purpose of this Ordinance is to provide regulations and a process for considering the approval of permits for allowing the use of electrified fencing as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities; and

WHEREAS, the purpose of this Ordinance is to add electrified fence standards and procedures to the Montclair Municipal Code; and

WHEREAS, the City of Montclair, California (“City”) is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to the City of Montclair by the California Constitution, the City is authorized to enact laws that promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction, and maintenance of electric fences on public and private property in the City; and

WHEREAS, the Planning Commission of the City of Montclair held a public hearing on November 27, 2023, after giving published notice of the proposed code amendment to allow electrified fences in specified locations within the City; and

WHEREAS, the Planning Commission adopted Resolution No. 23-1988, by a vote of X to X, and recommended denial/approval of the Ordinance to the City Council; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth fully within the body of this Ordinance.

SECTION II. Chapter 11.02 “Definitions” of Title 11 (Zoning and Development) of the Montclair Municipal Code is hereby amended to add the following definitions:

11.02 Definitions.

“Electrified Fence” - means any fence, barrier, or enclosure partially or totally enclosing a building, field, or yard, carrying any electrical pulse or charge through any part, section, or element.

“Monitored Electrified Security Fence” - means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary with an assembly of battery-powered equipment, including but not limited to:

1. A monitored alarm device and energizer which is intended to periodically deliver non-lethal electric pulses to a security fence; and
2. A battery charging device used exclusively to charge the system's battery; and
3. Audible and video surveillance equipment; and
4. Other integrated components.

“Key Box (e.g. “Knox Box”) means a secure device with a lock operable only by emergency personnel, and containing building entry keys and other keys that may be required for access in an emergency by the latest California Fire Code.

SECTION III. Chapter 11.38 of Title 11 (Zoning and Development) of the Montclair Municipal Code shall be amended as shown in Exhibit A; and

SECTION IV. Chapter 11.77 of Title 11 (Administrative Permit) of the Montclair Municipal Code shall be amended to add the following application type at Section 11.77.020 (Scope) as follows:

“C. Applications to install electrified security fences pursuant to the requirements and findings contained in Chapter 11.38.100 of the MMC.”

SECTION V: The proposed Amendment is exempt from further California Environmental Quality Act (CEQA) review under Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the CEQA Guidelines.

SECTION VI. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION VII. The City Clerk shall certify the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2024.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 24-1005 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XXXXX, 2024,

and finally passed not less than five (5) days thereafter on the XX day of XX, 2024, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick,
City Clerk

DRAFT

EXHIBIT A

New Zoning Code Section 11.38.100

11.38.100 - Monitored Electrified Fences

This chapter is intended to provide the regulations and procedure necessary for considering the approval of a permit to use an electrified security fencing system as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities. In granting such permits, the Director of Community Development may require conditions, in addition to those required by the provisions of this title, to protect both the health and safety of members of the public, and property values in the area.

11.38.110 – Monitored Electrified Security Fence Allowed.

Only monitored electrified security fence systems (hereafter, “electrified fence”) designed to carry non-lethal pulses of direct current to deter potential intruders shall be allowed in the City as provided in this section and subject to the following standards:

1. All electrified fence systems shall be from a registered manufacturer in compliance with International Standard IEC 60335-2-76; and
2. Electrified fence energizers shall be pulsed output type only. Continuous output-type systems are prohibited.
3. The energizer for an electrified fence must be driven by a commercial storage battery not to exceed 12 Volts DC. No part of the system shall connect to the electrical grid, or carry continuous current.
4. Supplemental lighting, audio, and video surveillance equipment to an alarm monitoring company shall be installed as required by the Director of Community Development
5. A Key Box (e.g., “Knox Box”) or other similar approved device shall be installed for emergency access to property by Police and Fire Department personnel. The location of the key box shall be determined by the Fire Marshal.
6. A notarized statement from a certified independent person with expertise in evaluating the safety of electric fences stating the electrified fence installation is currently operating in conformity with this Section and the safety requirements of IEC 60335-2-76.
7. The fence must be in compliance with the provisions of California Civil Code Section 835.
8. No electrified fence shall be allowed to extend within the public right of way or on property owned by a public agency.
9. Where the installation of an electrified fence is permitted under this Section, the owner must, prior to installation, provide written notice to the fire code official of the proposed location of the electrified security fence.

11.38.120 – Restricted Use

The installation of an electrified fence is restricted to the following areas and zoning districts as indicated and/or defined on the City of Montclair Official Zoning Map:

1. Commercially Zoned Property (C-3-General Commercial Zone):
 - a. Permitted outdoor storage of equipment or machinery, motor vehicle storage, major utility and recycling facilities, or contractor yard, in conjunction with a permitted and operating business, except where abutting a residentially-zoned property or use.
 - b. On developed properties where one or more general boundary lines of property abuts a railway, overpass, freeway, drainage channel, or other extraordinary or unusual physical condition(s).
 - c. Wireless Telecommunication Facilities sites located 100 feet from a residential use or zone.
2. Industrially Zoned Property (MIP-Manufacturing Industrial Park Zone; M-2-Limited Manufacturing Zone; M-2-General Manufacturing Zone):
 - a. Where general warehousing, outdoor storage of equipment or machinery, motor vehicle storage areas, major utility and recycling facilities, contractor yards, and mini or self-storage facilities, are lawfully permitted and operating.
 - b. On developed properties where one or more boundary lines of property abuts a railway, overpass, freeway, drainage channel, or other extraordinary or unusual physical condition(s).
 - c. Wireless Telecommunication Facilities sites 100 feet from a residential use or zone.
3. Prohibited Locations:
 - a. Single-family and multifamily zones and properties. Mixed-use developments shall be considered a multifamily zone for the purposes of this Section.
 - b. Properties adjacent to a residential zone and use.
 - c. Within the boundaries of the *North Montclair Downtown Specific Plan* (NMDSP) and *Montclair Place District Specific Plan* (MPDSP) areas;
 - d. Within 10 feet of a front or street side property line or any public right-of-way.
 - e. Within 300 feet of a public park/open space, church, and/or school facility (public or private).
 - f. Public right of way.
 - g. Any publicly owned property.
4. Exempt Locations Citywide
 - a. Federal or State-owned properties or uses.

- b. City facilities (not including Public Parks).
 - c. Unoccupied Public Utility Infrastructure Facilities (e.g. substations, water tanks, telecommunication switching sites, etc.). Such facilities shall meet the requirements of and obtain an approved Alarm Permit per Section 11.38.200.
5. Uses not listed above in 11.38.120(1) and (2) are not eligible to use electrified fences unless the Director of Community Development, or his/her designee, determines that the use is similar and the electrified fence can meet all other applicable requirements of this Chapter.

11.38.130 - Permits Required.

It shall be unlawful for any person to install, maintain, or operate an electrified fence system of any kind in violation of this Section. Any approved electrified fence security system shall require the following:

1. An Administrative Permit (AP) as issued by the Community Development Department as defined and regulated in Chapter 11.77 of the MMC (Administrative Permit); or
2. As an approved accessory use related to a primary land use requiring a Conditional Use Permit (CUP); and
3. Building Permit(s) issued by the Building Division. The electrified fence system shall comply with all applicable local and state regulations; and
4. An alarm user's permit according to Chapter 4.12.040 of the Montclair Municipal Code.

11.38.140 – Justification for Monitored Electrified Security Fence

As part of the application for an Administrative Permit to install an electrified fence, the applicant shall submit a written justification for utilizing such a system on-site. The applicant shall provide:

1. A detailed site plan showing existing improvements and location for the proposed monitored electrified fence security system and its various components (e.g. fence materials, power source, key box, cut-off switch, cameras, lights, etc.).
2. A written request that includes the intended purpose for the fence, facts, and/or diagrams to support the need for an electrified fence security system including but not limited to Police reports (e.g. calls for service, arrests, loss statements, etc.). The written request shall also demonstrate that all reasonable measures (e.g., existing fences or walls, security guards, conventional alarms, etc.) have not been successful in mitigating or preventing security breaches or property theft.
3. The established fee for a permit to install an electrified fence shall be paid by the applicant at the time of application submittal.

11.38.150 – Findings for Approval

In approving an Administrative Permit for a monitored electrified security fence, the Director of Community Development (Director), or his/her designee, shall make all of the following findings:

1. Based on the justification provided by the applicant, and site inspection(s), the proposed use of a monitored electrified fence is warranted and after all other reasonable efforts have been attempted, would be an effective means of deterring potential intruders; and
2. The proposed electrified fence complies with all requirements of this section; and
3. The installation of the proposed electrified fence will not have a detrimental effect on the appearance of the street, pose a direct danger to members of the public, or adversely affect the use of surrounding properties. In some cases, the Director, or his/her designee, may require new or existing exterior fences to be modified to install additional coverings (e.g. mesh, slats, etc.), or low-growing landscaping (on the exterior side of the non-electrified fence or wall) as a means of protecting the aesthetics of commercial areas and to further prevent unintentional contact with the electrified fence.

11.38.160 – Permit Revocation

If an approved electrified fence is found to be not in compliance with any provision of this Section and the applicant has not taken the initiative to address the deficiency within ten (10) days of written notice from the City, the City may revoke the Administrative Permit approval. Upon permit revocation, the permit holder/applicant shall receive a statement from the Community Development Department describing the reason for the revocation and shall immediately turn off the electric pulse for the fence.

11.38.170 – Appeal.

A decision of the Director of Community Development may be appealed to the Planning Commission within 10 days of the Director's decision. The appeal shall be made on forms prescribed by the Planning Division and fees paid per the fee resolution. The submission of the application and fees shall constitute the filing of the appeal. The Planning Commission shall review the appeal at a regularly scheduled meeting according to the schedule of meetings and deadlines for submission of applications. The Commission shall either uphold, reverse, or modify the Director's decision.

If anyone is aggrieved or affected by the decision of the Planning Commission, they may appeal the decision to the City Council within 10 days of the decision of the Planning Commission. The appeal shall be submitted per the above appeal provisions. The City Council shall review the appeal and either uphold, reverse, or modify the Planning Commission's decision. The City Council's decision shall be final.

11.38.180 – Installation Requirements.

1. Decorative Perimeter Fence or Wall Required.
 - a. No electrified fence system shall be installed or operated unless it is completely behind a new or existing permitted non-electrified decorative fence or wall of at least six feet in height (New or existing chainlink fences are not considered to

be decorative). The installation of a standalone electrified fence system is prohibited.

- b. An electrified fence, or portion thereof, shall be a minimum of 10 feet back from any street property line.
- c. For new or existing buildings with frontages abutting a public or private sidewalk, or within 10 feet of a street property line, an electrified fence shall be set back from the face of the building by at least five feet.
- d. The non-electrified perimeter fence shall be separated from the electrified fence system between four to eight inches inside the non-electric perimeter barrier, except for gate openings with insulated contacts.
- e. The inside area between the non-electric perimeter fence and the electrified fence shall be kept clear of landscaping, shrubbery, debris, or material of any kind.
- f. Existing permitted chain-link fencing, six feet in height, may be considered by the Director, or his/her designee, to meet this requirement if the chain-link fence is in good condition and does not face onto a public or private street.

2. Design.

- a. Electric fences shall be installed to appear as minimally intrusive as possible as viewed from any public or private street.
- b. Vertical support posts for wires shall be as few as needed and as evenly spaced as possible.

6. Height.

Electric fences shall be limited to a maximum height of 10 feet, or two feet higher than an existing and permitted wall or fence barrier, whichever is lower. Height shall be measured from an adjacent public sidewalk or level-paved surface, whichever is closer.

7. Warning Signs.

Electrified fences shall be identified by warning signs. The warning signs shall conform to the following requirements:

- a. Warning signs shall be located on both sides of the electrified fence, parallel with the direction of the fence, at not more than 30-foot intervals and shall read: "WARNING - ELECTRIC SECURITY FENCE".
- b. The text shall be printed in English and Spanish. All lettering shall be a minimum of one (1) inch high.
- c. Warning sign dimensions shall be a minimum of four inches high by eight inches wide.

- d. The warning signs shall consist of a yellow background with black inscriptions and must be kept in good condition to ensure visibility.

8. Electrical Shut-Off for Emergencies.

A cut-off switch shall be installed capable of disconnecting and de-energizing the fence from the controller in case of emergencies, electrical storms, etc. A key box/switch or keypad shall be installed to provide secure access to the cut-off switch. The key box/switch or keypad shall be provided with a reflective marker displayed in an approved location.

The system shall also have an approved visual signal indicator next to the key switch for emergency responders that indicates if the battery-operated alarmed electric fence is energized or de-energized. The signal indicator shall be lit when the fence is charged and not lit when not charged

11.38.190 – Hours of Activation

An electrified fence shall only be energized during the hours when the general public does not have access to the protected property.

11.38.200 – Alarm System

All approved electrified fence systems shall require and include an interface with an alarm system to be monitored during all times after a business is closed, or at all times when electrified fences are installed to protect unoccupied public utility properties. The alarm system shall be registered with the City, subject to the requirements of Chapter 4.12 of the Montclair Municipal Code, including service fees for false alarm service calls.

11.38.210 – Indemnification

All applicants issued permits to install or use an electrified fence as provided in this Section shall agree, as a condition of permit issuance, to defend, indemnify, and hold harmless the City of Montclair and its agents, officers, consultants, independent contractors and employees from any claims, actions or proceedings arising out of any personal injury, including death, or property damage caused by the electrified fence.

RESOLUTION NO. 23-1988

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL APPROVAL OR ORDINANCE NO. 24-1005 AMENDING TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE, CHAPTERS 11.02 (DEFINITIONS), 11.38 (DEVELOPMENT STANDARDS GENERALLY), AND 11.77 (ADMINISTRATIVE PERMIT) TO PERMIT MONITORED ELECTRIFIED SECURITY FENCES IN SPECIFIED COMMERCIAL AND INDUSTRIAL ZONES WITHIN THE CITY (CASE FILE NO. 2023-35).

A. Recitals.

WHEREAS, on October 2, 2023, AMAROK, LLC, a full-perimeter security company based in Columbia, South Carolina, submitted an application requesting a zoning code amendment to allow monitored electrified security fence systems within the City boundaries; and

WHEREAS, AMAROK, LLC, is seeking a code amendment to the Montclair Municipal Code, that would allow business owners located on properties zoned C-3 (General Commercial Zone), MIP (Manufacturing Industrial Park Zone), M-1 (Limited Manufacturing Zone, and M-2 (General Manufacturing Zone) to install monitored electric fence security systems inside their existing perimeter fence or wall; and

WHEREAS, a “Monitored Electrified Security Fence System” means a perimeter alarm system that transmits a signal intended to alert the business utilizing the system and an alarm monitoring service in response to an intrusion or burglary, including an energizer which is designed to periodically deliver non-lethal electric pulses to a security fence; and

WHEREAS, California Civil Code Section 835, allows the use of a low-voltage “electrified security fence” to protect and secure commercial, manufacturing, or industrial property, if permitted by a local ordinance, and subject to specified minimum requirements; and

WHEREAS, California Civil Code Section 835 (b) (1), does not allow the installation and operation of an “electrified security fence” in a residential zone; and

WHEREAS, the City has received reports of several incidents involving repeated trespassing, burglary, and major theft on properties located on the south side of Brooks Street adjacent to the Union Pacific Railroad right-of-way; and

WHEREAS, the use of electrified fence systems within the City is currently not a permitted use; and

WHEREAS, the purpose of this Ordinance is to provide regulations and a process for considering the approval of permits for allowing the use of electrified fencing as a supplemental means for securing industrial and commercial properties where other conventional means for securing a site have failed to protect outdoor areas from persistent trespassing, vandalism, and theft activities; and

WHEREAS, the purpose of this Ordinance is to add electrified fence standards and procedures to the Montclair Municipal Code; and

WHEREAS, the Planning Commission of the City of Montclair held a public hearing on November 27, 2023, after giving published notice of the proposed code amendment to allow monitored electrified fences in specified locations within the City; and

WHEREAS, during the meeting, any person wishing to testify in connection with said application was given the opportunity to speak, and said application was thoroughly studied; and

WHEREAS, the Planning Commission has reviewed the Planning Division's determination of exemption and based on its independent judgment, concurs with staff's environmental determination for the proposed Code Amendment per Sections 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15311 (Accessory Structures) of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

B. Resolution.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution, are true and correct.
2. The Planning Commission finds that the proposed Code Amendment to permit monitored electrified security fences in specified commercial and industrial zones within the City is reasonably related to the public welfare of the citizens of the City in that the proposed Ordinance includes appropriate restrictions and standards to ensure that the permitted electrified security fences meet all safety standards including Building and Safety Codes and International Electric Standards.

3. The Planning Commission hereby recommends that the City Council of the City of Montclair adopt the Zoning Text Amendment, in substantially the form attached hereto as **Exhibit "A,"** which is incorporated by reference.

The Secretary to this Commission shall certify the adoption of this Resolution.

APPROVED AND ADOPTED THIS 27TH DAY OF NOVEMBER, 2023, PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

BY:

Manny Martinez, Chair

ATTEST:

Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair at a regular meeting of the Planning Commission conducted on the 27th day of November 2023, by the following vote, to-wit:

AYES:

NOES:

ABSENT:



CASE NUMBER 2023-39

APPLICATION TYPE(S)	Zoning Code Amendment Related to SB 9-Urban Lot Splits
NAME OF APPLICANT	City of Montclair
LOCATION OF PROPERTY	Citywide
ENVIRONMENTAL DETERMINATION	Exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h)
PROJECT COORDINATOR	Silvia Gutiérrez, Senior Planner

On January 1, 2022, California Senate Bill 9 ("SB 9") went into effect as part the State's efforts to encourage the production of homes across California. SB 9 mandates changes to existing single-family residential properties to allow Urban Lot Splits and Two-Unit Housing Development. The proposed Ordinance will be the City's amendment to the Municipal Code to comply with SB 9 requirements.

Since the item was advertised as public hearing, staff requests the Commission open the meeting for public comment by persons intending to speak on the item. At the conclusion of public comments, staff recommends continuing the public hearing to the next regularly scheduled meeting on December 11, 2023.

Planning Division Recommendation

Staff recommends the Planning Commission approve the request to continue the review of proposed Ordinance 24-1007 to the Planning Commission's regularly scheduled meeting on December 11, 2023.