REUBEN, JUNIUS & ROSE, LLP

October 25, 2016

By Electronic Mail

Chair Catherine Vierra Houston
San Leandro Board of Zoning Adjustments
Civic Center, 835 East 14th Street
San Leandro, CA 94577

The Electric Guard Dog

REASONS FOR APPEAL

Re: No. 16-518 – 2371 Polvorosa Avenue, Electric Fence
Our File No.: 10491.01

Dear Chair Vierra Houston:

Our office represents Electric Guard Dog LLC ("Applicant"), the applicant for a building permit to install a low voltage security fence (the "Permit") at 2371 Polvorosa Avenue (the "Property"). We request that the Board of Zoning Adjustments reverse the denial of the Permit for the reasons set forth below. Alternatively, we request the Board to direct Planning staff to follow the San Leandro Zoning Code's (the "Code") procedure for fence modifications. Staff's denial of the permit without a hearing or any consideration of the four specific criteria to grant modifications raises serious due process concerns.

1. Background

Applicant installs perimeter security systems for non-residential locations to provide both theft protection for property on the site and safety for employees using the Property outside of normal business hours. Applicant proposes to construct an eight (8) foot tall low voltage security fence (the "Fence") along the Property.

On August 23, 2016, Planning staff (hereafter, "Staff") denied the Permit, via email to the San Leandro Building Department. (See Exhibit A). Staff's rationale was San Leandro has no "existing provisions in the Zoning Code that enable the installation or use of an electric fence" and had not previously issued a permit for this kind of fence. Staff reiterated its position in a subsequent email on August 31, 2016, noting that "electric fences are not permitted" under the Code and the city therefore cannot approve a permit for the Fence. (See Exhibit B). Staff did not advise Applicant of the procedure to request a modification from the San Leandro Zoning Code's principally permitted fencing materials prior to directing the Building Department to deny the Permit, as set out in Code Section 4-1682(C).

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin | John Kevlin
Tuija I. Catalano | Jay F. Drake | Lindsay M. Petrone | Sheryl Reuben[1] | Thomas Tunny
David Silverman | Melinda A. Sarjapur | Mark H. Loper | Jody Knight | Stephanie L. Haughey
Chloe V. Angelis | Louis J. Sarmiento | Jared Figerman[2,3] | John McInerney III[2]
1. Also admitted in New York 2. Of Counsel 3. Also admitted in Massachusetts

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2. Safety: Pulsed Electricity vs. Continuous or Mains Electricity

The City is charged with protecting the health, safety and welfare of its citizens. In this case, it would appear that the only reason one could be concerned about this type of fence is that it may not be safe. As described above and in the recent legislative history of SB 582 (see Section 3 below), the stigma surrounding the electric fence comes from its origins in agriculture. However, modern products like the one supplied by Applicant have for many years been proven both safe and effective in securing and protecting commercial property.

This is because of the basic technology behind the new fence. Most of us are familiar with "mains" electricity — best known as the continuous power that is generated from electrical infrastructure. Most standards of safety are set assuming this type of continuous power. The average person is less familiar with the unique properties of *pulsed electricity*. The closest most of us have come to pulsed electricity is the static discharge from touching a door knob on a dry day. While completely harmless, pulsed electricity like this does produce a startling and uncomfortable effect.

The pulsed electricity that powers Electric Guard Dog's fences shares the same properties. By pulsing the current, Applicant creates an extremely short, but memorable pulse. The shortness of the pulse is why it is safe.

International safety standards regulate the combined result of length of pulse and duration of pulse. In fact, Electric Guard Dog operates well within the safety standards, near the midpoint of the allowable power. It is a pulsed electrical device that has been tested to a California state standard by a nationally recognized laboratory. Because the prime power source is a 12-volt battery, and it is from a DC pulsing system, the system is safe. The fast-acting capacitors generate the pulses that are the magic of Electric Guard Dog. They are strong enough to deter thieves, economical to generate, and safe in the event of inadvertent contact.

3. SB 582 Prohibits the City from Denying the Permit

In 2015, the California State Legislature passed Senate Bill 582, changing the laws governing electrified security fences in certain parts of a city or county ("SB 582"). Specifically, SB 582 amended the California Civil Code's outdated regulations regarding electric fences. As explained in one of the legislative analyst's reports for SB 582 (attached as Exhibit C) prior to SB 582's enactment the law regarding fences "was clearly written to address electrified fences that are designed to contain livestock, which use a much higher voltage than what is allowed for and used by electrified security fences."

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SB 582 provides that "an owner of real property may install and operate an electrified security fence on his or her property" subject to a number of location and operational limits.[1] The electrical impulse output must generally be limited in charge.[2] The fence must protect property located outside of residentially-zoned areas; have prominently placed warning signs and symbols; and meet a prescribed 10-foot height limit.[3] Finally, subsection (c) of SB 582 states the following:

> "An owner of real property shall not install and operate an electrified security fence where a local ordinance prohibits that installation and operation. If a local ordinance allows the installation and operation of an electrified security fence, the installation and operation of the fence shall meet the requirements of that ordinance and the requirements of subdivision (b) [which provides the location and operational standards]."

This subsection does not permit San Leandro to deny the installation and operation of the Fence. While there arguably is some ambiguity in the Code, legislative intent is clear: a local ordinance must explicitly prohibit the installation and operation of a fence. Otherwise, SB 582 allows a property owner to install a fence meeting its requirements. The legislative analyst's report attached as Exhibit C explains in no uncertain terms:

> "[I]f a jurisdiction does not have an ordinance in place to prohibit or limit the installation and operation of an electrified security fence, [SB 582] would allow for the installation and operation of such a fence." (Exhibit C, pg. 2).

Staff's position is that the Fence is not permitted because San Leandro Zoning Code is silent on whether electrified security fences are allowed. As the analyst's report explained, in this situation, SB 582 was enacted specifically to allow property owners to install these kinds of fences. Assuming for the sake of argument Staff's interpretation of the San Leandro Zoning Code is correct (see Section 4 below) SB 582 allows the owner of the Property to install the Fence.

4. If There Is a Conflict, State Law Preempts the Code

To the extent it can be argued that the San Leandro Zoning Code prohibits electrified security fences, SB 582 preempts the Code. The California Constitution prohibits local governments from making or enforcing laws that are in conflict with general (i.e. state)

[1] California Civil Code Section 835(b).
[2] Id. at (a).
[3] Id. at (b).

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laws.[4] A conflict exists when local ordinances duplicate, contradict, or enter an area "fully occupied" by state law.[5] Although charter cities such as San Leandro are afforded more leeway to pass ordinances conflicting with state law, when the law relates to a matter of "statewide concern," as opposed to "municipal affairs", the local law is preempted.[6]

State laws addressing crime and security protection measures have consistently been found by courts to not be municipal affairs but instead matters of statewide concern, preempting conflicting local laws. (see, e.g., Fiscal v. City and County of San Francisco (2008) 158 Cal.App.4th 895, 918-919 [ordinance banning possession and sale of firearms]; O'Connell v. City of Stockton (2007) 41 Cal.4th 1061, 1075 [ordinance allowing forfeiture of vehicles used for prostitution or drug sales]). So too, here SB 582 provides a clear set of rules governing electrified security fences in order to allow for effective crime prevention in industrial and commercial areas of cities and counties throughout the state. The San Leandro Zoning Code may not conflict with this state law.

5. The City Failed to Follow the Zoning Code in Denying the Permit

The Planning Department failed to follow San Leandro's own procedure for modifications to the Code's limitations on fences, not evaluating the Permit against the four substantive criteria for modification, and denying Applicant the ability to prove to the City in the first instance that its fence is appropriate for the Property. Instead, Applicant's only venue for redress is to appeal Staff's decision to this Board based on an incomplete administrative record. This outcome raises due process concerns. Even if this Board determines that SB 582 does not principally permit the fence, it must allow Applicant a chance to pursue an administrative fence modification application and demonstrate the Fence's safety and compatibility with surroundings.

As noted above, Planning staff denied the Permit in an email to the Building Department on August 23, 2016 on the grounds that an electric fence simply is not permitted in any instance in San Leandro. It did not schedule or notice a public hearing, or direct Applicant to formally submit any supporting evidence as to why the fence would be safe, compatible with the neighborhood, and not cause any nuisance or health hazard, before denying the permit.

Staff noted that "there are no existing provisions in the Zoning Code that enable the installation or use of an electric fence" and that until San Leandro updated its code, the Fence is not allowed. (Exhibit A). Staff reiterated its position in a subsequent email on August 31,

[4] California Constitution, Article XI, Section 7.
[5] Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897.
[6] California Constitution, Article XI, Section 5; Johnson v. Bradley (1992) 4 Cal.4th 389, 398-399.

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2016, noting that "electric fences are not permitted" under the Code and the city therefore cannot approve a permit for the Fence. (See Exhibit B). This position is simply incorrect.

The Code actually specifically allows for types of fences other than those principally permitted in Section 4-1682. In commercial, professional, and industrial zoning districts where the Property is located, tubular steel or "equally high quality 'visually transparent' " fences are principally permitted, as are solid architectural walls.[7] Along with those two types of principally permitted fences, "approval to vary from the standards of this Section may be granted with the approval of a fence modification application."[8] Height, setback, and "material of construction" for the fence can all be modified.[9]

For a fence that does not meet the strict standards for principally-permitted materials, The Zoning Enforcement Official is required to either conduct a public hearing him- or herself, or refer the request to the Board of Zoning Adjustments.[10] No matter the venue, that hearing requires formal noticing. More importantly from a due process standpoint, the Zoning Enforcement Official or this Board is required to evaluate the fence against four substantive standards:

1. The fence is not detrimental to adjacent property;
2. The fence is compatible with the neighborhood in terms of aesthetics;
3. The fence does not create a site distance hazard; and
4. The fence is not detrimental to the public health, safety, or welfare.[11]

Applicant was not afforded the opportunity to have this hearing, either before the Zoning Enforcement Official or in front of this Board. No findings have been prepared by staff evaluating the Fence against these four substantive criteria—and Applicant was not directed to produce any while the Permit was being processed. Instead, Applicant's Permit was denied on the incorrect assumption that such a fence was not permitted in San Leandro, in direct conflict with the Code.

The entire point of having substantive criteria is so that staff—and if necessary this Board—can weigh the proposal against findings designed to ensure it is compatible with and not detrimental to the neighborhood. No findings have been made or recommended by staff, and Applicant was not even made aware of this requirement until after the Permit was denied. That being said, there are facts in evidence that show the permit should be granted.

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[7] San Leandro Zoning Code, Section 4-1682(B)(2).
[8] San Leandro Zoning Code, Section 4-1682(C).
[9] San Leandro Zoning Code, Section 4-1682(C)(1).
[10] San Leandro Zoning Code, Section 4-1682(C).
[11] San Leandro Zoning Code, Section 4-1682(C)(3).

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We have prepared sample findings attached as Exhibit D explaining how the Fence would meet each of the four standards.

Due process guarantees an opportunity to review evidence considered by the administrative agency, and an opportunity to be heard on the specific evidence that is supposed to be considered at the hearing. We have concerns that the Planning Department has not followed the Code's procedural protections for applicants requesting a fence modification, and request that this Board direct the Zoning Enforcement Officer to hold a hearing where evidence can be presented and the City can make findings of fact on the four substantive criteria of Section 4-1682.

6. Conclusion

For the reasons stated above, we request this Board grant the Permit and allow construction of the Fence based on the findings attached as Exhibit D, or other such additional findings you make. In the alternative, this Board should direct staff to follow its own procedures for considering a fence that is not principally permitted by the code.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

Andrew Junius

cc:

Robert Ahn, Esq.
Michael Pate, Elecrtic Guard Dog LLC
Mark Loper, Reuben, Junius & Rose, LLP

Enclosures:

Exhibit A	-	Email from A. Mogensen to M. Braun, 8/23/2016
Exhibit B	-	Email from A. Mogensen to C. Bausinger, 8/31/2016
Exhibit C	-	Legislative Analyst's Report, SB 582, Senate Third Reading, 8/17/2015
Exhibit D	-	2371 Polvorosa Avenue, Draft Code Section 4-1682 Findings

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Exhibit A

From: Cuero, Cynthia
To: Carol Bausinger
Subject: FW: B16-1483 - Unable to be approved
Date: Thursday, August 25, 2016 9:35:13 AM
Attachments: image002.png
image003.jpg

Carol, below is a copy of letter from Andrew Mogensen, Planning Manager to Melanie Braun, Building Permit Coordinator regarding the denial of your application to install an electric fence.

CityofSLlogo

Thank you,
Cynthia Cuero
Permits Clerk
Building Services Div
510-577-3345

From: Mogensen, Andrew
Sent: Tuesday, August 23, 2016 3:28 PM
To: Braun, Melanie
Subject: B16-1483 - Unable to be approved

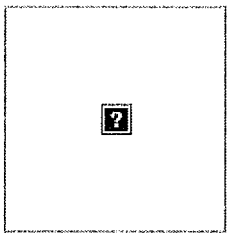
Melanie,

I am denying building permit B16-1483 for 2371 Polvorosa Dr. due to the fact that there are no existing provisions in the Zoning Code that enable the installation or use of an electric fence. The City has not previously issued a building permit for an electric fence. Unless the Zoning Code gets updated someday to expressly enable their use, we are unable to accept any building permits for electric fences.

There are existing Zoning Code provisions enabling fences with razor wire or barbed wire, under very limited circumstances (Section 4-1678, Restrictions on Use of Razor/Barbed Wire).

Thank You,

Andrew J. Mogensen, AICP
Planning Manager



City of San Leandro
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(510) 577-3325 Main | (510) 577-3458 Direct | (510) 577-6007 Fax
www.sanleandro.org | www.qcode.us/codes/sanleandro-zoning/

Exhibit B

From:	Mogensen, Andrew
To:	Carol Bausinger
Cc:	Cuero, Cynthia; Braun, Melanie; Michael Pate
Subject:	RE: Electric fences in San Leandro Zoning Code
Date:	Wednesday, August 31, 2016 12:21:44 PM
Attachments:	image001.png image004.png Agreement for Payment of Planning Appeal Fee July 2016.pdf BZA Appeal Application July 2016.pdf Article 28 Appeals.pdf

Ms. Bausinger,

Please review Article 28 Appeals and Article 21 Zoning Permits Required; Environmental Review; Fees and Deposits, San Leandro Zoning Code. A copy of the appeal application and agreement for the payment of fees shall be required along with this application.

- Appeals shall be filed within fifteen (15) days of the date of the decision.
- Appeals to the Board of Zoning Adjustment (BZA) are a direct cost for staff time (hourly).
- The fee deposit for an appeal to the BZA is $3,000. Unused fees are returned and overages will be billed.
- Both attached forms are required in order to file an appeal.
- Appeals must be filed at the Permit Center located at 835 East 14th Street, San Leandro, CA.
- The Board of Zoning Adjustments is a public hearing that regularly meets at 7pm on the first Thursday of the month.
- Appeals are scheduled within sixty (60) days of the City's receipt of an appeal, unless both applicant and appellant consent to a later date.

Sincerely,

Andrew J. Mogensen, AICP
Planning Manager

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From: Carol Bausinger [mailto:cbausinger@ELECTRICGUARDDOG.com]
Sent: Wednesday, August 31, 2016 9:37 AM
To: Mogensen, Andrew
Cc: Cuero, Cynthia; Braun, Melanie; Michael Pate
Subject: RE: Electric fences in San Leandro Zoning Code

Mr. Mogensen –
Please provide the appeal process.

Thank you,
Carol Bausinger
Compliance Manager
Electric Guard Dog, LLC

From: Mogensen, Andrew [mailto:AMogensen@sanleandro.org]
Sent: Wednesday, August 31, 2016 12:29 PM
To: Carol Bausinger <cbausinger@ELECTRICGUARDDOG.com>
Cc: Cuero, Cynthia <CCuero@sanleandro.org>; Braun, Melanie <MelanieBraun@sanleandro.org>
Subject: Electric fences in San Leandro Zoning Code

Ms. Bausinger,

Electric fences are not permitted under the San Leandro Zoning Code. The Zoning Code is an enabling legislation. Uses which are not expressly permitted in the Zoning Code are prohibited. The City is unable to approve a building permit for a use which is not permitted by code.

Sincerely,

Andrew J. Mogensen, AICP
Planning Manager

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Exhibit C

SENATE THIRD READING
SB 582 (Hall)
As Amended August 17, 2015
Majority vote

SENATE VOTE: 38-0

Committee	Votes	Ayes	Noes
Judiciary	10-0	Mark Stone, Weber, Wagner, Alejo, Chau, Chiu, Gallagher, Cristina Garcia, Maienschein, Thurmond	

SUMMARY: Allows a property owner to install an electrified security fence on his or her real property that is located in a non-residential zone as long as the fence meets certain specified requirements. Specifically, **this bill**:

1) Defines an electrified security fence as any fence, other than an electrified fence described in the Food and Agricultural Code Section 17151, that is used to protect and secure commercial property, and is powered by an electrical energizer with the following output characteristics: a) the impulse repetition rate shall not exceed 1 hertz; and b) the impulse duration shall not exceed 10 milliseconds, or 10/10000/seconds.

2) Requires an electrified security fence to be identified by prominently displayed warning signs that are legible from both sides of the fence and, at a minimum, placed at each gate and access point, at intervals along the fence not exceeding 30 feet, and adjacent to any other signs on the fence relating to chemical, radiological, or biological hazards.

3) Requires, in the event that a local ordinance allows the installation and operation of an electrified security fence, an owner of real property with an electrified security fence to comply with the installation and operation requirements of that local ordinance, as well as the requirements set forth above.

EXISTING LAW:

1) States that the Legislature finds and declares that improperly designed and installed electrified fences have caused injuries and in some instances have resulted in the deaths of persons, particularly children, coming into contact with the conductive elements thereof and that in order to prevent further such accidents, it is the intent of the Legislature to provide for the study and development and enforcement of safety standards for electrified fences.

2) Provides that "electrified fence" means any fence and appurtenant devices, including, but not limited to, fences and devices used in animal control, and including, but not limited to, a fence consisting of a single strand of wire supported by posts or other fixtures, which has an electrical charge or is connected to a source of electrical current and which is so designed or placed that a person or animal coming into contact with the conductive element of the fence receives an electrical shock.

3) Prohibits the sale or installation of electrified fences in California, unless the electric current is limited and regulated by an electrical controller that meets or exceed the standards or specifications of the National Electrical Code of the National Fire Protection Association, the New Zealand Standards Institute, the Standards Association of Australia, or the Underwriters Laboratories for intermittent type electric fence or electrified fence controllers.

4) Provides that cities and counties may regulate the installation and use of electrified fences, as long as local ordinances are consistent with state law.

5) Provides that local jurisdictions have the authority to make and enforce ordinances that protect the public health, safety, morals, and general welfare within its boundaries.

FISCAL EFFECT: None

COMMENTS: Electrified security fences are designed to protect commercial and industrial property. These fences are generally constructed of metal with attached wires that run along the width of the fence, carrying pulses of electric current to deter potential trespassers. Most electrified security fences are rigged with an alarm system to signal the property owner or the security company when the fence is touched. These fences are designed to provide a physical and psychological deterrent to potential intruders.

Existing law prohibits the sale or installation of electrified fences in California, unless the electrical current is limited and regulated by an electrical controller that meets or exceed the standards or specifications for intermittent type electric fence or electrified fence controllers of the National Electrical Code of the National Fire Protection Association, the New Zealand Standards Institute, the Standards Association of Australia, or Underwriters Laboratories. Existing law regarding electrified fences is in the Food and Agricultural Code and was clearly written to address electrified fences that are designed to contain livestock, which use a much higher voltage than what is allowed for and used by electrified security fences. Furthermore, the Food and Agricultural Code provisions, last amended in 1979, are so outdated that two of the four standards in the relevant code section are no longer in effect, and the remaining standards are inapplicable to electrified security fences.

Some municipalities have their own zoning and permitting ordinances that specifically allow electrified security fences, despite the fact that such ordinances may conflict with the provisions of the Food and Agricultural Code, but many others do not. As a result, municipalities across the state are unsure what state laws, if any, apply to electrified security fences.

This bill establishes standards for the installation and operation of electrified security fences, which outline the zoning, voltage, signage warnings, physical barrier clearance, and access requirements that are appropriate for electrified security fences. This bill does not impede local jurisdictions' authority to allow, prohibit or restrict the installation and operation of electrified security fences within their boundaries. However, this bill does require that if a local ordinance allows the installation and operation of an electrified security fence, the installation and operation must meet the ordinance requirements, as well as the requirements contained in this bill. Also, if a jurisdiction does not have an ordinance in place to prohibit or limit the installation and operation of an electrified security fence, this bill would allow for the installation and operation of such a fence.

Exhibit D

Exhibit D

Proposed Findings in Connection with Permit No. B16-1483
2371 Polvorosa Avenue

1. The fence is not detrimental to adjacent property;

   The electric fence is located behind the existing fence on the property. It is not located next to a residential use or a school where children might scale the existing fence and touch the fence at issue. Instead, the fence will be located next to two similar large-scale commercial and warehouse sites, which are expected to be used by individuals who will be able to comprehend the safety symbols and warnings that state law requires to be located on the fence.

2. The fence is compatible with the neighborhood in terms of aesthetics;

   2371 Polvorosa Avenue is located in an industrial area of San Leandro, off of Doolittle Drive. The immediate block is generally characterized by warehouses and one- or two-story commercial office buildings. Often, parking lots separate the permanent structures on the lot from the buildings themselves.

   As the fence will not stand out from the existing fence as it is located behind a standard non-electrified fence, it would have no effect on the aesthetics of the neighborhood. It is also set back from the property line at the street, and there is a parking lot with approximately three rows of parking spaces separating the fence from the street. Therefore, it is unlikely to be visible from Polvorosa Avenue to pedestrians or people in vehicles passing by the site.

3. The fence does not create a site distance hazard; and

   As the fence is located behind a standard non-electrified fence, it would not create any site distance hazard. It is also set back from the property line at the street, and there is a parking lot with approximately three rows of parking spaces separating the fence from the street. Therefore, it is unlikely to be visible from Polvorosa Avenue.

4. The fence is not detrimental to the public health, safety, or welfare.

   The electric fence is located behind the existing fence on the property. It is not located next to a residential use or a school where children might scale the existing fence and touch the fence at issue. Instead, the fence will be located next to two similar large-scale commercial and warehouse sites, which are expected to be used by individuals who will be able to comprehend the safety symbols and warnings that state law requires to be located on the fence.

   The electric fence at issue is safe and effective in securing and protecting commercial and industrial property. The fence uses "pulsed" electricity instead of "mains" electricity. Mains electricity is a continuous source of power that is generated from electrical infrastructure. "Pulsed" electricity is different, with the most common experience for

most people coming from the static discharge from touching a door knob on a dry day. While completely harmless, pulsed electricity produces a startling and uncomfortable effect.

The Electric Guard Dog fence's pulsed electricity shares the same properties. Applicant creates an extremely short, but memorable pulse. The shortness of the pulse is why it is safe. International safety standards regulate the combined result of length of pulse and duration of pulse. Electric Guard Dog operates well within the safety standards, near the midpoint of the allowable power. Because the prime power source is a 12-volt battery, and it is a DC pulsing system, the system is safe. Its pulsed electronic device has been tested to a California state standard by a nationally-recognized laboratory.

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www.sanleandro.org

November 4, 2016

Michael Pate
Electric Guard Dog LLC
121 Executive Circle, Suite 230
Columbia, SC 29210

Dear Mr. Pate,

On Thursday, November 3, 2016 the Board of Zoning Adjustments approved Resolution 2016-001 by a 7-0 vote, upholding the determination of the Zoning Enforcement Official that electric fences are not a permitted use under the City of San Leandro Zoning Code.

Decisions of the Board of Zoning Adjustments are final unless appealed to the City Council by filing a form to the City Clerk within 15 days of the date of the Board's decision. Should you wish to file an appeal of the decision, please provide a statement identifying the reason for the appeal and the required appeal fee to the City Clerk's office on the second floor of City Hall.

Sincerely,

Andrew J. Mogensen, AICP
Planning Manager

CITY OF SAN LEANDRO
Community Development Department · Planning Services
835 East 14th Street · San Leandro, CA 94577
(510) 577 – 3325 · www.sanleandro.org
Hours: Monday – Thursday 8:30 am – 3:00 pm; Friday by appointment

AGREEMENT FOR PAYMENT OF FEES FOR APPLICATION PROCESSING

Please type or print legibly

Project Address/Name: ELECTRIC GUARD DOG LLC / YRC REDDAWAY SECURITY FENCE INSTALLATION

PLN 16-518 APN: 79A-541-44

Applicant (☐ owner ☐ lessee ☒ agent of owner ☐ other): ELECTRIC GUARD DOG LLC / MICHAEL PATE

Legal Name (☐ individual ☒ corporation ☐ joint venture ☐ partnership): _____

Mailing Address: 121 EXECUTIVE CENTER DR ST 230 Daytime Phone: (803) 404-6189

City: COLUMBIA State: SC Zip: 29210 Fax: ( )

Email Address (optional): CBAUSINGER@ELECTRICGUARDDOG.COM Cell Phone: (323) 401-1819

I (We) hereby agree to pay all personnel and related direct and indirect costs (including 205% of employee benefits and overhead) for the review and processing of application(s) for the subject project, at such time as requested by the Community Development Director. *Direct costs include, but are not limited to review of project application for completeness by all applicable City Departments; telephone or written communication with applicant/property owner/architect, engineer, etc.; preparation of staff reports; and attendance by staff at public hearings.* If applicable, I (we) also hereby agree to pay all contract costs for preparing an environmental document in compliance with the California Environmental Quality Act.

Payments are due and payable within 30 days. Interest will accrue on all costs unpaid 30 days after billing at the maximum legal rate and the City is entitled to recover its costs, including attorney's fees, in collecting unpaid accounts.

If the City is unable to collect all costs from the applicant or authorized agent, the property owner will be responsible for the amount due. Delinquent accounts may result in a lien being placed on the property.

Furthermore, I (we) hereby agree to hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any State or Federal Court challenging the City's actions with respect to my (our) project.

Date: 11/8/16 Applicant's Signature: _____

Property Owner (if the applicant is not the owner): LBA/CPT INDUSTRIAL COMPANY V-A, LLC

Legal Name (☐ individual ☒ corporation ☐ joint venture ☐ partnership): _____

Mailing Address: PO BOX 847 Daytime Phone: _____

City: CARLSBAD State: CA Zip: 92018 Cell/Fax: _____

Date: 11/7/16 Property Owner's Signature: _____

Date Stamp Received/Paid

TO BE COMPLETED BY CITY STAFF

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RESOLUTION NO. 16-001

A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF SAN LEANDRO

A RESOLUTION UPHOLDING THE DETERMINATION OF THE ZONING ENFORCEMENT OFFICIAL THAT ELECTRIC FENCES ARE NOT A PERMITTED USE UNDER THE SAN LEANDRO ZONING CODE APL16-003

WHEREAS, Electric Guard Dog LLC. ("Appellant") applied for and was denied a building permit (B16-1483) to construct an electric fence on an approximately 5 acre site located at 2371 Polvorosa Avenue zoned Industrial General (IG) on behalf of the property owner, LBA CPT Industrial Co. V. LLC.; and

WHEREAS, the City of San Leandro's Zoning Code (the "Zoning Code") operates under the principles of permissive zoning. The Zoning Code specifies those land uses which are permitted and includes special requirements, if any, applicable to specific uses; and

WHEREAS, it is a policy of the City's General Plan to improve the visual appearance of the City's industrial areas by applying high standards of architectural design and landscaping for new industrial development and the re-use or remodeling of existing industrial buildings; and

WHEREAS, Zoning Code section 1-202(A) provides that "[t]he Zoning Code shall apply to all land within the City of San Leandro, and to state or federal agencies, to the extent applicable by law. Application of regulations to specific lots shall be governed by the zoning map"; and

WHEREAS, Zoning Code section 1-202(C) states that "[n]o land shall be used, and no structure shall be constructed, occupied, enlarged, altered, demolished or moved in any zoning district, except in accord with the [Zoning Code]"; and

WHEREAS, Article 2 of the Zoning Code further states that "[w]here uncertainty exists regarding the interpretation of any provision of this code or its application to a specific site, the Zoning Enforcement Official ("ZEO") shall determine the intent of the provision"; and

WHEREAS, Article 21 of the Zoning Code states that "[t]o ensure that each new or expanded use of a site and each new or expanded structure

San Leandro Zoning Code as provided in Zoning Code Article 2 Sections 1-202(A) and 1-202(C). Zoning Code Section 1-202(C) clearly provides that "[n]o land shall be used and no structure shall be constructed, occupied, enlarged, altered, demolished or moved in any zoning district, except in accord with the provisions of this code..."

B. Electric fences are not stated as a permitted use or fencing material in the San Leandro Zoning Code and are therefore not eligible for consideration of a Fence Modification application under Article 16, Section 4-1682 of the Zoning Code.

C. Based upon the Record before the Board of Zoning Adjustments, the City has not issued any permits for an electric fence.

D. Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the Board of Zoning Adjustments decision does not constitute a "project" within the meaning of Public Resources Code Section 21065, 14 Cal Code Regs. Section 15060(c)(2), 15060(c)(3), or 15378 because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if such activities did constitute a project under CEQA, staff believes the activities fall within the "common sense" exemption set forth in 14 Cal. Code Regs. Section 15061(b)(3), excluding projects 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..."

E. The Board of Zoning Adjustments finds that electric fences are substantially different from other types of fences and fencing materials which are permitted and regulated under the Zoning Code, such as tubular steel, razor or barbed wire fences, in that electric fences require an electric current and are designed differently than other types of fences, consisting of horizontal electrified wires which have a function and appearance that is substantially different from other types of fences. Electric fences are not visually transparent and may be accompanied by warning signs and/or a second non-electrified fence. For these reasons, electric fences are aesthetically and functionally incompatible with the design and land use policies identified in the General Plan and the quality of fence design prevalent in the City.

F. The foregoing determination that electric fences are not permitted under the Zoning Code is consistent with the express language and intent of the Zoning Code, and is consistent with the purpose of zoning districts and the General Plan because the determination promotes the general health,

LBA
REALTY

City of San Leandro
Building & Safety Services
San Leandro City Hall
835 E. 14th Street
San Leandro CA 94577

RE: Electric Guard Dog / YRC Reddaway
2371 Polvorosa Drive
Installation of 10' High Security Fence
APN: 79A-541-44

As the property owner of the above referenced property, this letter is to authorize Electric Guard Dog to act and submit and act on behalf of LBA/CPT Industrial - Company V-A, LLC, the attached Building Permit Application package for the above referenced property regarding the installation of the Electric Guard Dog, solar powered/12 volt battery operated, independent of the power grid, 10' high security system fence.

If there are any questions regarding this authorization, please do not hesitate to contact LBA/CPT Industrial - Company V-A, LLC at (415) 710-6211.

Sincerely,

LBA/CPT INDUSTRIAL-COMPANY V-A, LLC,
a Delaware limited liability company
By: LBA/CPT Industrial, LLC,
a Delaware limited liability company,
its Sole Member and Manager
By: LBA RIV-CPT Industrial, LLC,
a Delaware limited liability company,
its Managing Member
By: LBA REIT IV, LLC,
a Delaware limited liability company,
its Sole Member and Manager
By: LBA Realty Fund IV, L.P.,
a Delaware limited partnership,
its Manager
By: LBA Management Company IV, LLC,
a Delaware limited liability company,
its General Partner
By: LBA Realty LLC,
a Delaware limited liability company,
its Manager
By: LBA Inc.,
a California corporation,
its Managing Member

By: Lisa DuBose
Name: Lisa DuBose
Title: Property Manager