

RESOLUTION NO.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
CUPERTINO RECOMMENDING THAT THE CITY COUNCIL ADOPT
AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 19.08,
CHAPTER 19.12 AND CHAPTER 19.48 REGARDING FENCES**

The Planning Commission recommends that the City Council:

1. Determine that Project is exempt under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.
2. Adopt the proposed amendments to the Municipal Code as indicated in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Cupertino this 28th day of May, 2024, by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

APPROVED:

Piu Ghosh
Planning Manager

David Fung
Chair, Planning Commission

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO
AMEND MUNICIPAL CODE CHAPTER 19.08, CHAPTER 19.12, AND CHAPTER 19.48
REGARDING FENCES**

The City Council of the City of Cupertino finds that:

1. WHEREAS, Cupertino Municipal Code Chapter 19.48 outlines the requirements for fences in all zones; and
2. WHEREAS, the City Council desires to have objective standards applicable to projects that are clear and understandable to ensure orderly development; and
3. WHEREAS, the Ordinance amends the City's Municipal Code as set forth in Exhibit A to clarify the development standards to be applied to fences in all zones; and
4. WHEREAS, the Ordinance is consistent with the City's General Plan and the public health, safety, convenience, and general welfare; and
5. WHEREAS, in the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment; and
6. WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on May 28, 2024 to consider the Ordinance; and
7. WHEREAS, on May 28, 2024, by Resolution 2024-XX, the Planning Commission recommended on a unanimous vote that the City Council adopt the proposed Municipal Code Amendment to clarify development standards for fences; and
8. WHEREAS, on _____, 2024, upon due notice, the City Council has held at least one public hearing to consider the Municipal Code Amendment; and
9. WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption.

The Cupertino Municipal Code is further amended as set forth in Attachment A.

SECTION 2. Findings

The City Council finds the following as set forth by Municipal Code Sections 19.152.020C and 19.152.030D:

1. That the proposed zoning is in accord with Title 19 of the Municipal Code and the City's Comprehensive General Plan (Community Vision 2040) and the proposed amendments are internally consistent with Title 19 of the Municipal Code.
The proposed updates to the Municipal Code do not change any zoning designations, but rather modify Chapter 19.48 by adding new standards to create consistent requirements for the implementation of the fence ordinance and updating existing standards to streamline processes and align regulations with updated state allowances. The proposed amendments do not render existing provisions of the Municipal Code inconsistent with those proposed.
2. The proposed zoning is in compliance with the provisions of the California Environmental Quality Act (CEQA).
in the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.
3. The site is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints) for the requested zoning designation(s) and anticipated land use development(s).
Not applicable. The proposed ordinance amendments do not change the zoning designation for any properties, nor does it change any land uses allowed. The amendments also do not propose any physical changes in the environment or increased development.
4. The proposed zoning will promote orderly development of the City.
By modifying and updating regulations for fences, the ordinance will promote orderly and consistent implementation of the regulations for development in the City.
5. That the proposed zoning is not detrimental to the health, safety, peace, morals and general welfare of persons residing or working in the neighborhood of subject parcels.
The proposed ordinance provides regulation to maintain the health, safety, peace, morals and

general welfare of persons residing or working in the neighborhood of subject parcels by providing regulations and consistent requirements to address the development of fences.

6. The proposed amendments are internally consistent with this title.

All the necessary chapters and sections of Title 19: Zoning have been amended to ensure internal consistency with the proposed regulations.

SECTION 3. Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause, and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause, or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 4. California Environmental Quality Act.

Determine that Project is exempt under the requirements of the California Environmental Quality Act (CEQA) of 1970, and CEQA Guidelines (collectively, "CEQA") subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City Code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 5. Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 6. Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED this ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino and ENACTED on the ____ day of _____, 2023, at a Regular Meeting of the City Council of the City of Cupertino by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED: _____ Sheila Mohan, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Chris Jensen, City Attorney	 _____ Date

**ATTACHMENT A - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CUPERTINO TO AMEND MUNICIPAL CODE CHAPTER 19.08, CHAPTER 19.12 AND
CHAPTER 19.48 REGARDING FENCES**

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this Ordinance. Text in italics is explanatory and is not an amendment to the Code.*

1. Amend Chapter 19.48 Fences to modify or add the following:

19.48.010 Purpose.

19.48.020 Fence Location and Height ~~for in All Zones~~ **Except R1, RHS, R2, and R3 (with up to Four Units) Requiring Design Review.**

19.48.030 Fence Location and Height for ~~Zones~~ **Properties** Not Requiring Design Review.

19.48.040 **Fence Design Requirements.**

~~19.48.040 Roadway and Driveway Gates.~~

19.48.050 Proximity of Plants and Fences to Public Streets.

19.48.060 Roadway and Driveway Gates.

19.48.0670 Exceptions-Findings.

19.48.0780 Temporary Fences for Construction.

19.48.0890 Violation-Penalty.

~~19.48.090 Prohibited fences.~~

~~* For statutory provisions making fences taller than ten feet a nuisance, see Civil Code § 841.4.~~ Prior ordinance history: Ords. 112, 686, 852, 1179, 1630, 1637 and 1777.

19.48.010 - Purpose.

The purpose of this chapter is to regulate the location and height of fences ~~and vegetation~~ in yards of all zoning districts in order to protect the safety, privacy, and property values of residents and owners of properties within any zoning district of the City, including but not limited to residential, commercial, offices, institutional, industrial and/or agricultural properties.

19.48.020 - Fence Location and Height ~~for in All Zones~~ **Except R1, RHS, R2, and R3 (with up to Four Units) Requiring Design Review.**

A. **Design Review shall be required for projects in all zoning districts except R1, RHS, R2, and R3 (with up to four units).**

B. The Approval Body for a proposed project shall have the authority to require, approve, or disapprove ~~wall and~~ fencing plans including location, height, and materials ~~in all zones requiring design review.~~ **Where an Approval Body is not identified, the Director of Community Development, or his or her designee, shall have the authority to require, approve, or disapprove fencing plans and design.**

C. The basic ~~D~~esign ~~R~~eview guidelines for the review of fences and walls are as follows:

1. Fences ~~and walls~~ separating commercial, industrial, offices, and institutional zones from residential zones shall be constructed at a height and with materials designed to:
 - a. Acoustically isolate part of or all noise emitted by future uses within the commercial, industrial, offices, or institutional zones. The degree of acoustical isolation shall ~~be determined during the design review process~~ comply with the standards of Chapter 10.48.
 - b. Ensure visual privacy for adjoining residential dwelling units.
2. Fences ~~and walls~~ shall be designed in a manner to provide for sight visibility at private and public street intersections (i.e. corner triangles or any sidewalk sight triangle).
3. Fence design shall be consistent with the standards outlined in this Title for the applicable zone.
4. Fences shall meet the regulations of any applicable Special Area Plan, Design Guidelines, or conceptual development plan.
5. At no point shall fence height exceed 10 feet without a Fence Exception*

*For statutory provisions regarding fences taller than ten feet in height, see Civil Code § 841.4.

19.48.030 - Fence Location and Height for ~~Zones~~ Properties Not Requiring Design Review.

Table 19.48.030 sets forth the rules and regulations pertaining to fences ~~in zones on properties~~ where design review is not required. Appendix A is a visual representation of the provisions of Section 19.48.030(A)–(C). The Director of Community Development is authorized to administratively make changes to Appendix A to clarify the intent of these provisions.

Table 19.48.030: Fence Location and Regulations		
	6-7 foot high fence	3 foot high fence
A. Front Yard	Not within required setback area, <u>corner triangle, or sidewalk sight triangle.</u>	Along any property line, in any required setback area, or in corner triangle, <u>or sidewalk sight triangle.</u>
B. Rear Yard	Along property line or in required setback area, <u>except not allowed in any corner triangle or sidewalk sight triangle.</u>	
C. Side Yard	<ol style="list-style-type: none"> 1. Interior residential lots: Along property line or in required setback area 2. Corner residential lots: <ol style="list-style-type: none"> a. Interior side: Along property line or in required setback area 	

	<p>b. Street side:</p> <ol style="list-style-type: none"> i. If the rear property line adjoins a rear property line: S <u>the setback from the side property line shall be 5 feet.</u> ii. If the rRear property line adjoins <u>a</u> side property line of a key lot: I <u>in addition to i.</u> above, setback from street side property line, within 10 feet of adjacent property line: <u>shall be 12 feet.</u> 	
<p>D. Additional Rregulations for Residential Hillside, and Open Space Zoning Districts, and <u>Residential Properties with an Average Slope Over 20%</u></p>	<ol style="list-style-type: none"> 1. Open Fencing (composed of materials which result in a minimum of 75% visual transparency), s <u>Shall be unrestricted but shall be subject to the regulations in 19.48.030(A) — (D).</u> 2. Solid Board All Other Fencing <u>which otherwise meets the regulations in Section 19.48.030(A)-(C):</u> <ol style="list-style-type: none"> a. Net lot area ≤ 130,000 square feet: Shall n <u>Not be limited but shall be subject to the regulations in 19.48.030(A) — (D).</u> b. Net lot area > 130,000 square feet: 5,000 square feet (excluding the principal building) of net lot area may be enclosed with solid board fencing subject to 19.48.030(A) — (D). 	
<p>E. In areas where a six (6) <u>seven (7)</u> foot fence is allowed, an up to eight (8) foot high fence can be constructed, subject to building permit approval and upon receipt of written approval from adjacent abutting property owners.</p>		
<p>F. <u>Minor ornamental entry features (e.g. arbor, trellis, entry gates, light fixtures meeting the requirements of Chapter 19.102).</u></p>	<ol style="list-style-type: none"> 1. <u>Shall only be included in design of fences abutting a street lot line; and</u> 2. <u>Shall be limited to one entry feature per street frontage; and</u> 3. <u>Must be incorporated into the fence design, structurally a component of the fence, and shall not be considered an additional allowance for an accessory structure within required setbacks; and</u> 4. <u>Shall be no taller than eight (8) feet and shall not exceed a cumulative area of twenty-five (25) square feet; and</u> 5. <u>Shall not be located in any required flag lot access area, access easement, corner triangle, or sidewalk sight triangle; and</u> 6. <u>When viewed from the street, the feature shall be no wider than:</u> <ol style="list-style-type: none"> a. <u>Six (6) feet on lots with less than 60 feet of street frontage, or</u> b. <u>Eight (8) feet on lots with 60 feet or more of street frontage.</u> 	

G. Notwithstanding any other provision of this chapter, fences shall not be located in any future right of way dedication area, and setbacks shall be measured from any planned future street line, as determined by the Public Works Department.

H. If the Director of Community Development determines that a proposed fence is widely visible to public view and has the potential to create impacts on the visual character of an area (for example, blocks public views from the valley floor to the hills or an open space reserve), then the proposed fence shall comply with the requirements in Sections 19.48.030FD(1)(b) & 19.48.030FD(2) regardless of lot size.

19.48.040 - Fence Design Requirements.

A. Prohibited Materials:

The following materials shall be considered "Prohibited Materials" for purposes of this Chapter:

- 1. Unless required by law or regulation of the City, State or Federal Government, barbed wire, razor wire, chicken wire and similar small-gauge wire or mesh product, and/or electrified fencing are prohibited.**
- 2. Fences made of non-engineered plastic, fabric membranes, cloth, canvas, plywood, uncoated cyclone/chain link, and reed or bamboo with sticks and slats smaller than four inches in width are prohibited, unless located in areas not visible from public or adjacent properties.**

B. Allowed Materials: Allowed materials include, but are not limited to wood, engineered plastic, vinyl coated cyclone/chain link, metal (e.g. wrought iron), brick, block, stone, and other comparable (safe and commercially acceptable) materials intended for fence use.

C. Material colors shall be use natural earth tone and/or vegetation colors including natural hues of brown, green and shades of gray and shall have a reflectivity value of 60 or less.

D. Other materials, except Prohibited Materials, may be allowed if deemed appropriate through Design Review approval.

E. The area between the back of curb and any fencing shall be landscaped, with a suitable permanent irrigation system where necessary, or have pervious flatwork, and be continuously maintained by the property owner.

F. General Maintenance: All fences adjacent to a street, sidewalk, or public right-of-way shall be continuously maintained free of visible and structural defects.

19.48.050 - Proximity of Plants and Fences to Public Streets.

The proximity of plants and fences to public streets shall be controlled by the provisions of Chapter 14.08 of the Municipal Code.

19.48.0460 - Roadway and Driveway Gates.

Roadway and Driveway gates are allowed if they comply with the Fire Department Standard Details and Specifications for Security Gates for access roadways and driveways and the criteria in Sections 19.48.969(A)-(C). Roadway and driveway~~Table 19.48.040~~ or the gates were in existence prior to September 20, 1999, with necessary permits to install them, are permitted to be replaced if needed. All unpermitted roadway and driveway gates must comply with the regulations outlined below when replaced.

Table 19.48.060: Roadway and Driveway Gate Regulations

A. All Residential Districts, Except RHS:

- 1. A driveway gate meeting all of the following requirements may be installed, subject to building permit approval:**
 - a. The driveway gate shall be set back as follows:**
 - i. Interior and Corner Lots: 20 feet or in accordance with Fire Code standards, whichever is larger, and measured from the front and/or street side property lines, from the future street line, or from the property line after right-of-way dedication area as determined by the Public Works Department. However, in no case shall the driveway gate be located in front of the building wall line of a primary structure nearest to the right of way;**
 - ii. Flag Lots: 20 feet or in accordance with Fire Code standards, whichever is larger and measured from the property line closest to the street, from the future street line, or from the property line after right-of-way dedication area as determined by the Public Works Department.**
 - b. The driveway gate shall meet all height regulations described in Section 19.48.030; and**
 - c. The driveway gate shall not be located in any required corner triangle or sidewalk sight triangles; and**
 - d. The driveway gate shall not impede required paths of travel for compliance with the State and Federal law; and**
 - e. No more than one driveway gate shall be allowed per property; and**
 - f. The driveway gate opening shall not be wider than 20 feet; and**
 - g. The driveway gate shall not be located in a driveway for a side entering garage; and**

	<ul style="list-style-type: none"> h. <u>The driveway gate shall not be located in a manner which interferes with the required open off-street parking on a site; and</u> i. <u>The driveway gate shall meet the fence design requirements outlined in Section 19.48.040 and shall not make use of collapsible materials (e.g. scissor gates); and</u> j. <u>Driveway gates shall meet the regulations of any applicable Special Area Plan, Design Guidelines, or conceptual development plan; and</u> k. <u>The Fire Department shall approve the locking mechanism and location of the gate.</u> <p>2. <u>A Fence Exception shall be obtained for any driveway gates that do not meet the standards outlined above. These driveway gates shall meet all the following:</u></p> <ul style="list-style-type: none"> a. <u>The driveway gate shall be setback a minimum of 20 feet from the front and/or street side property lines, from the future street line, or from the property line after right-of-way dedication area as determined by the Public Works Department, whichever is greater, and not be located on or along any property line; and</u> b. <u>The Applicant must provide documented evidence that the gates are needed for demonstrated security and/or demonstrated safety reasons, which would not otherwise be mitigated by placing a fence or driveway gate in a manner permitted by the Municipal Code; and</u> c. <u>The Fire Department approves the locking mechanism and location of the gate.</u>
<p>B. <u>RHS Zoning District:</u></p>	<p>1. <u>Roadway and Driveway Gates may be used to control access to private roads and driveways provided that the design of the gate, including location, dimension and the locking mechanism, are approved by the Director of Community Development after consultation with the Fire Department.</u></p>
<p>C. <u>Other Development:</u></p>	<p>1. <u>A driveway gate meeting all of the following requirements may be installed, subject to Administrative Design Review approval. All driveway gates shall:</u></p> <ul style="list-style-type: none"> a. <u>Be setback a minimum of 20 feet from front and/or street side property lines. However, under no circumstances shall the gate</u>

be located closer to the property line than the location of the building wall of the primary building located on the property; and

- b. Not be located in any corner triangle or driveway sight triangle; and
- c. Not be installed in any parking area or portion of parking facilities designated for commercial, retail parking, and/or customer serving office,

2. An at-grade driveway gate shall:

- a. Be no taller than seven feet in height;
- b. Utilize architecturally decorative and at least 50% open materials; and
- c. Secure an open, surface parking lot which is largely obscured from views from the right of way by existing structures and serves a private use (e.g. church, office, multiple-family development);

3. Driveway gates for parking structures and below grade parking shall be allowed:

- a. When proposed to assure availability of parking for different uses (e.g. separating office and residential parking) in a shared parking structure;
- b. When proposed to secure access for a single, private use;

4. The driveway gate is required as a condition of approval of obtaining federal or state funding for development;

5. The driveway gate shall meet the fence design requirements outlined in Section 19.48.040 and shall not make use of collapsible materials (e.g. scissor gates); and

6. The Fire Department shall approve the locking mechanism and location of the gate.

7. A Fence Exception shall be obtained for any driveway gates that do not meet the standards outlined above, prior to issuance of building permits. Roadway and driveway gates that do not meet the standards outlined above may be approved through a Fence Exception only if the development can adequately justify that the

	<u>proposed gates are needed for demonstrated security and/or demonstrated safety reasons.</u>
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Table 19.48.040: Roadway and Driveway Gates

A. R-1, R2 and R3—Zoning District	A driveway gate may be installed after a Fence Exception is obtained and shall meet the following: 1. Driveway gate shall be setback a minimum of 30 feet from the front and/or street side property lines; 2. Applicant must provide evidence that the gates are needed for demonstrated security and/or demonstrated safety reasons; and 3. The Fire Department approves the locking mechanism and location of the gate.
B. RHS Zoning District	Gates may be used to control access to private roads and driveways provided that the design of the gate, including location, dimension and the locking mechanism, are approved by the Director of Community Development after consultation with the Fire Department.
C. Other Properties	Roadway and driveway gates may be approved through a fence exception if the development meets any one of the following conditions: 1. Is a mixed-use development, where the parking for different uses needs to be separated to assure availability of parking for each use 2. If a development include below-grade parking structure, where the gates are required to secure the below-grade parking; 3. If the gates are required for a development to obtain federal or State funding; 4. If the development is secluded; 5. If the gates are needed for demonstrated security and/or demonstrated safety reasons.
D. Property located in other residentially zoned areas	In addition to the requirements of Section 19.48.040C, the application shall also be subject to the requirements of 19.48.040A.

19.48.050 – Proximity of Plants and Fences to Public Streets.

The proximity of plants and fences to public streets shall be controlled by the provisions of Chapter 14.08 of the Municipal Code.

19.48.0670 - Exceptions–Findings.

Where practical difficulties, unnecessary hardships, or results inconsistent with the purpose and intent of this chapter result from the strict application of the provisions hereof, exceptions may be granted as provided in Chapter 19.12, and this section for all zoning districts except the RHS

Zoning District, in which case a Hillside Exception must be obtained in accord with the requirements of Section 19.40.040 and Section 19.40.070. The Approval Body may grant **a request for a Fence** ~~the exception only if all based upon~~ the following findings **can be made**:

- A. The literal enforcement of the provisions of this chapter will result in restrictions inconsistent with the spirit and intent of this chapter **and the proposed development is otherwise consistent with the City's General Plan and with the purpose of this chapter as described in Section 19.48.010.**
- B. The granting of the exception will not result in a condition which is materially detrimental to the public health, safety or welfare **or result in a hazardous condition for pedestrian and vehicular traffic.**
- C. The exception to be granted is one that will require the least modification of the prescribed regulation and the minimum variance that will accomplish the purpose.
- ~~D. The proposed exception will not result in a hazardous condition for pedestrian and vehicular traffic.~~
- ~~E. The proposed development is otherwise consistent with the City's General Plan and with the purpose of this chapter as described in Section 19.48.010.~~
- D. **When driveway, roadway, and structured parking gates not meeting allowed standards are proposed:** The proposed development meets the requirements of the Santa Clara Fire Department and Sheriff's Department, and if security gates are proposed, that attempts are made to standardize access.
- E. **When fences and gates that exceed allowable height limitations are proposed:** The fence height for the proposed residential fence is needed to ensure adequate screening and/or privacy.

19.48.0780 - Temporary Fences for Construction.

- A. The ~~Chief~~ Building Official may require persons constructing structures in the ~~C~~city to erect and maintain temporary fences around all or a portion of the construction site in order to secure the site from entry by the general public. **Any such fencing may only be erected during the time a valid building permit is issued for construction.**
- B. **Temporary fences are not required to comply with the location requirements of Section 19.48.030 but shall not be located in any corner or sidewalk sight triangle.**
- C. **Temporary fence materials are restricted to non-combustible materials and must screen construction activities. Temporary fence materials shall be consistent with the prohibited and allowed materials outlined in Section 19.48.040 (A) and (B), except that uncoated cyclone/chain link fences may be allowed.**
- D. **All fences adjacent to a street, sidewalk, or public right-of-way shall be continuously maintained free of visible and structural defects.**

19.48.0890 - Violation-Penalty.

Any person who violates the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.12.

19.48.090 - Prohibited Fences.

~~Barbed wire, razor wire, and/or electrified fencing are prohibited unless required by law or regulation of the City, State or Federal Government.~~

2. Amend or add the following definitions in Section 19.08.030 of the Municipal Code to read as follows:

"Accessory structure" means a subordinate structure, the use of which is purely incidental to that of the main building and which shall not contain living or sleeping quarters. Examples include a deck, tennis courts, freestanding trellis, light post, or car shelter. Fences eight feet or less or minor ornamental entry features structurally integrated as part of a fence are excluded.

"Fence" means a man-made structure, including a wall, or a hedge, which is designed, intended or used to protect, defend or obscure the interior property of the owner from the view, trespass or passage of others upon that property.

"Fence height" means the vertical distance from the highest point of the fence (~~excluding~~ including post caps) to the lowest adjoining natural grade or finished grade as permitted through an approved permit adjoining the fence. In a case where the finish grade is different for each face side of the fence, the natural or approved final grade with the highest elevation shall be utilized in determining the fence height.

"Hedge" means a dense grouping of shrubs or trees that form a screen or boundary, intended or used to protect, defend or obscure the interior property of the owner from the view, trespass or passage of others upon that property.

"Residential district," for purposes of the Sign and Fence Ordinances, means the R1, RHS, R2, R3, R1C, A, and A1 zoning classifications which are consistent with the residential designation of the Cupertino general plan.

"Sidewalk-~~site sight~~ triangle" is a triangular shaped area described in Cupertino Standard Detail 7-6. (See Appendix C, Cupertino Standard Detail; Sidewalk-~~Site Sight~~ Triangle (Sidewalk Clearance at Driveway))

3. Amend Section 19.12.030 Approval Authority, to modify the following:

Type of Permit or Decision <small>A, B</small>	Administrative Review	Arts and Culture Commission	Planning Commission	City Council	Public Hearing/ Public Meeting/ Comment Period ^C	Noticing Radius ^D	Posted Site Notice	Expiration Date ^E	Chapter/ Findings
Fence Exceptions	F	-	A ¹	A ^{1L}	PM	19.12.110/ Adjacent	Yes	1 year	19.48.06 <u>70</u>

Appendix A: Fence Locations

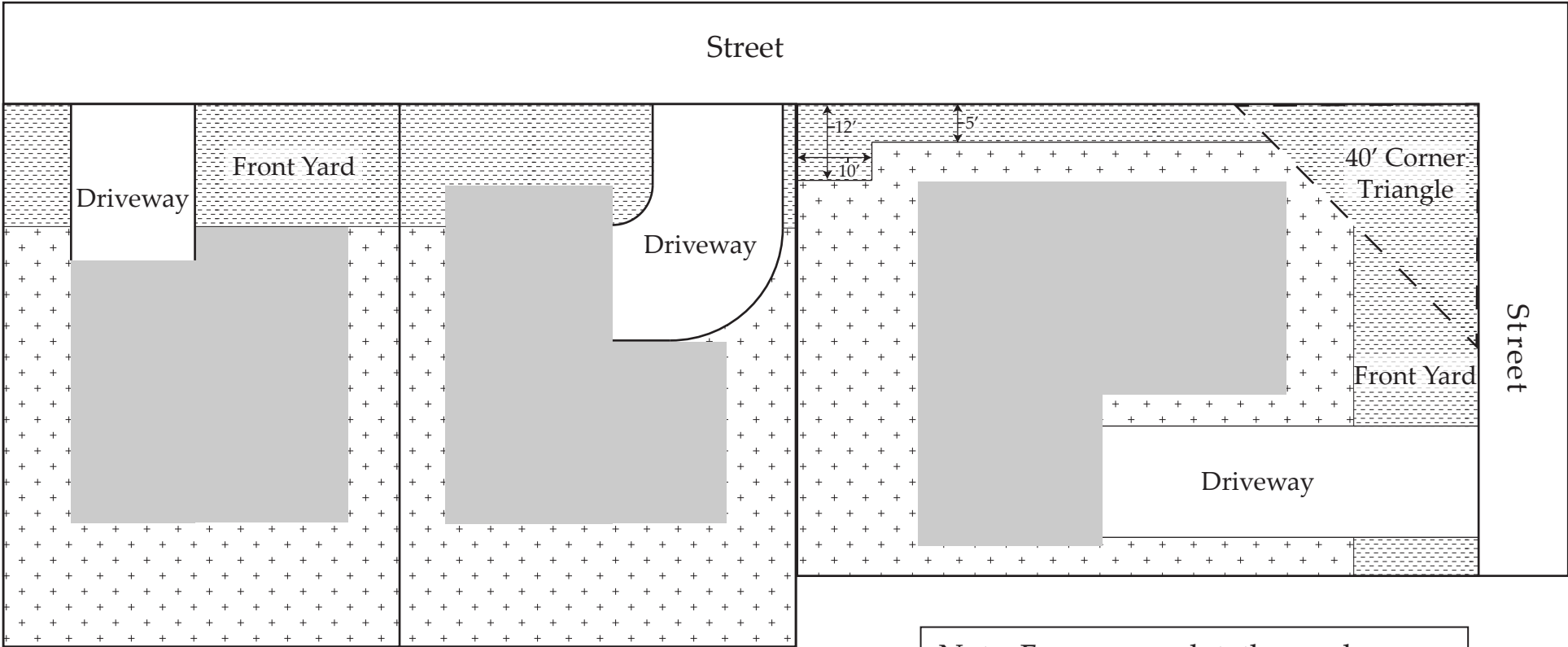


Up to 3 foot fence allowed



Up to 7 foot fence allowed

Up to 8 foot with neighbor approval and Building Permit



Note: For a corner lot, the yard area adjacent to the shortest lot line abutting a street is the front yard area

Fence height includes lattices.