



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION STAFF REPORT

Meeting: May 28, 2024

SUBJECT

Consider Municipal Code Amendments to Chapter 19.48 (Fences), Chapter 19.08 (Definitions). (Application No.: MCA-2024-001; Applicant: City of Cupertino; Location: Citywide)

RECOMMENDED ACTIONS

That the Planning Commission adopt the draft resolution (Attachment 1) recommending that the City Council adopt an ordinance to amend Chapter 19.48, Fences, Chapter 19.12 (Administration) and Chapter 19.08 (Definitions).

DISCUSSION

Background

Chapter 19.48, *Fences* outlines the City's requirements for placement and design of fences on all properties in the city. Periodically, language in the Municipal Code is reviewed for consistency with State law and internal policies, clarifications, corrections, and to consider changes to existing standards to address issues that arise in the community. Revisions to the Fence Ordinance, last modified in 2011, are proposed to streamline City permitting operations and staff review by modifying fence standards and the Fence Exception Permit process. Additionally, minor corrections and edits for consistency, readability, and clarity are proposed to the Fence Ordinance and associated definitions as part of this amendment. The proposed amendments are identified with strikethroughs and underlines, as appropriate, in Attachment 2. Note that language that is moved is indicated in green text with double underlines and/or strikethroughs.

Analysis

Chapter 19.48 - Fences

Generally, Chapter 19.48 is revised with a re-ordering of sections for improved readability, additions of new sections, and modifications to existing standards for clarity and consistency in application and to streamline processes. An overview of the proposed modifications and additions to each section is provided below.

Section 19.48.010 - Fence Location and Height in all Zones Except R1, RHS, R2, and R3 (with up to Four Units)

Updates are proposed to clarify this section's applicability and to further refine the requirements for fences subject to Design Review. These updates are intended to aid in a more consistent and transparent application of the standards.

Section 19.48.030 - Fence Location and Height for Zones Not Requiring Design Review

- *Fence Height:* Proposed amendments align the Zoning Code with the Building Code by allowing up to a seven-foot tall fence without neighbor approval in areas where a six-foot tall fence is currently allowed. Changes to the Building Code in 2013 allowed the construction of seven-foot tall fences without a building permit; however, the Fence Ordinance requires neighbor approval for fences taller than six feet. Therefore, while a building permit is not required from the City to construct a seven-foot tall fence, the typical height of residential neighborhood fences, interaction with the City is expected to ensure a neighbor approval form is submitted. This process is cumbersome for the property owner and contractors. As a result, seven foot tall fences are being erected without neighbor approval forms being submitted. The proposed Code modification streamlines the process for construction of a fence that does not need a building permit. Fences between seven and eight feet in height continue to be allowed, subject to building permit approval and upon receipt of written approval from abutting property owners.
- *Hillside Fences:* Modifications to the requirements for hillside fences are also proposed to reduce the area where non-open fencing is allowed. The current standard allows up to 5,000 sq. ft. of space enclosed by solid board (or non-open) fencing on lots greater than 30,000 sq. ft. and an unlimited amount of area enclosed by solid board (or non-open) fencing on lots with a net lot area of 30,000 square feet or less. The proposed standard reduces the lot size for lots with an unlimited allowance for non-open fencing from 30,000 square feet to 10,000 square feet or less. This change is proposed to provide consistency with General Plan Policies LU-12.1.1 and ES-5.3.2¹ to ensure consistency with the intent of the Residential Hillside zoning to preserve the natural setting in the hillsides and overdevelopment in the Hillside Zoning areas. The General Plan and Municipal Code treat residential properties with slopes greater than 20 percent in a similar manner to those zoned Residential

¹ Cupertino General Plan (Community Vision 2015-2024), [Chapter 3: Land Use and Community Design](#) "Policy LU-12.1: Land Use Regulations Establish and maintain building and development standards for hillsides that ensure hillside protection."

[Chapter 6: Environmental Resources and Sustainability Element](#) "Policy ES-5.4: Hillside Wildlife Migration. Confine fencing on hillside property to the area around a building, rather than around an entire site, to allow for migration of wild animals."

Hillside, therefore a clarification has been included for the consistent application of fence standards to those residential properties outside of the Residential Hillside zone with slopes exceeding 20 percent.

- *Ornamental Features:* Residents have, over the years, want to incorporate ornamental features to accentuate entry areas as part of their fence design; however, these features are not currently addressed in the Municipal Code and must be accommodated via a Fence Exception process. To streamline and accommodate these requests without having to go through a permit process, standards are proposed to allow for minor ornamental entry features. These features include entry arbors and trellises, which do not exceed eight feet in height or a cumulative area of twenty-five square feet. These standards outline the location and design requirements of these structures, including limiting the features to only those that are structurally integrated with fences and located along street lot lines.
- *Other:* Additional minor clarifications are proposed to ensure a more consistent application of standards, including a clarifying standard for measuring setbacks and the restrictions of corner and sight triangles.

Section 19.48.040 - Fence Design Requirements

The new Fence Design Requirements section replaces the previous “Prohibited Fences” section (currently Section 19.48.090) and provides an outline of the allowed and prohibited materials and maintenance requirements for fences. Prohibited and allowed materials are proposed based on aesthetics, durability, and material compatibility, i.e. materials normally manufactured for, used as, and recognized as fencing materials. The addition of these standards to Chapter 19.48 is intended to provide regulation of materials that are considered incompatible with neighborhood design standards.

Flexibility in these standards is incorporated through the proposed language which allows for some prohibited materials to be used where not visible by the public or neighboring property owners and allows for unlisted materials to be considered when determined to be safe and commercially acceptable.

Additionally, a standard has been added to address the area between an erected fence and the back of curb. This standard requires that the area be maintained with either landscaping or pervious flatwork and is included to ensure that these areas on private property but adjacent to the public right-of-way and visible to the public are well maintained.

Section 19.48.050 - Proximity of Plants and Fences to Public Streets

Reordered, no substantive changes. The public right of way continues to be required to be free and clear of plants and private fences.

Section 19.48.060 - Roadway and Driveway Gates

Modifications to this section are intended to simplify the process for approval of roadway and driveway gates by allowing gates that currently require approval of a Fence Exception prior to issuance of a building permit, with just a building permit. In order to be approved without a Fence Exception, these gates would need to meet the updated standards outlined in this section, including standards for setback, height, and design. The standards are proposed to ensure that gates would be aesthetically well-designed and not interfere with vehicular or pedestrian traffic, parking, or public access to commercial sites. Driveway gates in all circumstances must meet a minimum setback of 20 feet from the existing or planned public rights-of-way.

Additionally, the proposed changes clarify the standards for gates subject to the Fence Exception review process. All modifications to this section are intended to streamline the permitting process for driveway and roadway gates while ensuring consistency in design and addressing potential safety concerns.

Section 19.48.070 – Exceptions-Findings

Minor changes are proposed to clarify exception findings including specifying the applicability of some findings and consolidating similar findings.

Section 19.48.080 – Temporary Fences for Construction

Additional standards are included relating to the placement, allowable materials, and location of construction fences. These standards are intended to clarify when temporary fences for construction are allowed and the physical condition under which they must be maintained.

Section 19.48.090 – Violation-Penalty

Reordered, no changes.

Other Chapters

To aid in the implementation of the new and modified standards outlined above, minor revisions to Chapter 19.08 and conforming changes to Chapter 19.12 are proposed as follows:

Chapter 19.08, Definitions

Definitions of “Accessory Structure,” “Fence,” “Fence Height,” “Residential District,” and “Sidewalk Sight Triangle” are modified, and a definition of “Hedge” is proposed for clarity and consistency with the proposed amendments.

Chapter 19.12, Administration

Reference to Fence Exception findings section is updated in Table 19.12.030.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed ordinance revisions are not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) Guidelines because they have no potential for resulting in physical changes in the environment, either directly or indirectly; and 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.

PUBLIC NOTICING & OUTREACH

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> ▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i> ▪ Display ad placed in newspaper <i>(at least 10 days prior to hearing)</i> 	<ul style="list-style-type: none"> ▪ Posted on the City's official notice bulletin board <i>(five days prior to hearing)</i> ▪ Posted on the City of Cupertino's Web site <i>(five days prior to hearing)</i>

PUBLIC COMMENTS

As of the posting of this Staff Report, no public comments have been received.

NEXT STEPS

The recommendations made by the Planning Commission will be forwarded to the City Council for consideration at the June 18, 2024 meeting.

Prepared by: Emi Sugiyama, Associate Planner
Reviewed by: Piu Ghosh, Planning Manager
Approved for Submission by: Luke Connolly, Assistant Director of Community Development

Attachments:

- 1 – Draft Resolution
- 2 – Proposed Amendments (redlines with annotations)