

**ATTACHMENT 2
PROPOSED AMENDMENTS (REDLINES WITH ANNOTATIONS)**

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. New Section

~~19.48.040 Roadway and Driveway Gates.~~ Reordered to Section 19.48.060

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.~~ Reordered to Section 19.48.040

Relocated to
Section 19.48.020

** 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.

Clarification made
to fence definition

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 ~~De~~ design R review guidelines for the review of fences and walls are as follows:

Clarification

Clarifications

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.

Specification of standard
 - 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*

Clarifications

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

Relocation of existing standard

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.

Appendix A added for public reference

<u>Table 19.48.030: Fence Location and Regulations</u>		
	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	1. Interior residential lots: Along property line or in required setback area 2. Corner residential lots: a. Interior side: Along property line or in required setback area b. Street side: i. If <u>the</u> rear property line adjoins a rear property line: S	

Height increased to align with Building Code and streamline

Clarification

	<p><u>, the setback from the side property line: shall be 5 feet.</u></p> <p>ii. If <u>the r</u>Rear property line adjoins <u>a</u> side property line of a key lot:<u>I,</u> in addition to i. above, setback from street side property line, within 10 feet of adjacent property line: <u>shall be 12 feet.</u></p>	
<p>D. Additional <u>R</u>egulations for Residential Hillside, <u>and</u> Open Space Zoning Districts, <u>and</u> <u>Residential Properties with an Average Slope Over 20%</u></p>	<p>1. Open Fencing (composed of materials which result in a minimum of 75% visual transparency), <u>s</u>hall be unrestricted but shall be subject to the regulations in 19.48.030(A) — (D).</p> <p>2. Solid Board <u>All Other</u> Fencing <u>which otherwise meets the regulations in Section 19.48.030(A)-(C):</u></p> <p>a. Net lot area ≤ <u>130,000</u> square feet: Shall n <u>Not be limited but shall be subject to the regulations in 19.48.030(A) — (D).</u></p> <p>b. Net lot area > <u>130,000</u> 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>	
<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 <u>abutting</u> 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>	<p>1. <u>Shall only be included in design of fences abutting a street lot line; and</u></p> <p>2. <u>Shall be limited to one entry feature per street frontage; and</u></p> <p>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></p> <p>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></p> <p>5. <u>Shall not be located in any required flag lot access area, access easement, corner triangle, or sidewalk sight triangle; and</u></p> <p>6. <u>When viewed from the street, the feature shall be no wider than:</u></p> <p>a. <u>Six (6) feet on lots with less than 60 feet of street frontage, or</u></p> <p>b. <u>Eight (8) feet on lots with 60 feet or more of street frontage.</u></p>	
<p>G. <u>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.</u></p>		
<p>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</p>		

Formatting

General Plan and internal consistency

Height increased to match Building Code and streamline

Standards to allow features to streamline process

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.

Clarification

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.

Standards for internal consistency and consistency in application

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.

Reordered, no changes

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

<p>A. <u>All Residential Districts, Except RHS:</u></p>	<p>1. <u>A driveway gate meeting all of the following requirements may be installed, subject to building permit approval:</u></p> <ul style="list-style-type: none">a. <u>The driveway gate shall be set back as follows:</u><ul style="list-style-type: none">i. <u>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;</u>ii. <u>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.</u>b. <u>The driveway gate shall meet all height regulations described in Section 19.48.030; and</u>c. <u>The driveway gate shall not be located in any required corner triangle or sidewalk sight triangles; and</u>d. <u>The driveway gate shall not impede required paths of travel for compliance with the State and Federal law; and</u>e. <u>No more than one driveway gate shall be allowed per property; and</u>f. <u>The driveway gate opening shall not be wider than 20 feet; and</u>g. <u>The driveway gate shall not be located in a driveway for a side entering garage; and</u>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>
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Modified standards to streamline approval process and provide clear development requirements

	<ul style="list-style-type: none"> 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 be located closer to the property line than the location of the building wall of the primary building located on the property; and</u> b. <u>Not be located in any corner triangle or driveway sight triangle; and</u>

Modified standards to streamline approval process and provide clear development requirements

	<ul style="list-style-type: none"> c. <u>Not be installed in any parking area or portion of parking facilities designated for commercial, retail parking, and/or customer serving office.</u> <ul style="list-style-type: none"> 2. <u>An at-grade driveway gate shall:</u> <ul style="list-style-type: none"> a. <u>Be no taller than seven feet in height;</u> b. <u>Utilize architecturally decorative and at least 50% open materials; and</u> c. <u>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);</u> 3. <u>Driveway gates for parking structures and below grade parking shall be allowed:</u> <ul style="list-style-type: none"> a. <u>When proposed to assure availability of parking for different uses (e.g. separating office and residential parking) in a shared parking structure;</u> b. <u>When proposed to secure access for a single, private use;</u> 4. <u>The driveway gate is required as a condition of approval of obtaining federal or state funding for development;</u> 5. <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> 6. <u>The Fire Department shall approve the locking mechanism and location of the gate.</u> 7. <u>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 proposed gates are needed for demonstrated security and/or demonstrated safety reasons.</u>
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Modified standards to streamline approval process and provide clear development requirements

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:
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Standards incorporated into Table 19.48.060

	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.

Relocated

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 E~~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.

Clarifying applicability and consolidating similar findings

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.

Clarifications

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.~~

Incorporated into Section 19.48.040

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.

Internal consistency and clarifications

"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 <small>S</small>	F	-	A ¹	A ^{1L}	PM	19.12.110/ Adjacent	Yes	1 year	19.48.0670

Appendix A: Fence Locations

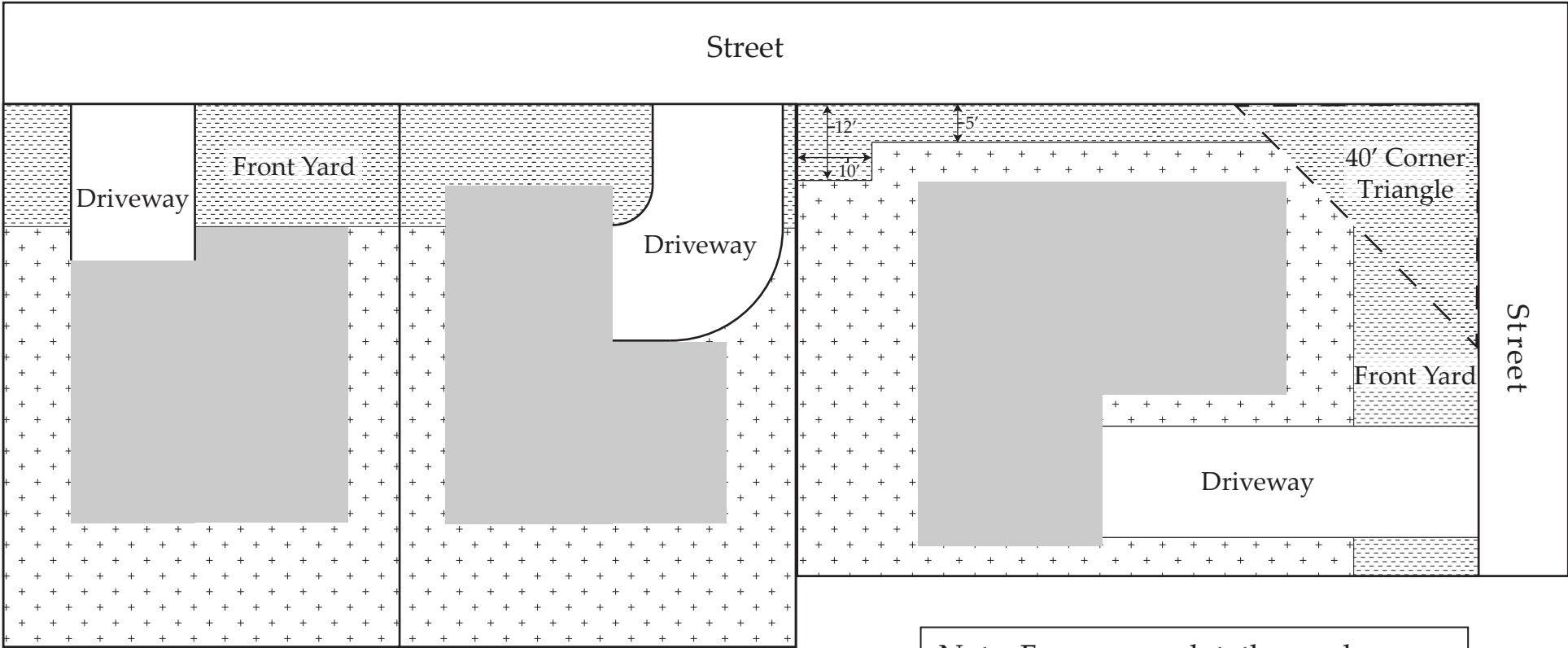


Up to 3 foot fence allowed



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.