

**MINUTES**  
**CITY COUNCIL/PLANNING COMMISSION**  
**JOINT STUDY SESSION**  
**FENCE ORDINANCE**

**OCTOBER 7, 2008**

Mayor Waltonsmith called the Joint Study Session meeting to order at 5:30PM.

**ROLL CALL**

PRESENT: Councilmembers:  
Jill Hunter, Aileen Kao, Kathleen King,  
Vice Mayor Chuck Page, Mayor Ann Waltonsmith  
Planning Commissioners:  
Yan Zhao, Linda Rodgers, Susie Nagpal, Robert Kundtz, Joyce  
Hlava, Chair Manny Cappello

ALSO PRESENT: Dave Anderson, City Manager  
Richard Taylor, City Attorney  
Ann Sullivan, Acting City Clerk  
John Livingstone, Community Development Director  
Chris Riordan, Senior Planner

**REPORT OF CITY CLERK ON POSTING OF AGENDA FOR MARCH 19, 2008**

Ann Sullivan, Acting City Clerk, reported that pursuant to Government Code Section 54954.2, the agenda for the meeting of October 7, 2008, was properly posted on September 29, 2008.

**COMMUNICATIONS FROM PUBLIC ON NON-AGENDIZED ITEMS**

None

**JOINT MEETING AGENDA ITEM:**

**1. Fence Ordinance Study Session to Discuss Updates to Existing Regulations Regarding Fences Walls, and Hedges.**

Community Development Director John Livingstone presented the staff report and noted that this is a fact-finding meeting where the City Council and Planning Commission could discuss the item and ask questions as well as receive input from members of the public attending the meeting.

Director Livingstone explained that the overall goals for the update to regulations for fences, walls, and hedges include establishing an exception process that would allow

property owners to exceed the maximum permitted fence height by adding a 2-foot lattice to a six-foot fence and to clarify ambiguous language and areas of the code that are currently difficult to enforce.

Mayor Waltonsmith invited Manny Cappello, Planning Commission Chair, to provide a progress update of the Planning Commission meetings regarding updates to the Fence Ordinance.

Chair Cappello noted that the Planning Commission has reached an agreement on 90% of the updates to the fence ordinance; however, there are issues pending with elements specific to the Hillside Districts. Chair Cappello indicated that the commissioners felt it is important to:

- Preserve natural beauty of hillsides
- Allow free movement of wild life by allowing
  - Split rail
  - Three-foot high fencing
  - Stone walls
  - Openings in fencing
- Provide security for children and domestic animals
- Identify property line

Chair Cappello stated pending issues involve:

- Proposed fencing areas increased from 4,000 sq. ft. to 6,000 sq. ft.
- fencing beyond the 6,000 sq. ft. – allow free movement of wildlife
- fence height – anything beyond a three to four foot height will impede movement of wildlife
- three-foot maximum fence height for front yards
- allowance for periodic opening in fencing still interferes with movement of wildlife
- fencing around vineyards, orchards, horse corrals and sport courts

There was discussion regarding the definition of an orchard, the difference between the Santa Clara County fence ordinance versus the City of Saratoga, and fencing requirements around pools.

Director Livingstone stated the definition of an orchard has to be determined, Santa Clara County does not have a limit on enclosures, and the current fence ordinance does not address fencing around pools.

Mayor Waltonsmith invited public comments.

The following people spoke on this item:

John Purvis stated that he had sent an email to the Council, the Planning Commission and staff on August 13, 2008 regarding the fence ordinance and asked that it be included in the record. Mr. Purvis noted several areas needed to be addressed such as: the definition of lattice versus fence, actual or finished grade of property, and height of fence posts. In addition, he noted the lengthy process in addressing the fence ordinance updates has been frustrating and feels that the issues aren't confined to just the hillsides. *[Mr. Purvis' email was included in staff report]*AS.

Kay Abelar voiced her concern regarding fences that are 25 years old or more and if they would be grandfathered into the new fence ordinance. She also questioned whether strands of barbed wire on top of fences was permitted.

James Johnston addressed the Council and Planning Commissioners regarding the gardening aspect in the hills and feels that gardening is an activity or hobby that deserves the same consideration as vineyards in the hillside.

Bruce Lafountain stated his property is in the hillside district surrounded by non-hillside districts and that as a result of the different set of fencing rules his property endures a lot of the wildlife movement – including bobcats stalking his family while working in their garden. In addition, he voiced his concerns regarding the safety and security of his family, the lengthy process of updating the fence ordinance and that the differences between the hillside and the flatlands needs to be addressed.

Balu Balakrishnan voiced his concerns regarding fence exceptions and that a lot of properties exceed the recommended two acres at 15% fencing limitation and these properties should be grandfathered into the new ordinance. He also stated that 15-29.080 section (b) item number (3) (*on page 10 of the attachment to the staff report*) was confusing and needed some clarification.

Drew Perkins commented that the fence ordinance as it is written now is an improvement; however, he recommended that the word “hedges” be more clearly defined and urged that hedges be restricted. He believes there is little difference between hedges and green fences and that hedges can restrict the view of the hillsides. He added, if hedges are allowed they should be restricted to a certain height.

Steve de Keczer stated he just planted 100 yards of hedges so that he could remove the very unattractive old fence on his property once the hedges grew taller. He asked if his fence would be grandfathered into the new ordinance. He also noted the 3-foot high fence requirement should be raised to a higher level.

Mike Byrd stated he is currently building a home in the hillside area and that it is very difficult to fence the property, including the pool area, within the 4,000 square feet currently allowed. He noted even the proposed 6,000 square feet will be problematic and feels that the fencing area should be based on percentage of the lot size. He also feels it is important to grandfather in existing fences and to allow property owners to improve their chain link fences by replacing them with something more attractive without having to abide by the new ordinance.

Martin Rossip stated he feels there should be fewer restrictions on fencing and that the restriction on the amount of square feet be removed. He also feels people who would like to create wildlife corridors on their property should be allowed to do so and people who want to restrict wildlife movement on their property should be allowed to do so.

Mayor Waltonsmith closed the public comment.

Mayor Waltonsmith noted there were several comments regarding the “grandfathering in” of old fences and asked if that issue had been addressed by the Planning Commission.

Director Livingstone responded that it had been discussed and the Commission felt that the best option would be to create an exception process; if fences were legally established and then if 50% or more of the fence falls down years later, the property owner will have to make the new replacement fence legal per existing code or apply for a fence exception process.

Councilmember King asked about the barbed wire on top of fences and if that was legal and if that would be grandfathered in.

Director Livingstone replied that it has never been legal.

City Attorney Richard Taylor stated that when a complaint is filed, staff would have to ascertain when a fence was built and if it was legal when it was built. In addition, he noted that the “grandfathering in” provisions in this new ordinance would not allow an illegal fence to continue to exist. He reiterated that if a fence was legal when it was built and 50% or more fell down, it would have to be replaced according to the new code.

Mayor Waltonsmith asked if there was more or less flexibility regarding new fencing requirements of the proposed updates.

Director Livingstone replied that overall there would be more flexibility with the new code than there was with the old code.

Mayor Waltonsmith noted that during the public comments, speakers voiced concerns regarding the struggle to provide safety and security for their families from wildlife and to also allow un-impeded movement of wildlife.

Commissioner Nagpal stated that this issue was a concern for the commission in wanting to preserve the rural character of the hillsides as well as recognizing the non-conformance of the enclosures of the developed hillsides.

Councilmember King asked about the fence post height issue raised by a resident.

Chair Cappello clarified the “fence post” is actually a “pilaster” and that it is allowed to go two feet above the fence height limit and in no case would a pilaster be allowed to exceed eight feet.

There was continued discussion regarding:

- the various types of fences – hedges, chain link, or wood fences
- the height of fences
- grandfathering of fences
- Fence Exceptions 15-29.080 section (b) item number (3) clarification
- fencing around pools

City Attorney Taylor recommended staff review the proposed wording on 15-29.080 section (b) item number (3) Fence Exceptions and clarify the intent of the wording.

Mayor Waltonsmith stated that there are two objectives regarding this study session and that is to; 1) address the weak wording within the fence ordinance so that the code can successfully be defended for legal purposes, and 2) the aesthetic, philosophical issues.

City Attorney Taylor explained the legal issue with the fence ordinance is the ambiguities in the existing fence ordinance that may cause difficulties for staff and residents that have fence problems to communicate and to understand what the rules are as well as avoiding the legal expense in explaining the ambiguities to a hearing officer. He also noted there are a number of small word changes that need to be addressed and the final proposal should then be viewed by the City Attorney.

Mayor Waltonsmith invited each of the Council members to present their views and provide input to the Planning Commission.

Councilmember Hunter:

- Has problems with the 6-foot fence and the 2-foot lattice added to it and would like property owner and neighbor to agree with that choice.
- Would like to add wording that wrought iron fences cannot include spikes on top in hillsides and flatlands
- Has no problem with hedge fences
- Has no problem with 6,000 square feet around pool area and/or back yard
- Would like some definitions of what constitutes an orchard

Councilmember King:

- Supports the 15% fencing option
- Very much into the practical side and doesn't understand why you can't fence unless you have a vineyard, sport courts, or garden
- Should allow residents that have bigger lots to put in more fencing
- Agrees with allowing the 2-foot lattice
- Is okay with the 8-foot fence, but both sides of the property should agree; should also apply to hedges
- Agrees that both hillsides and flatlands need to be updated

Councilmember Kao:

- Believes hillsides and flatlands need to be addressed individually
- Front yard fencing on large lot needs to be different than on a small lot
- Wrought iron fences on several small lots would create a prison feeling – need variation
- Was undecided on hillside fencing limits

Vice Mayor Page:

- Supports 15% fencing – should look at the lot and see what is involved
- Is fine with 6-foot fence plus 2-foot lattice
- Feels most wildlife travels along creek bed corridors
- Doesn't feel that it would be appropriate to grant fencing to every area of the property
- Include some limitations – but consider some factors other than just square footage
- Separate the different issues from the hillsides and the flatlands

Mayor Waltonsmith:

- Concerned about the increased use of fences and bigger fenced in areas
- Prefers openness of the hillsides with views
- Wrought iron without the spikes on top is a little more appealing
- Black metal is more appealing versus the bright metal

- Would agree to the 6,000 square feet of fencing
- Opposes the 15% percentage - feels it will change the rural look of Saratoga
- Natural beauty is important and wildlife in the hills is what Saratoga is about
- If we are going to go to the suburban look by encasing the hillsides in fences, that is a philosophical discussion that will have to be done at a larger level
- Security for children and domestic animals is an issue, however, we can't build a fence high enough or deep enough to keep wild animals out
- Consider the idea of building a double mesh-type fence to keep deer out
- Consider planting native trees and plants that deer won't want to eat
- If you are considering having larger areas for residents that have orchards and vineyards, then those residents should be required to have a business license

The Planning Commissioners asked if they should continue working on the fence ordinance as a whole and try to reach a conclusion on the hillside issues or go with the proposed changes that have been agreed on regarding the flatland areas and come back at a later date to discuss the hillside district.

City Attorney Richard Taylor stated the proposed changes the Commission has made to the flatland areas has come a long way and noted the hillside district already has special rules regarding fence requirements, and additional proposed changes would be necessary to make the hillsides and flatlands fit together in one updated ordinance.

City Manager Dave Anderson stated that with the pressure of all the other ordinances that have to be addressed feels it would be difficult to get back to this ordinance if they split it at this point.

Council's recommendation to the Planning Commission was to: 1) go back and hold at least one additional meeting, 2) take public testimony, 3) work out the details regarding the maximum fence square footage, orchards and vineyards, front yard fencing exception process option, and send it on to Council.

Recommendation passed 5-0.

The fence ordinance will be discussed again at the next Planning Commission meeting on November 12th and it was noted that signage will again be used to inform residents of the meeting.

Mayor WaltonSmith adjourned the Study Session at 7:45 PM.

Respectfully submitted by:

Ann Sullivan, CMC  
Acting City Clerk