



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 09/13/2017

ITEM NO: 2

ADDENDUM

DATE: SEPTEMBER 12, 2017

TO: PLANNING COMMISSION

FROM: JOEL PAULSON, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: TOWN CODE AMENDMENT APPLICATION A-17-002. PROJECT LOCATION:
TOWN WIDE. APPLICANT: TOWN OF LOS GATOS.
CONSIDER AMENDMENTS TO CHAPTER 29 (ZONING REGULATIONS) OF
THE TOWN CODE REGARDING **FENCES, HEDGES, AND WALLS.**

REMARKS:

Exhibit 11 includes the verbatim minutes from the July 26, 2017, Planning Commission meeting.

Exhibit 12 includes additional public comment received between 11:01 a.m. Friday, September 8, 2017 and 11:00 a.m. Tuesday, September 12, 2017.

EXHIBITS:

Previously received with July 26, 2017 Staff Report:

1. Findings
2. Ordinance Priorities Memorandum dated February 12, 2017, from Robert Shultz, Town Attorney
3. Draft Amendments to Chapter 29 of Town Code
4. General Plan Policies and Actions pertaining to Fences, wildlife habitats, and migration corridors
5. Hillside Development Standards and Guidelines pertaining to fences
6. Public Comments received by 11:00 a.m., Friday, July 21, 2017

PREPARED BY: SEAN MULLIN, AICP
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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SUBJECT: CONSIDER AMENDMENTS THE TOWN CODE REGARDING FENCES, HEDGES,
AND WALLS. TOWN CODE AMENDMENT/A-17-002
SEPTEMBER 12, 2017

Previously received with July 26, 2017 Desk Item:

7. Public Comment received between 11:01, Friday, July 21, 2017, and 11:00 a.m., Wednesday, July 26, 2017

Previously received with September 13, 2017 Staff Report:

8. Revised Draft Amendments to Chapter 29 of the Town Code
9. Neighboring Jurisdictions Fencing Regulations
10. Public Comments received between 11:01, Wednesday, July 26, 2017 and 11:00 a.m., Friday, September 8, 2017

Received with this Addendum Report:

11. July 26, 2017 Planning Commission Meeting Minutes (38 pages)
12. Public Comments received between 11:01 a.m. Friday, September 8, 2017 and 11:00 a.m. Tuesday, September 12, 2017

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Tom O'Donnell, Chair D. Michael Kane, Vice Chair Mary Badame Kendra Burch Melanie Hanssen Matthew Hudes
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Robert Schultz
Transcribed by:	Vicki L. Blandin (510) 337-1558

EXHIBIT 11

1
2 P R O C E E D I N G S:
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5 CHAIR O'DONNELL: All right, we are now to
6 consider the Town Code Amendment Application A-17-002. It's
7 a town-wide location. The applicant is the Town of Los
8 Gatos, and it is to consider amendments to Chapter 29 of
9 the Town Code regarding fences, hedges, and walls, and may
10 I ask for the Staff Report? I think I've got Sean Mullin
11 here.

12 COMMISSIONER HUDES: Chair?

13 COMMISSIONER O'DONNELL: Oh, pardon me. You're
14 absolutely right, and I forgot; you wanted to say
15 something. Commissioner Hudes.

16 COMMISSIONER HUDES: If you don't mind, I will
17 need to recuse myself from this matter. I have a property
18 that is within the Hillside Design Guideline area
19 designated on the map, and although I understand from Town
20 Council that there is not a strict legal requirement to
21 recuse myself, and I do not want to in any way say that
22 that's incorrect, however, I do want to note that I believe
23 that the way the document before us is drafted it could
24 have a negative economic impact on my particular property
25

1 to the extent that I would be uncomfortable in deliberating
2 on this matter.

3 Just to explain that a little bit more, I find
4 the document in some of the provisions is complex and
5 difficult to assess the impact in a finite way on my
6 property, but I have the sense that it might, particularly
7 the provision about repair being within the scope of what's
8 being proposed, and I could very well face a repair
9 situation with the fence.
10

11 COMMISSIONER O'DONNELL: I think it is sufficient
12 to say that if you feel uncomfortable to sit for that
13 reason, that's enough.

14 COMMISSIONER HUDES: Yeah.

15 COMMISSIONER O'DONNELL: But if you want to go on
16 further, you may, but it is not necessary.

17 COMMISSIONER HUDES: I don't need to. I just
18 wanted to explain that while it's been explained that it is
19 not a legal requirement for me to, I'm uncomfortable.

20 COMMISSIONER O'DONNELL: That's sufficient, and
21 we will excuse you, and since there is only, I think, the
22 Staff Report afterwards, if you choose not to come back,
23 because this may take a while, we don't hold it against
24 you.
25

1 ROBERT SCHULTZ: Let me make sure for the public
2 that they understand the law in this area. The Fair
3 Political Practice Act is a very complicated and often
4 revised law, but what it does say is it has certain
5 conflict of interests involving your real property and your
6 business assets. In this case, there could very well be a
7 presumption that there could be an economic effect on your
8 property, and therefore usually that would require a
9 stepping down and not hearing the matter. But there is
10 what's called the general public exception, and what that
11 says is that if you are a public official and you're
12 hearing an item that might affect your property and the
13 value of it, but you're in the same position as a
14 significant portion of the community and you're going to be
15 similarly affected as everybody else, then you're able to
16 hear it.

18 That means there is no conflict of interest under
19 the state law, but that being said, there's still a
20 perception, and I think that's what Commissioner Hudes was
21 talking about. Even though there might not be a conflict
22 under state law, there could be a perception that he
23 doesn't feel comfortable about it. But there is no
24 violation of the law if he were to hear this, but that's
25

1 okay for him to decide when you want to step down and when
2 you don't.

3 COMMISSIONER O'DONNELL: And I just want to add
4 without going any further, to the extent that there may be
5 one or more of us—not me—but who might be similarly
6 affected as Commissioner Hudes, that person is perfectly
7 able to make the judgment that since they are not legally
8 required to do this that they can do better for the
9 community by staying on. Both of those decisions are
10 entirely defensible.
11

12 VICE CHAIR KANE: That means I can go home?

13 COMMISSIONER O'DONNELL: In your case, anything
14 is defensible. Commissioner Hanssen.

15 COMMISSIONER HANSSEN: I just wanted to state for
16 the record that I also live in the hillsides and I had the
17 conversation with Attorney Schultz, and I decided that I'm
18 able to participate in these discussions because of the
19 reasons that he stated about it affecting over 25% of the
20 residents in Los Gatos.

21 COMMISSIONER O'DONNELL: Thank you. Good night,
22 Commissioner Hudes. All right, can I have the Staff Report?

23 SEAN MULLIN: Thank you. Good evening,
24 Commissioners. Before you tonight is consideration of
25

1 amendments to Chapter 29 of the Town Code regarding fences,
2 hedges, and walls.

3 In January of this year the Town Council held a
4 study session to identify strategic priorities for the
5 upcoming fiscal years. During that study session a resident
6 requested that an ordinance amendment regarding fencing in
7 the hillside areas be set as a priority, to which the
8 Council agreed.

9 Staff met with two residents to refine a draft of
10 the ordinance that they provided, which is included as
11 Exhibit 3. Under current ordinance, permits are not
12 required for fences in the town regardless of the property
13 being located in the hillside or not. The owner is
14 responsible for meeting the current regulations, and there
15 is no language regarding wildlife friendliness of fences,
16 hedges, and walls.

17 The draft ordinance before you tonight would
18 separate non-hillside properties from hillside properties.
19 The non-hillside properties would be regulated in a similar
20 way as the current ordinance, and for properties located in
21 the hillside a fence would require a permit, and as
22 proposed that would be a Minor Residential Development
23 approval. Fences would be subject to regulations related to
24 siting, design, materials, dimension, and wildlife
25

1 friendliness. Staff has included a number of discussion
2 points and examples of effects on properties in the Staff
3 Report.

4 Staff is recommending that the Planning
5 Commission review the draft ordinance and discuss the
6 topics of concern raised by Staff. Following the discussion
7 Staff recommends that the item be continued to a date
8 certain.

9 There is a Desk Item provided tonight which
10 includes a response to the comments included with the Staff
11 Report. This response was submitted after the deadline for
12 inclusion in the Staff Report and it was submitted as a
13 Desk Item.

14 This concludes Staff's presentation and we are
15 available to answer any questions.

16 COMMISSIONER O'DONNELL: All right, are there
17 questions of Staff? Yes, Commissioner Hanssen.

18 COMMISSIONER HANSSEN: I saw the long list of
19 ordinances that are to be reviewed that Attorney Schultz
20 put out. What I was trying to understand with this one was
21 what the problem is that we're trying to solve.

22 I got some of this, that there is a concern about
23 wildlife, but are there actually instances where people
24
25

1 have built egregious fences or blocked wildlife? I mean why
2 are we doing this?

3 SEAN MULLIN: I think in concert building fences
4 can be perceived as creating wildlife barriers. Anecdotally
5 you could push wildlife out onto roads and could obstruct
6 their passage through properties in areas that tend to be
7 more wild and open, such as the hillside, versus the
8 downtown areas and the residential areas, which are more
9 suburban development.
10

11 We're here tonight because a resident requested
12 this be brought forth to address wildlife passage and
13 safety in the hillsides. The General Plan has some language
14 about preserving wildlife corridors; those are included in
15 the summary in the Staff Report as an exhibit, and some
16 language in the Hillside Design Guidelines as well.

17 ROBERT SCHULTZ: But reiterating, it wasn't a
18 Staff generated ordinance. I don't believe it was even in
19 my memo; it might have been. A citizen generated it, and
20 no, we weren't aware of outstanding or many complaints or
21 claims of animals that were being injured. So it was
22 completely citizen-driven.
23

24 COMMISSIONER HANSSEN: Okay.

25 COMMISSIONER O'DONNELL: And I might say that
since I've been on the Commission, and before I was on the

1 Commission but appeared before the Commission, I had dealt
2 with projects up in the hills where notwithstanding the
3 absence of this ordinance, when clients wanted to put
4 fences up we had to take into consideration the paths, and
5 we did, so I just say that as a matter of fact. Now,
6 whether somebody wanted to argue about that, typically my
7 clients being good people, they would design the fence so
8 that they could satisfy not everything that's in this, mind
9 you, but satisfied. So Commissioner Kane, you had
10 something?
11

12 VICE CHAIR KANE: For Staff. I understand Staff's
13 report on what had previously been submitted. What is
14 Staff's view of the Desk Item we received tonight that has
15 a number of new points and some compromises in it?

16 SEAN MULLIN: My view is that it's the opinion of
17 a resident who submitted it, and the Planning Commission
18 can consider it. I haven't had proper time to fully analyze
19 the information that's (inaudible).

20 VICE CHAIR KANE: Nor have we, so that's why I'm
21 asking you for your guidance.

22 JOEL PAULSON: I would just offer also, we really
23 envision this as kind of a kick-off and kind of get all the
24 issues out on the table so that we can make any other
25 modifications that may be recommended by the Commission. So

1 we can bring it back, we'll have another hearing, there may
2 be other people who want to come out and speak or provide
3 things in writing, and then that's when you would make your
4 final recommendation to Council.

5 VICE CHAIR KANE: Because it was designed to just
6 be continued from the beginning.

7 JOEL PAULSON: Correct.

8 VICE CHAIR KANE: I see. Thank you.

9 COMMISSIONER O'DONNELL: Let me also say this.
10 When we get there, after we invite any public comment, to
11 the extent that it would be helpful maybe we can say--
12 because we're going to continue the matter--what we would
13 like to see changed or adjusted, those kind of things, as
14 opposed to discussing the whole thing, because there are
15 obviously lots of things in here people could disagree
16 with, or at least I could.

17 VICE CHAIR KANE: (Inaudible).

18 COMMISSIONER O'DONNELL: We should do it after
19 the public comments, because we may get some more things we
20 really want to consider. So if there are no further
21 comments, and we've had the Staff Report, I'll go ahead
22 with the list of cards I have here. The first card is David
23 Klinger.
24
25

1 DAVID KLINGER: Good evening, my name is David
2 Klinger; I live at 141 Potomac Drive, which is up by Trader
3 Joe's.

4 I'm obviously not involved in the hillside, but I
5 have just gone through a process of applying for a waiver
6 for a fence height where I had an existing 7' fence in some
7 areas and 6' in others. I bought the house two years ago; it
8 was in poor condition at the time and now it needs to be
9 replaced. I was required to go through the Community
10 Development process and pay a \$233.00 fee in order to be
11 able to replace my fence and add 7' all the way around.

12 I bring this up because I look around my
13 neighborhood, we walk the dogs a lot, and there are a lot
14 of 7' fences. I took a sample of three. No one had applied
15 for a waiver. I feel kind of discriminated against, I
16 guess, having to pay a fee. I did go and have signed
17 approvals from all the neighbors.

18 I looked at what San Jose does. They have 7'
19 fences allowed, and Cupertino allows a 7' fence if you have
20 documented approval of your neighbors. I think a reasonable
21 and prudent metaphor might be driving down the highway, the
22 speed limit is 65, everybody drives 70, and it's not
23 enforced on that way.
24
25

1 So there are just a lot of people, a lot of
2 residents of Los Gatos, that have non-compliant fences.
3 Somebody could choose to report them to code enforcement; I
4 don't think that makes a lot of sense. I think what has
5 happened here over time is that the 6' fence has kind of
6 migrated more up to a 7' level; typically it's 6' of solid
7 and 1' of lattice.

8 My recommendation is to adopt probably the
9 Cupertino approach of allowing 7' if you have approval of
10 your neighbors, and that's the people who are really
11 affected. The ordinance really isn't protecting anybody
12 else except the immediate neighbors.

13 Also, hillside. We have quail, we have raccoons,
14 we have possums, and so we have wildlife in our
15 neighborhoods too. Yes, sir?

16
17 COMMISSIONER O'DONNELL: Go ahead.

18 VICE CHAIR KANE: I read your letter, Mr.
19 Klinger. Did you get a response from anyone on this?

20 DAVID KLINGER: Sean Mullin did. He encouraged me
21 to be here tonight, so I'm here tonight to make the case.

22 VICE CHAIR KANE: Thank you.

23 COMMISSIONER O'DONNELL: If there are no other
24 questions, thank you very much. The next card I have is
25 Bruce McCombs.

1 BRUCE McCOMBS: I'll start at the beginning. My
2 name is Bruce McCombs; I live at 16160 Kennedy Road. My
3 wife and I are lifelong residents of Los Gatos; we've lived
4 in our current home for a little more than 40 years.

5 Our home on Kennedy Road is located on a hillside
6 just above Kennedy Meadows. Our property has a total of
7 seven paths that the deer in our neighborhood have created
8 over the years. The seven paths eventually merge into two,
9 and the deer in our neighborhood use these paths nearly
10 every day as they make their way down from the hillside
11 above our house to the meadow across Kennedy Road, seeking
12 shelter among the shade trees. My wife and I have enjoyed
13 this scene near every day for the past 40 years, and it's
14 in these moments we feel so very fortunate to be able to
15 call Los Gatos our home.

17 I'm here this evening to discuss the very clear
18 impact that steel and chain link fences have on the deer
19 and other wildlife who live in our area, especially the
20 young fawns who are just learning to navigate their way
21 around the neighborhood.

22 These are some of the photos that we took
23 throughout the neighborhood that just shows some of the
24 fences. You can see a cyclone in the back. This brings me
25 to my next point.

1 My wife and I continue to be concerned for the
2 safety of wildlife in the area. This most recent deer-
3 related incident in our neighborhood occurred on Monday
4 morning as my wife was headed into town. When she left our
5 driveway my wife noticed a doe on one side of our
6 neighbor's chain link fence—that's the other side—with her
7 fawn stuck on the other side right next to the road. Please
8 note that this incident was occurring as cars are zooming
9 by with the fawn frantically dashing back and forth in
10 front of the fence trying to get to her mother. It goes
11 without saying, this would be an extremely upsetting
12 experience for anyone concerned about the wellbeing of
13 wildlife in and around our town, especially in the
14 hillsides where the vast majority of wildlife live.

16 I believe that the proposed amendments to the
17 Town's Fence Ordinance would provide a major benefit to the
18 wellbeing of many of the different species of wildlife
19 living in our hillsides. I'm very grateful to the Town for
20 taking the initiative to address this extremely important
21 issue.

22 Here we see a fence that I built for a neighbor
23 about three years ago. It's a pretty simple cedar fence; as
24 we can see it fits in with the surroundings. But the thing
25 that makes it the most important is it has a long lifespan,

1 a fence of this design establishes a clear property
2 boundary, and at the same time is very wildlife friendly.
3 Notice the spacing between the horizontal rails and the
4 space between the bottom rail and the ground. Deer, quail,
5 rabbits, and birds can pass over or under this type of
6 fence with very little effort. In short, I believe that
7 this type of fence would be an ideal model for future
8 fences built on the hillsides above Los Gatos.
9

10 Finally, my wife took these photos from our
11 driveway last summer. The doe and fawn shown here are
12 standing on one of the several paths that lead to the
13 meadow on the other side of the road. As we can plainly
14 see, not a fence in site.

15 In conclusion, the proposed amendments for the
16 Town's Fence Ordinance provide a much-needed solution to a
17 very serious problem, and I'm asking the Planning
18 Commission to please vote unanimously to approve the
19 proposed amendments. Thank you.

20 COMMISSIONER O'DONNELL: Thank you. We'll see if
21 there are any questions. There aren't, so thank you.

22 BRUCE McCOMBS: Thanks very much.

23 COMMISSIONER O'DONNELL: The next card is David
24 Weissman.
25

1 DAVID WEISSMAN: Los Gatos has a great tree
2 protection ordinance.

3 COMMISSIONER O'DONNELL: Dr. Weissman, would you
4 give us your address?

5 DAVID WEISSMAN: We don't do addresses anymore.

6 COMMISSIONER O'DONNELL: It's so nice if you do.

7 DAVID WEISSMAN: All right, 15431 Francis Oaks.

8 COMMISSIONER O'DONNELL: Thank you.

9 DAVID WEISSMAN: Los Gatos has a great tree
10 protection ordinance. The goal of this revised Fence
11 Ordinance is to have actual live animals living in our
12 protected hillside forests. The impetus for these changes
13 come from the fact that while the Hillside Guidelines
14 clearly appear to require that hillside fences must allow
15 wildlife to pass through and to protect wildlife corridors,
16 Staff has interpreted these provisions as applying only to
17 new A&S applications.
18

19 Before writing our draft we got information from
20 Committee for the Green Foothills; Woodside; Los Altos
21 Hills; Sonoma County Open Space District; Montana Outdoors;
22 and Jackson, Wyoming. We then took the best of all these
23 jurisdictions and their documents, and after working with
24 Staff, you have the draft before you.
25

1 I want to address the five bullet points on page
2 2 of the Staff Report that Staff says they have concerns
3 with.

4 Bullet #1: The two latest smoking ordinances have
5 five and two pages respectively of whereas. We think the
6 short Vision Statement of the Fence Ordinance draft is
7 helpful, and it was also suggested by Mayor Sayoc.

8 Bullet #2: Minor Residential Development Permits
9 cost more than \$2,200. This is a lot of money and we would
10 like to see these fees reduced for fences, perhaps more
11 along the cost of obtaining a Waiver Permit for \$233. The
12 point is to get citizens to the counter where Staff can
13 ensure that they are aware of the newest fence regulations,
14 it is not to be punitive with excessive costs, and in some
15 situations no permit is required.

16 Bullet #3: Yes, strict regulation is necessary to
17 ensure that the best quality fences are built, plus the
18 Hillside Guidelines already require an open view, design,
19 and wildlife friendly design. Do people really need to
20 enclose a barbeque and playground area farther than 30'
21 from the house? Living in the hillsides is a compromise.

22 Bullet #4: Under the draft, fences farther than
23 30' from the primary residence in hillsides shall be less
24 than 42" in height to ensure that such fences are indeed
25

1 wildlife friendly. By comparison, Jackson, Wyoming limits
2 fence heights to 38", and Sonoma County Open Space District
3 limits fence heights to 40".

4 Bullet #5: Replacement and modification of
5 hillside fences would have to meet the new regulations.
6 This is the appropriate time to try to improve the
7 stability of our hillsides. Nevertheless, under this draft
8 all current situations are grandfathered in.

9 Our goal in this ordinance is to maximize the
10 contiguous open space and to keep animals offroad.

11 COMMISSIONER O'DONNELL: Let's see if there are
12 any questions. Vice Chair Kane.

13 VICE CHAIR KANE: Dr. Weissman, in what has been
14 proposed I wasn't clear on what we would do about existing
15 chain links and barbed wire.

16 DAVID WEISSMAN: It's there, and I don't think we
17 can make this retroactive. We have no intention of making
18 this... It would be wonderful if when people come in for
19 modifications that they would make it more animal friendly.

20 VICE CHAIR KANE: So it would be a going forward?

21 DAVID WEISSMAN: Yes, going forward completely.

22 VICE CHAIR KANE: Thank you.

23 DAVID WEISSMAN: Commissioner Hanssen asked is
24 this a problem? When I moved into my property 30 years ago
25

1 we used to have many animals, skunks, bobcats, possums, and
2 over the years things have just disappeared, and as you
3 drive around our area you see fences along perimeters of
4 houses. They serve no function except to mark your property
5 line, and there are consequences for doing this. I think
6 some of the other speakers that will come will also support
7 this. So it really is a problem. If we live in the
8 hillsides, we live there because of the animals too besides
9 just the trees, and these have had impacts.

11 COMMISSIONER O'DONNELL: Other questions? Thank
12 you very much. Thank you for all the work you did. I can
13 tell it was a lot of work. The next card I have is
14 MacKenzie Mossing.

15 MACKENZIE MOSSING: Good evening, Chair O'Donnell
16 and members of the Commission. My name is MacKenzie Mossing
17 and I work for the Santa Clara Valley Audubon Society. With
18 over 2,000 members in Santa Clara County, our organization
19 is one of the largest Audubon chapters in California. Our
20 mission is to promote the enjoyment, understanding, and
21 protection of birds and other wildlife through birding,
22 education, and conservation. We believe that with adequate
23 consideration and attention people can live in harmony with
24 birds and wildlife in our communities and landscapes.
25

1 We appreciate the Town of Los Gatos' efforts to
2 reduce the impacts of urban sprawl on our natural
3 environment, and are very supportive of the proposed Fence
4 Ordinance. People in Los Gatos and regionally love their
5 deer and bobcats. They care to be able to see them in their
6 natural habitat and care to preserve the ability of the
7 animals to move between pastures and water, to migrate, and
8 to disperse. It is imperative that we avoid fencing that
9 will restrict this movement.
10

11 Hillside development and associated fencing can
12 severely impede the functionality of critical landscape
13 linkages and fragment habitat for local wildlife, causing
14 serious degradation of regional ecosystems. Impassible
15 property fences and perimeter fences may force animals to
16 travel along busy roadways rather than through open space,
17 posing a safety hazard for both wildlife and vehicle
18 traffic.

19 Further, certain types of fencing can cause
20 devastating injuries and death to wildlife as they try to
21 jump over or crawl through fencing. To your question,
22 Commissioner Hanssen, this is a well-documented issue in
23 our region in terms of injury to wildlife, as well as road
24 kill. Our organization has received numerous photos
25 documenting such instances over the years. Simple

1 solutions, such as adequately spaced wood or smooth wire
2 fencing can allow safe passage of wildlife without injury,
3 and minimize human/wildlife conflict.

4 We applaud the Town of Los Gatos for considering
5 this important step towards facilitating wildlife movement
6 and for demonstrating that our communities can co-exist
7 with nature and wildlife. Please vote to recommend adoption
8 of the proposed ordinance. Thank you.

9 COMMISSIONER O'DONNELL: Thank you. Let's see if
10 there are any questions. There are none, so thank you for
11 coming. The next card I have is Kit Gordon.

12 KIT GORDON: Good evening, I'm Kit Gordon
13 speaking on behalf of the Sierra Club Loma Prieta chapter.
14 We support protecting wildlife corridors and migration
15 routes in the hillside areas of Los Gatos. We applaud Los
16 Gatos for its existing wildlife friendly Hillside
17 Guidelines.

18 Wildlife corridors promote healthy and diverse
19 gene pools for the many species that live in our area.
20 Habitat fragmentation, however, can decrease biodiversity
21 through increased predation, inbreeding, genetic defects,
22 and increased disease risk for species. Adequate wildlife
23 corridors benefit animals, plants, insects, as well as
24 humans.
25

1 Biodiversity requires not only wildlife
2 permeability, but also includes native plants to sustain
3 our native species. We support your policies that protect
4 native vegetation along creeks and corridors in hillside
5 areas.

6 Locally, partnerships are investing several
7 million dollars to evaluate wildlife corridors along
8 Highway 17 and Coyote Valley. These partners include
9 Caltrans, Land Trust of Santa Clara, Santa Cruz County,
10 Mid-Peninsula Regional Open Space District, Santa Clara
11 Open Space Authority, Peninsula Open Space Trust, Guadalupe
12 Coyote Resource Conservation District, Santa Clara County
13 Parks, Santa Clara Valley Water District, the Department of
14 Fish and Wildlife, and the USCS Puma Project. They are all
15 investing in protecting wildlife corridors.

16 We urge the Commission to approve the proposed
17 Fence Ordinance allowing wildlife permeability. As our
18 beautiful valley continues to be developed, impinging on
19 natural habitats, these restrictions become more and more
20 valuable for our fragile ecosystem. Thank you.

21 COMMISSIONER O'DONNELL: Thank you. Any
22 questions? Thanks, again. Next card I have is for Alice
23 Kaufman.
24
25

1 ALICE KAUFMAN: Good evening, Commissioners. My
2 name is Alice Kaufman; I am here on behalf of Committee for
3 Green Foothills. We are an open space and natural resource
4 preservation operating in San Mateo and Santa Clara
5 Counties since 1962. I'm here to speak in support of the
6 draft ordinance.

7 As I'm sure you're aware, the Santa Cruz
8 Mountains are a habitat for a diversity of wildlife.
9 However, the animals in this area are suffering from the
10 existence of many barriers to movement that impedes their
11 ability to find food, mates, and other necessities for
12 population survival.

13 Roadways cut across available migration routes,
14 resulting in animals trying to cross busy roads, with
15 hazardous results for vehicles as well as animals. Anyone
16 who has ever seen a deer walking along the edge of a road
17 hemmed in by walls and fences can understand the dangers
18 that animals undergo in order to reach the areas they need
19 to access. Building tall fences may keep animals off your
20 property, but it will force them into the road where they
21 pose a collision danger for passing vehicles.

22 Those who choose to build homes at the interface
23 between urban areas and natural communities typically do so
24 because they value the surrounding natural area, but to
25

1 live in harmony with nature does require compromise. You
2 can't expect to have all of the human-oriented conveniences
3 that exist in a fully urban area while still enjoying
4 living out in nature.

5 We believe that the draft ordinance exemplifies a
6 reasonable degree of compromise between nature and human
7 habitation. Limiting the additional requirements to only
8 those fences that are more than 30' from the home allows
9 for wildlife to be excluded from what is typically
10 considered an ordinary back yard area that can accommodate
11 vegetable gardens, kids' play areas, and other similar
12 uses.
13

14 I'd also like to point out the issue here is not
15 only one of allowing wildlife movement, but also of
16 ensuring wildlife safety. Fences that include barbed wire
17 or wire strands stretched between posts are hazardous to
18 animals. Deer will often attempt to jump the fence and may
19 get their legs tangled in the wire. I've seen photos of
20 juvenile deer that starved to death after getting their
21 legs tangled in wire fencing.
22

23 We ask you to please consider the ordinance
24 that's been submitted and move it forward. Thank you.
25

1 COMMISSIONER O'DONNELL: Thank you. Any
2 questions? No. Thanks, again. The next card, and I think
3 it's the last card, is Tanya Kurland.

4 TANYA KURLAND: Hello, my name is Tanya Kurland
5 and I'm at 15275 Seaview Drive in Los Gatos.

6 I would like to address some concerns about what
7 actually those fences are for, because it seems to me that
8 previous orators assumed that fences don't serve any
9 purpose except people wanting to mark their territory. This
10 is actually not true.

11 I've seen fences here to protect people, because
12 according to the results of a study announced by Stanford
13 University researchers in 2014, "Lyme disease is more
14 spread by areas of open space than previously thought," and
15 the study (inaudible) California also revealed that
16 (inaudible) a second bacteria previously undetected in the
17 region and known (inaudible), and this is actually very
18 dangerous bacteria which causes flu-like disease which can
19 be deadly to elderly people, small kids, and immunity
20 deficient people.

21 A lot of people, and even doctors, believe that
22 Lyme disease is easily treated by antibiotics and just
23 disappears after that. Unfortunately, often the bacteria
24 can hide in the body, attacking the body, attacking the
25

1 central nervous system and brain. The chronic form of Lyme
2 disease have left many patients mentally and physically
3 debilitated. Again, drastically there is a shortening of
4 life. There has actually been a lot of research that prove
5 that point, and I already submitted in my email links and
6 information about these diseases, and by area, and how
7 important it is.

8 And I would like to emphasize that it's not that
9 widespread as on the east coast, but personal risk is
10 actually greater, because we don't have public awareness
11 here and people just don't know that they can contract Lyme
12 disease, and even doctors do not continually test their
13 patients. I've been reading about a lot of cases where
14 people have been sick with Lyme disease for decades and
15 basically disabled because of it, and doctors just didn't
16 test them, because they were not aware of it.

18 Just recently it came to public attention
19 research had been made where we actually became aware of
20 the widespreading of this disease, and researchers have
21 found the number of (inaudible) reported cases of Lyme
22 disease per thousand households strongly correlated with
23 deer population density in the community.

24 While I strongly think that we should maintain
25 (inaudible) for deer on our property, we should do that,

1 but we should enclose our areas where people routinely
2 spend their time with high fences and keep deer out of
3 them.

4 COMMISSIONER O'DONNELL: Thank you. Are there any
5 questions? No. All right, I have no other cards, so what
6 I'm going to do is close the public input of this evening,
7 and we're going to ultimately continue this matter, so I
8 would assume that it would be okay to reserve our comments
9 then until then.

10
11 JOEL PAULSON: It is. I think if there's anything
12 specifically for the topics that we raised, which obviously
13 Dr. Weissman raises well. I think generally there are a
14 number of ways where these things can be handled. I know
15 Dr. Weissman and Lee Quintana looked at a number of
16 different possibilities.

17 Mr. Mullin comes to us from Woodside, who has an
18 ordinance. They do it a little bit differently. They do it
19 from setbacks from road, so you have corridors rather than
20 setbacks from the structures, and they're a little bit
21 different process. The necessity for going through the
22 Minor Residential Permit process that Dr. Weissman and Lee
23 were interested in notifying and having a process where we
24 notify the neighbors when you're applying for a Fence
25 Permit. Currently we have sport court fencing, where if you

1 want to go over 6', that goes through a Minor Residential
2 Permit, we notify the neighbors, and that's where the fee
3 comes from.

4 That's also appealable, that process. If one of
5 your neighbors objects to the fence you want to put in,
6 then they ultimately will come before the Planning
7 Commission, just as any other Minor Residential
8 application. So that's the necessity for the fee.

9 So going through some of these items, there are
10 some exceptions, as Dave noted, for a number of things, and
11 then also for the replacement of the existing fencing, if
12 it's I believe more than 50' or more than 25% of the fence,
13 then you have to come into compliance.

14 We just wanted to raise these concerns. There may
15 be private property right concerns from folks who are used
16 to having to go through this process, and the way the
17 current process is set up, whether you are doing a 6' fence
18 within 30' in planting zone one, or a 42" outside of the
19 30', you need a permit.

20 So just things to consider, and if you believe
21 these things are all appropriate given the circumstances
22 and kind of the direction, then we're perfectly fine
23 carrying that forward as well.
24
25

1 COMMISSIONER O'DONNELL: Let me ask you this
2 question. You said that Sean's experience was in Woodside?

3 JOEL PAULSON: Woodside, correct.

4 COMMISSIONER O'DONNELL: And so perhaps, if you
5 will indulge me, that's a contrasting measurement system.
6 Could you explain that to us?

7 SEAN MULLIN: Sure. The Town of Woodside looks at
8 fencing two ways. One is a barrier to wildlife, but the
9 other is a barrier visually, and the community character up
10 there is to protect the rural character of the town. The
11 setback that's required for fencing is only along roads,
12 and it's measured from the edge of the driving surface, so
13 the measurement or setback can start off your property.
14 It's not measured from the property line, because the
15 right-of-way may be 50' and the improvement may only be
16 30'.

17
18 The guiding documents, the Residential Design
19 Guidelines and the General Plan, encourage wildlife passage
20 corridors. I should preface all this that a permit was
21 required for any fencing regardless of height, and the
22 maximum height was 6'. You could build solid fencing, and
23 these setbacks that I mentioned as measured from roads vary
24 depending on the height of your fence and whether it's a
25 visually open fence or not, so it gets a little complicated

1 there, but the way Staff was instructed to handle someone
2 coming in with new perimeter fencing, they come into the
3 county and say I need to pull a permit for a fence, was to
4 enforce the setback as the code required, but also work
5 with the applicant and explain to them the importance of
6 the language in the guiding documents about wildlife
7 passage, and urge them and work with them to try to bring
8 in the fencing from the property line.

9
10 So if they wanted to build the maximum fence on a
11 one- or five-acre property they would put it right on the
12 property lines and then maybe 50' back from the road, and
13 to a pretty high degree of success Staff was able to get
14 10', 15', 20' corridors along a property line, maybe two
15 property lines, maybe three, and while not completely open
16 range land, create wildlife corridors so animals could get
17 off the road and traverse into the woodland, but also
18 provide for enjoyment of the property.

19 The cautionary tale here is that the properties
20 in Woodside tend to be larger, and at least my experience
21 was it was easier to ask someone with five acres to give us
22 10-15' on a property line than it was in the same community
23 to ask someone with a 1,500 square foot property to do the
24 same. But that's how it's regulated there; it's a little
25 bit different.

1 COMMISSIONER O'DONNELL: All right, if you have
2 some general questions or comments, we can certainly make
3 them. Otherwise, we can just ask at our next meeting. But I
4 think Commissioner Hanssen had her hand up first, or
5 Commissioner Badame, whichever you ladies would like.

6 CHAIR BADAME: I just want to make a comment. If
7 anybody watches the local news or reads Next Door posts
8 about Los Gatos and coyotes, there is an influx of coyotes
9 in our residential neighborhoods in Los Gatos. I mean it's
10 a big problem. So I'd be curious if other jurisdictions
11 have this problem, or if their fence ordinances are
12 different from ours so that it has mitigated the problem,
13 so they don't have the same problem as we do, or if we
14 update our Fence Ordinance if it would mitigate the problem
15 we are having and seeing in Los Gatos.

16 COMMISSIONER O'DONNELL: Any comments on that, or
17 should we defer that?

18 JOEL PAULSON: I'll make a simple statement. You
19 hear that ring true all over California in urban areas,
20 that coyotes are problematic. Obviously, that's problematic
21 for domestic animals, whether those are cats or dogs, but
22 this ordinance would provide an area, although limited, for
23 those types of animals to have some protection. I don't
24 know that we have any evidence as to whether or not a Fence
25

1 Ordinance is going to change that. Coyotes are fairly
2 persistent, from what I understand.

3 ROBERT SCHULTZ: I think what Joel said is
4 correct. I would just make the observation regarding the
5 comment about the raccoons and skunks. Our Town Terrace
6 area, which is really right in the middle of town, is where
7 we get the most complaints from raccoons and skunks, so
8 clearly I think they've come out of the hills, because
9 that's where they can find food. And possums, they're all
10 in that area is where we get the most complaints.

11
12 COMMISSIONER BURCH: In case you wondered,
13 there's the watershed right behind my house, all of them.

14 COMMISSIONER O'DONNELL: Vice Chair Kane.

15 VICE CHAIR KANE: In lieu of Mr. Mullin's
16 comments, would you be able to develop some sort of best
17 practices on Saratoga? Do we think we're ahead of the game,
18 or can we learn something from somebody else?

19 JOEL PAULSON: I think we definitely can be
20 informed.

21 VICE CHAIR KANE: I know you've got enough to do.

22 JOEL PAULSON: Dr. Weissman has helped us be
23 informed, and with Sean's expertise as well, it's another
24 component. We can come up with other options of maybe ways
25 to try to provide wildlife corridors. They may not be as

1 extensive as what the current ordinance has, but at least
2 then you can look at options. And we'll also factor in,
3 because that's a good point on the lot size, we do have
4 nonconforming lots in the hillside area that if you look at
5 restricting it, it may be a little more challenging. But we
6 can walk through and provide some options.

7
8 VICE CHAIR KANE: Or maybe some of his comments
9 in writing, or pertinent pages from what Woodside has.

10 JOEL PAULSON: We can give you the actual
11 language.

12 COMMISSIONER O'DONNELL: I would be interested on
13 that line of we have some recommendations here which are
14 good, and I think Dr. Weissman already said in his letter
15 on some of the comments that had been made, some of which
16 he agreed with, I don't think there's any magic in 30'. On
17 the other hand, there isn't any magic against 30', except
18 that we are quite aware of the coyote thing. I mean you
19 can't live here and not be aware of the coyotes, so if I
20 had a four year old and I was up in the hills, I'd want to
21 at least protect some area.

22 When I see 30', I don't know whether that's a
23 good number or a bad number. When I see if somebody puts a
24 garden in, whether we do anything about that, whether
25 anybody puts in a gym set, so I'm more interested in not

1 don't we do this, but if we do this can we do it in a way
2 which is sympathetic to the property owner and yet
3 facilitate the animals' migration, feeding, all that? It's
4 a real question: how do you do that and try to balance
5 both? But the bottom line is we should come away with some
6 regulation that allows the animals freedom to move, but I'd
7 like to balance that against the people who live here the
8 freedom to protect, particularly, their children. You
9 unfortunately can't protect cats, you can't contain them,
10 but I see things all the time on Next Door, good old cat
11 just bit the dust.

12
13 COMMISSIONER BURCH: Can I ask one quick
14 question?

15 COMMISSIONER O'DONNELL: Sure.

16 COMMISSIONER BURCH: This is just a very quick
17 question, and I bet Dr. Weissman actually would already
18 have this information and be able to share it with you.

19 I heard what the lady said. I'm from the Midwest
20 where Lyme disease and stuff, and my uncle actually just
21 recently passed away from such a disease. I would be very
22 curious, with the knowledge of what you were just talking
23 about with children and stuff, if there is a distance. If I
24 do have small kids and they're going to be playing out in
25 the yard, is it wise for me to put my protective fence, not

1 my friendly fence, my protective fence, 15', 20'? Is 30'
2 the magic number that would allow for some type of
3 protection from that, because it is becoming more prevalent
4 here?

5 COMMISSIONER O'DONNELL: Didn't we see though
6 somebody commented that the tick is more borne not by the
7 deer but by squirrels and things like that which I don't
8 think any fences are going to keep out?

9 COMMISSIONER BURCH: And that may be true, so I'm
10 not asking for an answer now, if there is something that
11 would assist in looking at the (inaudible), I would be
12 curious.
13

14 JOEL PAULSON: We can look and see if that
15 information (inaudible).

16 COMMISSIONER O'DONNELL: Commissioner Hanssen,
17 did you have something?

18 COMMISSIONER O'DONNELL: I just had a couple
19 comments. I know we're going to discuss it more, but one
20 comment that was in the written comments mentioned about
21 the pets. Just using my own personal example, we have a
22 home in the hillsides and it happened to have a fenced in
23 yard, and this has been a great thing for our dog, and our
24 neighbors who didn't have a fenced in yard, their dog got
25 bit by the coyote, and \$2,5000 worth of surgery later it's

1 still alive, but almost died and everything. So I'm totally
2 sympathetic.

3 We have deer running through all the time. I
4 certainly am sympathetic to this whole idea of getting the
5 wildlife to be able to pass through safely, but then what
6 are people supposed to do with their pets? We have 52
7 houses in our neighborhood. I can only think of maybe five
8 families that don't have dogs. I mean you can get invisible
9 collars, but do you really want to put electronics close to
10 the brain and everything like that? So the pets thing is
11 something that concerns me in how do you make that
12 compatible with the wildlife?
13

14 And then the other thing was this 30' thing, I
15 agree with Chair O'Donnell, I'm not sure if that makes
16 sense, because most people I know use all the different
17 parts of their yard for different things, like the pool
18 might be over here, and the play swing set might be over
19 here, and a lot of it, especially in hillside lots, it's
20 going to be way more than 30' from the home, because we
21 have a minimum of one-acre lots in our neighborhood, so a
22 lot of things are going to be more than 30' from the house.
23 I had this picture of islands of fences; you get this one
24 around your pool, and this one around your garden. What's
25

1 that going to look like? I mean it might let wildlife
2 through, but it will look bad. That was one thing.

3 Then I just want to mention about the fees. I
4 heard where it came from, but there are some people that
5 have five-acre lots and they want to do the perimeter
6 thing, even if it's like 30" or something, and then someone
7 else has a 100' segment, and then they're still going to
8 have to pay \$2,500?

9 Just to give you an example, we have ponds in
10 front of our house, and we actually had a deer drown in one
11 of the ponds, and so we put the fence in to protect them
12 and children who were leaning over looking into the ponds
13 and everything like that, but we paid about \$5,000 for the
14 fence. It's a relatively open fence. But then I would have
15 to pay another 50% on top in terms of fees versus somebody
16 that had a five-acre lot. So I just wondered if maybe it
17 should be related to the amount of the fence?

18 JOEL PAULSON: We can come back with options on
19 those things. I think the one thing that comes to mind is
20 the ones that are within the 30' which is tied to the
21 ornamental landscaping requirement in the Hillside
22 Guidelines, so that was an easy link, I think, that maybe
23 those don't require permits. You can do a 6' fence and
24 you're fine, and then it's really the open fences outside
25

1 of that. And there are also opportunities for the Community
2 Development Director to make exceptions in certain
3 instances, like your pond one, for instance. I think that
4 one is probably something that would fall into that
5 classification.

6 COMMISSIONER HANSSEN: And unusual, too.

7
8 JOEL PAULSON: Yeah, so we'll come back with some
9 additional information on those things.

10 COMMISSIONER O'DONNELL: Okay, so we'll do that,
11 and I think that will allow us then to move into a Staff
12 Report.

From: Mark Muser [<mailto:lpspin@earthlink.net>]
Sent: Saturday, September 09, 2017 12:24 PM
To: Joel Paulson
Subject: Re: Fence Height Exception Request

Hello Again Mr. Paulson,

To follow up with our phone conversation in August, I have attached a purposed addition to the exceptions section of the Town of Los Gatos fence ordinance SEC. 26.10.065

My recommended addition is highlighted in red. Please review it and purpose this addition to our Towns fence regulations.

Thank You Kindly,

MarkMuser

Strathmore Pool Club

C# [REDACTED]

Sec. 29.40.030. Fences, Hedges & Walls

- A. In residential zones, fences, hedges, and walls not over 6 feet high are allowed on or within all property lines, except that no owner or occupant of any corner lot or premises in the Town shall erect or maintain upon such lot or premises any fence, hedge or wall higher than 3 feet above the curb in a traffic view area unless a permit is secured from the Town Engineer. A traffic view area is the area which is within 15 feet of a public street and within 200 feet of the right-of-way line of an intersection. Barbed wire or razor ribbon wire is prohibited in all zones.
- B. The following exceptions shall apply:
 - 1. Properties within historic districts or have a Landmark and Historic Preservation Overlay shall not have fences, hedges, and walls higher than 3 feet in a front yard except as provided in subsection 29.40.030(b)(2). Any fence, hedge or wall erected in a front yard shall be of open design.
 - 2. Gateways or entryway arbors may be higher than 6 feet in any zone including historic districts and shall be of open design but in no case shall a gateway or entryway arbor be higher than 8 feet, have a width greater than 6 feet, or have a depth greater than 4 feet. All gateways and entryway arbors shall be constructed of open design. No more than 1 gateway or entry arbor per street frontage is allowed.
 - 3. Boundary line fences or walls adjacent to commercial property may be 8 feet high if requested or agreed upon by a majority of the residential property owners.
 - 4. Properties not on a street corner, may have side yard and rear yard fences, hedges, or walls behind the front yard setback that are 8 feet high if the property owner can demonstrate to the satisfaction of the Planning Director that the following conditions exists:
 - a. A special privacy concern exists that merits the need for the eight-foot height and that these concerns cannot be practically addressed by additional landscaping or tree screening. Written justification shall be provide to the Planning Department which documents the special privacy concern, and the higher fence height may only be approved at the discretion of the Planning Director.
 - b. A special wildlife/animal problem affects the property and merits the need for the higher eight-foot height because no practical alternatives exist to address the problem. Documented instances of wildlife grazing on gardens or domestic landscaping may be an example of such a problem. Fencing proposed for rural or hillside areas shall be of an open design that does not detract from the scenic nature or character of the surrounding area.
 - c. A special safety/security concern with Home Owner Association Private Swim Pool Clubs exists that merits the need for the eight-foot height and that these concerns cannot be practically addressed by additional landscaping or tree screening.

Sean Mullin

From: Joel Paulson
Sent: Monday, September 11, 2017 9:16 PM
To: Sean Mullin
Subject: Fwd: Proposed fence ordinance

Sent from my iPhone

Begin forwarded message:

From: Marico Sayoc <MSayoc@losgatosca.gov>
Date: September 11, 2017 at 9:11:31 PM PDT
To: Bonnie Payne <bonnieapayne@comcast.net>
Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>, Joel Paulson <jpaulson@losgatosca.gov>
Subject: Re: Proposed fence ordinance

Dear Mr. and Mrs. Payne —

Thank you for sharing your objections to the proposed fence ordinance. I am copying our town staff so that your email can be shared with the Planning Commissioners who will be reviewing this proposal during their Commission hearing this Wednesday.

Marico

Marico Sayoc

Mayor, Town of Los Gatos

On Sep 11, 2017, at 6:08 PM, Bonnie Payne <bonnieapayne@comcast.net> wrote:

September 11, 2017

Dear Mayor Sayoc,

I wish to go on record as objecting to the new fence ordinance proposal. It is hard to believe that the fence that surrounds our property could not be repaired or replaced in its current location, which includes the orchard we have been nurturing for 20 years and further from our house than 30 feet. Does that mean that our orchard needs to be abandoned if our fence ever needs to be repaired?

Please reject this proposal!

Sincerely,

Bonnie and Richard Payne

16216 Kennedy Road, Los Gatos 95032

Sean Mullin

From: Joel Paulson
Sent: Monday, September 11, 2017 9:58 PM
To: Sean Mullin
Subject: Fwd: objection to Town Code Amendment A-17-002

Sent from my iPhone

Begin forwarded message:

From: Marico Sayoc <MSayoc@losgatosca.gov>
Date: September 11, 2017 at 9:25:30 PM PDT
To: Richard Payne <rkpayne1@mac.com>
Cc: Laurel Prevetti <LPrevetti@losgatosca.gov>, Joel Paulson <jpaulson@losgatosca.gov>
Subject: Re: objection to Town Code Amendment A-17-002

Hello Mr. Payne —

I am sharing your email (and your wife's email) to our town staff so that they may share your concerns with the Planning Commission. They will review this proposed change on Wednesday and your emails will be included in public comments for their consideration.

Marico

Marico Sayoc

Mayor, Town of Los Gatos

On Sep 11, 2017, at 8:01 PM, Richard Payne <rkpayne1@mac.com> wrote:

Dear Mayor Sayoc,

The proposed ordinance amendment would very negatively effect our quality of life. We have invested a great deal in developing an orchard on land that was orchard when the house was built in 1949. And in which we have lived for over 25 years, developing an orchard on our property. The only way that we can protect our investment from being destroyed by deer is to have it fenced. While I understand that the goal is to allow animals opportunities to move through the town, a goal of which I approve, there is a difference between mandating something like openings that enable coyotes, raccoons, foxes and so on freedom of movement, and not being able to protect from deer.

As described I strongly object to the amendment,

yours,

Richard Payne
16216 Kennedy Road
Los Gatos, CA 95032
408.358.3332

Sean Mullin

From: David Weissman <gryllus@gmail.com>
Sent: Tuesday, September 12, 2017 9:07 AM
To: Sean Mullin; Joel Paulson
Subject: Fence Ordinance revision
Attachments: Fence. 9-13-2017.To.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Sean and Joel,
Please send the attached document to the PC members for the PC meeting on Wednesday, Sept 13th.

Thank you.
Dave

--
Dave Weissman
15431 Francis Oaks Way
Los Gatos, CA 95032
H: (408) 358-3556
gryllus@gmail.com

To: Planning Commission, meeting of 9/13/2017

Re: Fence Ordinance

From: Dave Weissman, 9/12/2017

At the prior meeting of 7/26/2017, Commissioner Hanssen asked why there is a need for this ordinance revision? The Town needs this new language because the 2020 General Plan Policy, LU-1.3, says that a Town policy and goal is to "Preserve ...wildlife habitats in new and existing developments" and the HDS&G require that hillside open views be maintained and that wildlife corridors be protected. The current fence ordinance does neither. Additionally, at the last meeting, the PC heard from 3 local experts, from the Loma Prieta Chapter of the Sierra Club, Santa Clara County Audubon Society, and Committee for Green Foothills, as to why animal-friendly movement hillsides are important to the integrity of our urban forests. We need to protect the animals within our hillsides as much as we protect our trees.

With these considerations in mind, I propose the following 5 changes/additions to staff's draft, shown below in **bold, italics, and underlined**.

I urge that you approve Staff's draft, with my proposed changes (of course), and send this document onto the TC with the recommendation for adoption.

Sec. 29.40.030. Fences, walls, gates, gateways, entry arbors, and hedges.

Sec. 29.40.030xx. - Purpose and intent. The Fence Ordinance is divided into two parts: non-hillside and hillside areas. The use of fences, walls, gates, gateways, entry arbors, and hedges in the hillside areas shall be minimized and located so that natural landforms appear to flow together and are not disconnected. The primary emphasis shall be on maintaining open views, protecting wildlife corridors, and maintaining the rural, open, and natural character of the hillsides. Additional details are available in the Town's Hillside Development Standards and Guidelines, **including the statement on page 43: "Fences shall not be allowed in areas that would impede the movement of wildlife..." Additionally from photo caption on page 42, "Rural character allows wildlife to pass through."**

Sec. 29.40.030xx. - Definitions. The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section. Fence means a man-made structure serving as a barrier or screen constructed of wood, metal, wire, masonry, glass, plastic,

stone or any material. Fence height means measured from finished grade and shall be measured from either side of the property line which affords affected property owners the most buffering from noise, light, glare, or privacy impacts. Hedge means a boundary formed by closely growing deciduous or evergreen bushes or shrubs. Hillside lot means a parcel of land that is shown on the Hillside Area Map in the Hillside Development Standards and Guidelines regardless of zoning district. Movement corridor means a movement pathway that is typically independent of season and used by animals on a near daily basis for the acquisition of food, shelter, water, and mates. Open-view design means a fence or other structure that permits views through it. Planting Zone 1 means that area within a 30-foot radius of the primary dwelling unit on a hillside lot. Retaining wall means a man-made structure designed to retain soil. Riparian corridor means an area comprised of habitat strongly influenced and delineated by the presence of perennial or intermittent streams. Page 2 of 6 Draft 9/8/17 Draft Amendments to Chapter 29 of Town Code - Hillside Fences Stream means a body of water that flows at least periodically or intermittently through a bed or channel having banks. The body of water may include watercourses having a surface or subsurface flow that supports or has supported riparian vegetation, fish, or aquatic life. Top of bank means a stream boundary where a majority of normal discharges and channel forming activities take place. The top of bank will contain the active channel, active floodplain, and their associated banks. Where there are no distinguishable features to locate the top of bank, the local permitting agency will make a determination and document as appropriate. In the absence of this determination, the 100-year water surface will be used. Traffic view area means that area, on corner lots, which is within fifteen (15) feet of a public street and within two hundred (200) feet of the right-of-way line of an intersection, or a distance of thirty (30) feet measured horizontally in any direction from the point of intersection of the property lines at street corners. Wall means a man-made structure that defines an area, carries a load, or provides shelter or security. Wildlife-friendly design means a fence, wall, hedge, or other structure that permits any animal, regardless of size, to easily climb under, pass through, or jump over.

Sec. 29.40.030xx. - Non-hillside lots: Proposed new fences, walls, gates, gateways, entry arbors, and hedges.

(A) In residential zones, no permits are required for the repair, replacement, or construction of fences, walls, gates, gateways, entry arbors, or hedges that are less than six (6) feet high on, or within all property lines.

(B) The following height exceptions shall apply: (1) Corner lot: In a traffic view area, no corner lot or premises in the Town shall have any fence, wall, gate, gateway, entry arbor, or hedge higher than three (3) feet above the curb unless permission is secured from the Town Engineer. (2) Properties not on a street corner: At the discretion of the Director of Community Development, side yard and rear yard fences, walls, gate, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification to the Planning Department that demonstrates either of the following conditions exists: a. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening. b. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem. (3) Historic Districts and/or Landmark and Historic Preservation Overlay: The

maximum height of fences in the front yard shall be three (3) feet and shall be of open-view design. (4) Gateways or entryway arbors: May be up to eight (8) feet high, including within Historic Districts or for properties with a Landmark and Historic Preservation Overlay, and shall be of open-view design. A gateway or entryway arbor shall have a maximum width of six (6) feet and a maximum depth of four (4) feet. No more than one (1) gateway or entryway arbor per street frontage is allowed. Page 3 of 6 Draft 9/8/17 Draft Amendments to Chapter 29 of Town Code - Hillside Fences (5) Adjacent to commercial property: Boundary line fences or walls adjacent to commercial property may be eight (8) feet high if requested or agreed upon by a majority of the adjacent residential property owners.

(C) Materials. The type of fencing materials within the non-hillside zone are generally unrestricted, and fences can be a combination of materials, with the following exceptions: (1) Plastic fencing is discouraged everywhere and is prohibited in Historic Districts. (2) Barbed wire or razor ribbon wire is prohibited in all zones.

Sec. 29.40.030xx. - Hillside lots: Proposed new fences, walls, gates, gateways, entry arbors, and hedges. This division section covers any new fence, wall, gate, gateway, entry arbor, or hedge, and the replacement, modification, and/or repair of any existing fence, wall, gate, gateway, entry arbor, or hedge whether the primary dwelling unit is new or existing. In the absence of a primary dwelling unit, an entire hillside lot, including any accessory structures such as a barn, storage shed, stable, or similar structure, shall be covered by the conditions of this Section.

(A) Within 30 feet of primary dwelling unit (Planting Zone 1): (1) Approvals: Minor Residential Development approval is required pursuant to Section 29.20.480(2)(h). The permit shall be posted on site during construction. (2) Are subject to the provisions of Sec. 29.40.030, Non-hillside residential lots above. (3) Riparian corridor. No fence, wall, gate or hedge shall be constructed within a riparian corridor or within 30 feet of its top of bank. (4) Prohibited materials. Barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors, are prohibited.

(B) Greater than 30 feet from primary dwelling unit (outside Planting Zone 1): (1) Approvals: Minor Residential Development approval is required pursuant to Section 29.20.480(2)(h). The permit shall be posted on site during construction. (2) Accessory structures. Fences associated with accessory structures, if located farther than 30 feet from the primary dwelling unit, shall be governed by this section. (3) Wildlife friendly. All fences, walls, gates, and hedges shall be of wildlife-friendly design. If a new hillside fence is, in part, closer than 30 feet to the primary dwelling unit and, elsewhere, farther than 30 feet from the primary dwelling unit, the portion that is farther than 30 feet shall be of wildlife-friendly design. (4) Maximum height: a. New fences. The maximum height of new fences shall be 42 inches. b. Hedges. Hedges shall be maintained at a maximum height of 60 inches (5 feet). c. Hedges shall have two- to four-foot-wide gaps at least every 25 feet. (5) Minimum height above grade: a. New Fences. The minimum height above grade of new fences shall be 16 inches. (6) The following fence types are not of wildlife-friendly design and are therefore prohibited: a. Chain-link, chicken wire, welded wire, wire mesh, cyclone or similar fence material Page 4 of 6 Draft 9/8/17 Draft Amendments to Chapter 29 of Town Code - Hillside Fences b. Buck and rail fences. c. Any fence with bare lengths of wire stretched between posts. d. Electric fences, including any fence designed to produce an electric shock, except where necessary for animal husbandry operations. e. Barbed or razor wire fences,

including any fence with attached barbs, sharp points, or razors. (7) Fence design. a. Fences shall be of an open-view design that does not detract from the scenic nature or character of the surrounding area. b. Traditional split-rail fences are encouraged. Rural styles shall emphasize natural colors such as brown, grey or green. c. Fences shall have a top level of wood (or similar material) rail rather than wire. d. Split rail fences shall include a minimum 12-inch spacing between rails wherever feasible. e. Hedge plant species shall consist of those listed in Appendix A of the Hillside Development Standards and Guidelines. f. The spacing of vertical fence posts shall be at least 8 feet apart, unless physically impossible due to terrain or other conditions. (from HDS&G, page 43) g. "Only open fencing shall be located within 20 feet of a property line adjacent to a street." (8) Fence, wall, gate, and hedge siting: a. Fences and hedges shall be located to follow natural contours, whenever possible. b. Fences and hedges shall be located to avoid impacts to trees, animal movement corridors, and other natural features. (from HDS&G, page 43) "Fences shall not be allowed in areas that would impede the movement of wildlife...". No fence, wall, gate or hedge shall be constructed within a riparian corridor, stream, or within 30 feet of its top of bank. d. No fence, wall, gate, or hedge shall be constructed in the public or private right-of-way or within any trail easement or other easement precluding their construction unless allowed, in writing, by the Town Engineer. (9) Walls: a. Walls are prohibited unless needed for privacy as determined by the Director of Community Development. b. Town approved retaining walls are permitted.

(C) Replacement or modification of existing fences, walls, hedges or gates: (1) Shall be subject to the requirements in this Ordinance. The permit will be posted on site during construction. (2) Are encouraged if such changes improve wildlife movement or animal corridors. (3) Replacement or modification of any fence, wall, hedge or gate shall be prohibited if the Town Engineer determines that a public safety hazard exists.

(D) Repair. A permit is not required for repair of short sections of existing fences, walls, or hedges no greater than 50 percent of fence, wall, or hedge provided no other repair work is done on the same structure over a 12- month period.

(E) Exceptions: (1) Fences around swimming pools, outdoor sports courts, and similar structures are not required to be of wildlife-friendly design, even if farther than 30 feet from the primary dwelling unit (see Sec. 29.10.09020 for other swimming pool requirements). Sport court fencing may be 12 feet in height. (2) A temporary (1 to 3 year), animal excluding, circular enclosing fence may be erected to protect a newly planted tree or shrub. (3) Enclosure fencing around vineyards, orchards, and vegetable gardens shall be limited to those areas requiring enclosure and does not have to be wildlife friendly even if farther than 30 feet from the primary dwelling unit. (from HDS&G, page 43) "Deer fencing shall be limited to areas around ornamental landscaping. Larger areas shall not be enclosed..." (The HDS&G already limits ornamental landscaping to planting zone 1, within 30' of the primary dwelling). (4) Fences needed for livestock control do not have to be of wildlife-friendly design even if farther than 30 feet from the primary dwelling unit. (5) Security fencing required to protect a public utility installation does not have to be wildlife friendly. (6) Written exceptions may be granted when the Director of Community Development finds that the strict application of these requirements will result in an extreme hardship for the property owner.

(F) Fees. The fee, as adopted by Town Resolution for Minor Residential development, prescribed therefore in the municipal fee schedule, shall accompany any application for a fence in the Hillside area submitted to the Town for review and evaluation pursuant to this division.

(G) Enforcement. Any fence, wall, gate, gateway, entry arbor, or hedge constructed, replaced, modified, or repaired without required approval, is a violation of this Code.

(H) Where a conflict exists between the Covenants, Conditions, and Restrictions (CC&Rs) of a hillside Planned Development (PD) and this document, the requirements of this document shall prevail.

(I) Notices. Noticing shall comply with the public noticing procedures of section 29.20.480 of the Town Code. (Ord. No.1316, § 4.10.020, 6-7-76; Ord. No. 1493, 3-17-81; Ord. No. 1873, §I, 10-7-91; Ord. No. 2049, § I, 10-5-98; Ord. No. 2062, §I, 6-21-99; Ord. No. XXXX, §)

Sean Mullin

From: Janette Judd
Sent: Tuesday, September 12, 2017 10:34 AM
To: adonkathy@aol.com
Cc: Sean Mullin; Joel Paulson
Subject: FW: Fence Ordinance

cc: Town Council
Town Manager
CDD Director J. Paulson
Associate Planner S. Mullin

Good morning,

Thank you for your e-mail, received by the Town Council and Town Manager. This matter is currently scheduled for discussion at the September 13 Planning Commission meeting. Your communication was received after the Planning Commission agenda was finalized and after initial public submittal deadlines. However, your comments will be included (along with all Public Comment) in supplemental materials distributed for tomorrow's meeting, as well as any subsequent Town Council meeting discussion.

By copy of this message your comments are referred to Associate Planner Sean Mullin, staff liaison for matter. Should you have additional questions or comments, Sean can be reached at (408) 354-6823 or by email, SMullin@LosGatosCA.gov.

Thank you once again for contacting the Town of Los Gatos and voicing your comments.
Best regards,



Janette Judd • Executive Assistant

Town Council and Town Manager • 110 E. Main St., Los Gatos CA 95030

Ph: 408.354.6832 • JJudd@LosGatosCA.gov

www.LosGatosCA.gov • <https://www.facebook.com/losgatosca>

-----Original Message-----

From: Don & Kathy [mailto:adonkathy@aol.com]

Sent: Monday, September 11, 2017 6:30 PM

To: Council

Subject: Fence Ordinance

I was shocked to read the facts concerning the new fence ordinance. At first I thought it was "fake news". I cannot understand the reasoning behind such an ordinance. I ask the Town Council to use good judgment and vote against such an abusive home owner's ordinance. I would also wonder what the thinking was that went into even coming up with such regulations.

I think more time should be spent on trying to solve the horrific traffic problems.

Kathy Anderson
Foster Rd.
95030

Sent from my iPad

Sean Mullin

From: Janette Judd
Sent: Tuesday, September 12, 2017 10:36 AM
To: dr_jkim@verizon.net
Cc: Joel Paulson; Sean Mullin
Subject: FW: comments regarding fence ordinance
Attachments: FenceOrdinance_DrKim.pdf

cc: Town Council
Town Manager
CDD Director J. Paulson
Associate Planner S. Mullin

Good morning,

Thank you for your e-mail and attached letter, received by the Town Council and Town Manager. This matter is currently scheduled for discussion at the September 13 Planning Commission meeting. Your communication was received after the Planning Commission agenda was finalized and after initial public submittal deadlines. However, your comments will be included (along with all Public Comment) in supplemental materials distributed for tomorrow's meeting, as well as any subsequent Town Council meeting discussion.

By copy of this message your comments are referred to Associate Planner Sean Mullin, staff liaison for matter. Should you have additional questions or comments, Sean can be reached at (408) 354-6823 or by email, SMullin@LosGatosCA.gov.

Thank you once again for contacting the Town of Los Gatos and voicing your comments.
Best regards,



Janette Judd • Executive Assistant

Town Council and Town Manager • 110 E. Main St., Los Gatos CA 95030

Ph: 408.354.6832 • JJudd@LosGatosCA.gov

www.LosGatosCA.gov • <https://www.facebook.com/losgatosca>

From: Julie Kurkchubasche [mailto:dr_jkim@verizon.net]
Sent: Monday, September 11, 2017 9:09 PM
To: Council; Town Manager
Subject: comments regarding fence ordinance

Dear Council Members,

Please see my letter addressing the upcoming fencing ordinance in the attachment.

Thank You,

Julie Kim, MD
dr_jkim@verizon.net

-----Original Message-----

To: Julie Kim <dr_jkim@verizon.net>

Sent: Mon, Sep 11, 2017 9:04 pm

9/1/17

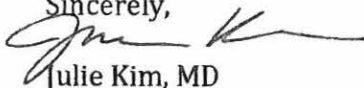
Dear Members of the Los Gatos Planning Commission,

I am a proud resident of Los Gatos and your local Pediatrician for 25 years. I am vested in our town and look forward to residing here for many years to come. We have a lovely home in the hills that we work VERY hard to maintain with beautiful trees and vineyard (permitted). I'm writing to voice (along with many residents like me who spend many hours and many dollars to keep their properties beautiful), how disappointed we are at the new pending fence ordinance.

First of all, we don't need another ordinance to dictate how we should maintain our property. I think we have enough. We have existing guidelines on fencing that work very well. We see wildlife all around us, including many family of deers, coyotes, wild turkeys, bobcats and more. I could hardly keep up with plants being eaten by our wildlife in front of my house. There are no deer resistant plants-not really. The cost to replace them just in the front of the house is tremendous. If we don't have a decent fence to keep some of the wildlife from devouring plants in our backyard, what's the use of all the hard work of maintaining our land? It will be replaced by ugly weed, thistle and poison oak. Before our fence was erected near our property line, everything beautiful was devoured even in our immediate backyard. For instance, our family went on a short vacation overseas. On the last day of our trip, at the airport, one of our neighbors called and informed us that 2 deers had gotten into our immediate backyard and devastated our yard. All the hard work of planting and beautifying our yard, not to mention the cost, all went down the drain. It was heartbreaking. We had to start all over again. We have not had this problem since the peripheral fence was installed. Also, one of our major reason for purchasing our house was for our land. I will not be able to enjoy a view of any other tree beside an oak on our property because it will get devoured.

With current existing regulations, we and our neighbors can work together on our own and figure out and create passageways for wildlife. We did just that. We carved out passageways for wildlife to roam and it must be working because I can give you pictures of many wildlife that pass through our property. Finally, I and many of my neighbors do not wish to pay thousands of dollars to have to get a permit to fix our fence, let alone the time and additional work which it will entail. The cost of living in our town is tremendous and we work long hours at our jobs to be able to afford the pleasure of living here. Please don't burden us with yet another cost to live in Los Gatos.

Sincerely,



Julie Kim, MD
RAMBLC Pediatrics
14880 Los Gatos Blvd.
Los Gatos, CA 95032