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

Los Gatos Planning Commissioners:	Kendra Burch, Chair Jeffrey Barnett, Vice Chair Susan Burnett Adam Mayer Rob Stump Emily Thomas
Community Development Director:	Joel Paulson
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P R O C E E D I N G S:

CHAIR BURCH: We will now reopen the meeting, and we are now on to Item 3. Forward a recommendation to the Town Council on an ordinance amending Chapter 4 (Animals and Fowl) and Chapter 29 (Zoning Regulations) of the Town Code regarding electronic pet containment and the Town's fence regulations. The proposed amendments to the Town Code are not considered a project under Section 15378 of the California Environmental Quality Act. Town Code Amendment Application A-26-006. Project location is Town Wide, and the Applicant is the Town of Los Gatos.

Mr. Mullins, are you going to be giving the Staff Report? Oh, Ms. Whelan.

ATTORNEY WHELAN: Good evening, are you ready? Gabrielle Whelan, Town Attorney, and I will be presenting this item to the Planning Commission.

The Town Council held a study session approximately three months ago to discuss the topic of electronic pet containment and recommended that my office prepare an ordinance for consideration by the Planning Commission. The proposal is to amend Town Code Section 4.40.005 to recognize underground electronic fence systems

as an approved method of pet containment on properties in a hillside of an acre or more in size.

What electronic pet containment systems are is using a buried wire that establishes a containment boundary for pets, and the pets wear a collar, and when they cross the boundary they receive an electric shook.

There is State law on this topic, which does allow local jurisdictions to provide for electronic pet containment systems for most pets, however, an actual physical enclosure is required for potentially dangerous or vicious dogs.

Currently, the Town Code requires that dogs either be on a leash or confined behind a 6’ fence. However, there is another provision that applies solely to properties in the hillside areas of town, and that’s located in the Town’s Zoning Code, and that provides that in the hillside area fences can’t exceed 6’, and on properties of one acre or more perimeter fencing must be wildlife-friendly. The ordinance goes on to define what constitutes a wildlife-friendly fence, and it’s defined as “a fence that allows any animals, regardless of size, to climb under, pass through, or jump over, with a maximum height of 42 inches and a minimum distance between the bottom rail and the ground at 18”.

The problem that has arisen is that wildlife-friendly fences do not contain animals, and so properties of one acre or more in the hillside area are limited with regard to how they can contain their pets.

There is another State law on point called the "Room to Roam Act," and that does require cities to consider wildlife movement when they're planning new development, and the goal is to allow animals to move safely throughout property.

With regard to the Town changing its ordinance to allow electronic pet containment, there are pros and cons to such an amendment, and so I wanted to spend some time talking about those.

The pros are that it would resolve an existing conflict between Town Code Sections 4.40.005 and 29.40.0315 in that Chapter 4.40 requires that pets be contained, and then the Zoning Code requires that it be a wildlife-friendly fence.

Amending the code would also support wildlife movement consistent with the Room to Roam Act. It is a cost-effective option for hillside and large acreage properties. It's also an option that works well on large or uneven terrain where it's difficult to build a standard fence.

There are also cons for the Planning Commission to consider. The first con is that electronic correction can hurt pets. The electronic fence would not keep wildlife or stray animals off of property, and that pets do occasionally escape when the electronic pet containment system fails or if their battery dies.

With regard to other California jurisdictions that allow electronic pet containment, there are regulations that allow them in the County of San Diego, the City of Del March, the City of Salinas, the County of Monterey, the City of Rolling Hills, and locally Santa Clara County and Los Altos Hills are working on wildlife-friendly fencing regulations, but not specifically electronic pet containment.

There is a redline of the proposed changes in the Planning Commission's packet, and the gist of changes is that the ordinance would permit the use of electronic dog fences of properties of one acre or more in the hillside area, however, to match with State law, the ordinance would prohibit the use of electronic dog fences to confine potentially dangerous or vicious dogs. The ordinance would also define what constitutes a hidden, underground electronic fence.

If the Planning Commission opts to recommend that the Town Council introduce the ordinance, then the ordinance would be scheduled for a future Town Council meeting for consideration.

I'm available as questions come up this evening.

CHAIR BURCH: Thank you. I do have one question. How do you define a dangerous dog?

ATTORNEY WHELAN: We define it in our local Town Code, and our definition derives from State law, and there is a procedure in State law where an animal control officer can petition a court to have the dog declared either potentially dangerous or vicious. I did hand out the definition section that defines those terms, and then I have copies of those definitions on the table at the front of the Council chambers as well, and if it would be helpful, I could read that into the record.

CHAIR BURCH: All right, thank you. Commissioner Stump.

COMMISSIONER STUMP: Thank you for the other jurisdictions that have implemented this. I found it interesting though that only—was it Los Altos Hills?—is looking at that locally. I was kind of hoping we'd have more local examples, because obviously Saratoga and Monte Sereno and parts of Cupertino are very much like Los Gatos,

and it's interesting that perhaps—I don't know if you queried all of them—but if they have not gone that direction and why they have not gone in that direction, because I do think there are some concerns, and I know we'll get into those a little bit later.

But thank you, again, for that information. Did you actually query Saratoga, Monte Sereno, etc.?

ATTORNEY WHELAN: No, I literally searched on the Internet to see which other cities had electronic fencing regulations in place.

COMMISSIONER STUMP: Thank you.

CHAIR BURCH: Are there any other questions of Staff? Commissioner Mayer.

COMMISSIONER MAYER: For the Town Attorney. I just wondered, where did the definition for wildlife-friendly fence come from? Is that something that the Town came up with in its own code, or did it refer to some other law from somewhere else?

SEAN MULLIN: I can jump in, just because the Town Attorney wasn't here during this effort. I think in 2019-2020 the Town's Fence Ordinance was significantly updated and introduced the term "wildlife-friendly fencing." That language was, I think, the original drafts of it were kind of pulled from other hillside communities

of the peninsula, and massaged through the Planning Commission and Town Council review to what you see in front of you today.

COMMISSIONER MAYER: Follow-up question. So, the metrics maximum height of 42" and a minimum distance between the bottom rail and the ground of 18", that's just something the Town arrived at through research?

SEAN MULLIN: Yes.

COMMISSIONER MAYER: It's not like a State law?

SEAN MULLIN: To my recollection, we referenced a lot of different documents, not just town ordinances. My memory is failing, but I know that we referenced technical documents about wildlife-friendly fencing and used the dimensions from them. So, we didn't just arrive at them out of the blue; it was an educated guess.

COMMISSIONER MAYER: Got it. Thanks.

CHAIR BURCH: Commissioner Stump.

COMMISSIONER STUMP: I'm not sure if this is an appropriate question or not, but you referenced a study session on this. I'm not asking by name, but was this study session well attended? Were there groups that presented?

ATTORNEY WHELAN: No, I would say it was sparsely attended.

COMMISSIONER STUMP: You said lightly attended?

ATTORNEY WHELAN: Yes.

COMMISSIONER STUMP: Okay, thank you.

CHAIR BURCH: Any other questions? Vice Chair Barnett.

VICE CHAIR BARNETT: Would it be fair to add to the list of cons that a vicious dog could breach an electronic fence?

ATTORNEY WHELAN: Yes, I think that's accurate.

VICE CHAIR BARNETT: Thank you.

CHAIR BURCH: Any other questions? Commissioner Stump.

COMMISSIONER STUMP: Once again, the purveyor of inappropriate questions. Was there any discussion about how these electric containment fences work? So, if a dog breaches containment, does it continue to get a constant shock, or does that shock end once it gets across, and now it's 10' across, and there is no longer any signal? Then again, maybe the dog doesn't want to come back, but what happens with, I guess, a "typical" system?

ATTORNEY WHELAN: There was no discussion of that, and I actually don't know the answer to that question.

COMMISSIONER STUMP: Thank you.

CHAIR BURCH: Commissioner Thomas.

COMMISSIONER THOMAS: What was the list of cons again? Can we just see that?

CHAIR BURCH: I have it is a shock to animals, other animals can obviously still get onto your property, and they can fail if like the battery dies.

COMMISSIONER THOMAS: Okay. Oh, so like separately? Okay, I understand what Commissioner Barnett was trying to add. I thought it said that pets can escape, but specifically you're saying just if it fails in general, specifically a vicious dog an escape.

VICE CHAIR BARNETT: Maybe I should say my comments after public comment.

COMMISSIONER THOMAS: No, no, you were clarifying. We're just clarifying.

VICE CHAIR BARNETT: Well, I undertook research to determine potential problems with electronic fences, and it seems to be well established that a vicious dog, amped up, will go through the electronic fence, and that's the point I was trying to make.

CHAIR BURCH: Okay, thank you. Any other questions? Yes, Commissioner Burnett.

COMMISSIONER BURNETT: During discussion, I can give examples of an electronic fence for my dog, Wesley.

CHAIR BURCH: All right. Any others? Okay, here was my thought. I'm going to use the marked-up version, because it's going to allow us to see… Oh, gosh, sorry. Yeah, I was like jumping right into it. I was ready to plan. I'm now going to open the public portion of Item 3 and call Nazzi Shishido.

NAZZI SHISHIDO: Good afternoon, my name is Nazzi Shishido and this is my first time on coming to the Planning Commission. I know Mr. Paulson, I know Mr. Mullen, and the reason I got involved is first of all, thank you, Ms. Whelan for informing me that there is a lot of confusion by one petitioner about this subject.

We have two zones in the hillside, and I'm a homeowner of hillside property below sub-acre, so some confusion has been created that this is for all hillside, and I'm very glad to know that we will remain the sub-acre pet containment to a physical fence of 6', which exists today.

2017 through 2019, there were wildlife animal welfare environmentalists. There were thousands of residents of Los Gatos involved. Mr. Paulson's and Mr. Mullin's group did an amazing job, and it took two-and-a-half years to make sure that we do have rules that satisfy the wildlife and the Room to Roam Act, as well as give

permission to homeowners to have fences. Some people want them for their children, some want them for pets, some people want for diseases, for privacy. So, sub-one acre has the option to have a 6' fence, and that's for pet containment. That's going to remain the same, so thank you, and I know that you will provide that to the Council, and I was at the Council meeting.

What I want to say about pet electronic fences, there is 17 pages of document that has been submitted to the Town, and in that document, which I have reviewed it and I will say the majority of it, 90%, is unsupported.

One of the biggest things is that it is claimed that the Silicon Valley Animal Control—which I have worked with them and I have contacted them—supported this. They don't. They do not support electronic fences. They will do whatever you recommend to the Commission, and if the Council says yes, then they will go ahead and figure out how to implement it.

Electronic fences do not work. I live next to a person who had an electronic fence, and I know people who have electronic fences. In Santa Clara County it is banned. It is not a way to contain animals.

First, we lose electricity. When we lose electricity, that system does not work, and all this

nonsense about battery backup and all that stuff does not work.

It shocks the animal. Just think about it.

CHAIR BURCH: That was actually time. However, hold on. Let's see are there any questions for the speaker?

VICE CHAIR BARNETT: Could you summarize the other points that you had in mind?

NAZZI SHISHIDO: Yes, thank you.

VICE CHAIR BARNETT: Thank you.

NAZZI SHISHIDO: Just imagine you have a dog. You are assuming every owner is responsible. You assume every owner has the right intention for the electronic fence. You assume their pet doesn't have behavioral issues that is not known to the public. You assume he graduated from Cupcake Camp, and you assume they're not a hunting dog, they're not a big dog. I'm a very small person, and a lot of the big hunting dogs are bigger than me.

Just think about this. You are this dog that is sitting in the middle of a hillside property with the squirrels going around, with pedestrians walking by the road, with all sorts of distractions. He is a dog. I have a doodle; he is very smart, but he's a dog. He's smart till he's not smart. So, this dog is sitting in the hillside, sees this squirrel. He is bored. He decided to go and cross

that electronic fence, and then he gets shocked, which no homeowner wants their dog shocked if they're a good, responsible homeowner. He's going to pass through that electronic fence that normally our experience was 90% never worked, and so he's going to pass to get the squirrel.

Now, he got shocked. He doesn't want to come back. Guess what it does? It's going to go to the street. From the street it's going to be into the car. An accident. Pedestrian…

VICE CHAIR BARNETT: I'm sorry, I was looking for kind of a concise summary of the points.

NAZZI SHISHIDO: I am sorry.

VICE CHAIR BARNETT: We definitely have your point on that, but is there anything else you wanted to add then, and substantive?

NAZZI SHISHIDO: They fail. We live in hillside property. How many times do you lose electricity of PG&E? Then it's not going to work.

VICE CHAIR BARNETT: Okay, we heard that.

NAZZI SHISHIDO: We have wildlife. The wires are chewed. Also, electronic fence company, it's business for them.

CHAIR BURCH: Other Commissioners have questions, so hold, please. Commissioner Stump.

COMMISSIONER STUMP: So, as we consider this item this evening, what is it that you would ask us to do?

NAZZI SHISHIDO: I ask you to please never, ever pass sub-acre on the hillside. If you want to do this for a ten-acre, I still consider it no, but I really do not want to give input since my property is not ten acres, so that is something to be left for public owners that are above one acre to come in and discuss this with you, because we live in the Town of Los Gatos. One petitioner should not make the things change.

I have talked to the wildlife people; I think they have sent you a letter. It would be they were involved for two-and-a-half years. They were outraged that this has even got considered.

CHAIR BURCH: I think I've got it. Thank you.

COMMISSIONER STUMP: Thank you.

NAZZI SHISHIDO: Thank you very much.

CHAIR BURCH: Are there any other questions? All right, thank you. Keith Blaine.

KEITH BLAINE: Good evening. My name is Keith Blaine. I am the individual referenced in documents that you guys have in front of you. I just wanted to address some of the comments in my time.

As it relates to Silicon Valley Animal Control's support that was related to my individual dog when they came out to my property on two occasions, they acknowledged that he was contained. Obviously, their "authority" is actually this town's laws and codes, so they're just enforcing it. So, just to address that support from them. They're not necessarily an agency.

It states that Petitioner, me, made two inaccurate claims. "Petitioner states that the Section 4.40.0054, Animal Code, was written in the seventies, and there are only two forms." I agree that it's a leash and 6', and then it references the Hillside Fence Code, which is 29.40.0315, and as we discussed earlier today, thanks to our attorney, that that's 42" tall, 18" above ground, so that's 24" of solid area. That fence is intended for one-acre perimeter.

What a lot of residents do, in speaking with Code Enforcement, is in order to get a solid fence and to bypass the Hillside Fence Code for a fence they come in 3', and so you then have that solid fence. We're missing the intent of the wildlife corridor and the intent of the code.

I think I actually have a sub-one-acre lot, and I'm a hillside resident. Our town has 1,103 hillside residents. I do support the concerns of the community. If

we would like to open the discussion up to that 1,103 residents and come to a conclusion, I'm more than happy to do this. This is something that's important to me to live here. Commissioner Burnett, you have a dog fence. The Town Council acknowledged that solid fences are only as successful as the gate being closed. The system becomes a little bit more passive. It is dependent on low voltage, so that's 12 volts. Any questions?

CHAIR BURCH: For the sake of fairness, I'm going to also ask you if you want to summarize your thoughts.

KEITH BLAINE: In doing this, I did quite a bit of research, and I submitted that with her attorney. There are at least 400 of these fences installed within the Los Gatos town and adjacent hillside. I think our dog was very happy with the ability to run around. I know my boys were happy with that ability for the dog to run around. I know our other neighbors have similar technology.

I do want to address the vicious dog comment. The ordinance as the proposal is written is that this does not apply to them. If you are a listed registered vicious dog, then this containment method doesn't apply, so that's not a conflict there.

CHAIR BURCH: All right. Are there any questions for the speaker? Commissioner Stump.

COMMISSIONER STUMP: Again, what was your reference to 1,100 hillside residents?

KEITH BLAINE: Speaking with Planning or one of the (inaudible) departments, I was able to receive a list of the hillside resident HR zoned residents, and that number came in at close to 1,300, but if you take out PG&E, you take out San Jose Water, and you take all the different utilities that own property in the hillside, there is then 1,100 residents with owners of various LLCs and trusts.

COMMISSIONER STUMP: And again, you mentioned that there were a certain number of electronic fences already installed up in the hillside. What was that number again?

KEITH BLAINE: That is 400 of the brand that I have, which is DogWatch. There are other manufacturers for which I don't have those statistics, so it could be higher. The term "invisible fence" is a brand name, so it's trademarked, but the one that we have and the one that our other neighbor on the street has is DogWatch.

COMMISSIONER STUMP: How large is your property?

KEITH BLAINE: I think it's .87.

COMMISSIONER STUMP: Okay, thank you.

CHAIR BURCH: Any other questions for the speaker? Vice Chair Barnett.

VICE CHAIR BARNETT: When Ms. Shishido mentioned a 17-page document, is that something you submitted to the Town?

KEITH BLAINE: I did to the Town Council, yes.

VICE CHAIR BARNETT: Oh, to the Council. Okay, we didn't see it in our packet. Thank you.

And then has your dog been the subject of an investigation by the Town or of the County for potentially vicious behavior?

KEITH BLAINE: My dog is not—I'm not sure what the term is—classified or has not been qualified as a vicious dog. He's a Weimaraner, was a Weimaraner. Silicon Valley came out twice to give us notice in discussions with them on the phone and onsite, and they said that okay, he is contained, and they stopped citing us or responding to solicitations to come out to the site.

Then I received three citations from the Town Code Enforcement, and then in discussion, or in this forum with the Town Council, our Town Manager acknowledged retroactively that those three citations actually would not stand, because the dog in all three citations was actually on my property at the time of citation.

VICE CHAIR BARNETT: So, what is the containment that you have for your Weimaraner?

KEITH BLAINE: It's this DogWatch technology, which is a 12-volt underground radio that transmits to a radio receiver on the collar. From the battery standpoint, lithium batteries, the battery in the collar lasts over a year, and the system can easily have a 12-volt battery just like your fire alarm, your home security, that would sustain for days on that 12-volt system.

VICE CHAIR BARNETT: Okay, thank you.

CHAIR BURCH: Commissioner Stump.

COMMISSIONER STUMP: Could you then clarify for us again, so then why did you get cited?

KEITH BLAINE: The Code Enforcement, Allen Mayer, he was fulfilling his job and his interpretation of the code, and in reviewing those citations with the Town Manager, he pointed out that had I contested them; he doesn't believe that they would have actually been able to enforce them.

COMMISSIONER STUMP: So, is this a result of neighbor complaints? Is that what happened?

KEITH BLAINE: That's correct.

COMMISSIONER STUMP: Then one last question. On your .87 acres, do you have any fencing internal to your property? Oftentimes hillside folks might have a small area fenced off just because they don't want the deer even on an

acre of property, but do you have any internal fencing on your property?

KEITH BLAINE: It's hard to describe, but I have like a deck railed area. I wouldn't consider it fencing, but it does some containment, or would contain, but it's not, say, 6'.

COMMISSIONER STUMP: Thank you.

CHAIR BURCH: All right, any other questions? Thank you. And then I have Megan Blaine.

MEGAN BLAINE: Hello, I'm Megan Blaine, and (inaudible) spoken before at a Council meeting, so thank you for having me.

Like Keith said, we have an under one-acre parcel in the hillside, and I just wanted to tell you a little bit more about the dog fence and our experience over the last five years with our fence.

The dog fence has a backup battery. The power has gone out, many, many times, and the dog stayed within the barrier. But not only that, we were alerted to the power outage from the dog fence device, because it has this little alarm that won't turn off until it gets power again, because it just wants you to know the battery is being use, and the battery lasts for a minimum of 48 hours, and then I know Keith said the battery on the collar is a year, but

Troy, who installed the dog fence for us, said it's actually up to three years, and we never actually had to replace it.

The other really great thing about these fences that I think is pretty cool is we've had a lot of Weimaraners, and we had a 6' fence at our previous residence in San Jose, and that dog could jump it, and that dog could dig under it, and that dog got out of the gate all the time.

Since we got the electronic dog fence, it records every time the dog breaches the barrier, and in five years he breached it twice, and both times were within the first week of installation, so he was learning the barrier and the boundary.

Then in regard to it hurting the dog, there is a 6' offset from the wire that triggers a little noise, and the dog hears the noise and goes oops, I'm right by the wire, and runs the other way, and it was so incredibly effective that, let's say I gave the dog a bath and let him out without putting the collar back on, he had no idea he didn't have the collar on, because he was so trained to stay within the barrier, so that let us have like we had daily turkeys walking through the yard, we have little trails and pathways, we have deer all the time, and it's

just been really, really nice to see the wildlife and have a dog in the hillside.

Our property is super steep too, so it's like fencing it in would kind of be ridiculous; the dog would just (indicates jumping the fence), get right out, so this dog fence is really great for us.

We have another neighbor that was down on the other side of the dog fence, and he liked the dog so much he would like play with it with sticks, because he could just walk in, and so the dog was, I don't know, kind of a neighborhood feature.

The other dog on our block that has this dog fence comes over and they play in our fence.

CHAIR BURCH: Any questions or anything else, for the sake of fairness, you wanted to summarize?

MEGAN BLAINE: For me? Let's see. I think I got through everything.

CHAIR BURCH: Are there any questions for the speaker? No. All right, thank you very much.

MEGAN BLAINE: Thank you.

CHAIR BURCH: Do we have anyone on Zoom?

DIRECTOR PAULSON: We do have a hand raised on Zoom. Shani, you can unmute yourself.

SHANI KLEINHAUS: Hi, my name is Shani Kleinhaus; I'm the Environmental Advocate for the Santa Clara Valley Bird Alliance, and this has been an interesting discussion.

I think what surprised me is that after all the engagement from the community, both environmental organizations and residents, that was so intensive, at this point there is no public involvement, so it's not clear whether there was not outreach enough, or people just don't care. I don't know, but I expected to hear a lot more from residents on this one, and also some more studies of potential impacts on deer or other animals if the dogs chase them out of the fence. So, it's just surprising that there is so little engagement, and that there was no outreach to the organizations that have been involved in the past. Anyway, thank you.

CHAIR BURCH: Thank you. Are there any questions for the speaker? No. All right, thank you. I think that's probably it, so I'll close the public portion of this item, and getting ahead of myself earlier, I apologize.

I'm very open to thoughts, but I had thought I would take the marked-up version so that we can see what was removed or added, and just go through section-by-section, and if there are comments or changes people want

to have made, or questions to Staff, we can address them then. Does that sound all right with everyone? Okay.

To make sure I did get this right, because I did pull it off the printers that ran out, the first page I have for Exhibit 3 is page 151. Is that the same page? Okay, excellent.

So, that is Section 4.40.005, Restraint of Dogs, in the top section. We can see that there are some deletions and some additions. Are there any comments on (a) or (b)? I guess there is one (c) also. Commissioner Stump.

COMMISSIONER STUMP: I just want to get some clarification; maybe I'm missing it. I was looking back through the report, it says, (a)(2), "On a property of one acre or more located in the hillside…a Hidden Underground Electronic Dog Fence is defined…" So, are we now talking about properties that are an acre or more, or is this any size in the hillside from, you know, their lot is .87 acres?

ATTORNEY WHELAN: The intent of the ordinance is to cover only properties of one or more, and the reason for that is that elsewhere in the Town Code it requires that properties of one acre or more have wildlife-friendly fences, and the wildlife-friendly fences don't contain pets, and so this ordinance was intended to fill that gap.

COMMISSIONER STUMP: So, there is nothing to preclude somebody with a smaller piece of property on the hillside to have a hidden underground electric fence?

ATTORNEY WHELAN: No, as draft, the ordinance would require regular fencing for properties under one acre. It would not permit underground electronic fences.

COMMISSIONER STUMP: I thought they just said they've got that type of fencing on .87 acres.

ATTORNEY WHELAN: I don't think their system is permitted.

COMMISSIONER STUMP: Okay, thank you.

CHAIR BURCH: Commissioner Burnett.

COMMISSIONER BURNETT: Yes, thank you. I'd just like some clarification. Should we move forward with going through these sections if we are considering not recommending approval of the draft ordinance, or is this something different?

CHAIR BURCH: Well, if you have made up your mind before we've had the discussion, I would still appreciate your input.

COMMISSIONER BURNETT: I just wonder if the rest of the Commission feels that maybe after reading through everything they feel they may not be for this draft ordinance, so I don't know if it would be time wasted to go

through this exercise, or are we trying to clarify readings in the zone?

CHAIR BURCH: Mr. Paulson.

DIRECTOR PAULSON: I think for the benefit, either way this goes, whether it's recommended for approval or denial, obviously the Council ultimately will get verbatim minutes. I think they will be informed by any conversation the Commissioners individually and collectively will have, so I suggest walking through it so that that's on the record.

COMMISSIONER BURNETT: Thank you.

CHAIR BURCH: Thank you, Mr. Paulson. Commissioner Mayer.

COMMISSIONER MAYER: Personally, I haven't made any decision one way or the other, and I'd like to go through that to just review and think about it. Thanks.

CHAIR BURCH: Okay, excellent. I appreciated the questions you just asked, Commissioner Stump, because I was trying to figure out the same thing as far as like if I have a smaller property, I have to fence my yard in if I want to have a pet? Like, I can't say I have less than an acre, I love deer and turkeys, but if I have a dog I *have* to put a fence in the hillside? I can't do something like this as an option?

ATTORNEY WHELAN: As the code is right now, it says, "The owner or the person with the right to control any dog shall keep such dog under the owner's own physical restraint by means of a leash not to exceed 6' in length, or shall keep such dog confined behind a fence not less than 6' high.

CHAIR BURCH: Okay.

ATTORNEY WHELAN: And the proposed change would be you can either keep it with a fence if you're under an acre, or if you're on an acre or more, you can use a hidden underground electronic dog fence, and so that's the proposed ordinance, and the Planning Commission could propose changes to the ordinance, if desired.

CHAIR BURCH: Okay, thank you. Commissioner Thomas.

COMMISSIONER THOMAS: As the ordinance is written right now, and the proposed changes, like if I am in my front yard and I have my dog on a leash that's longer than 6', that's against code?

ATTORNEY WHELAN: I'm sorry, did you say the leash in not 6'?

COMMISSIONER THOMAS: It's longer than 6'.

ATTORNEY WHELAN: Technically, that would be out of compliance with the code as written.

COMMISSIONER THOMAS: Okay, even if it can get to the edge of my property?

ATTORNEY WHELAN: Would you like me to reread the section?

COMMISSIONER THOMAS: No, I just am trying to clarify, because then I am violating this code, because often… I mean, I don't leave my dog on my front porch without me there, but like because I do work in the front yard. I don't know, it just seems obviously like we don't get a bunch of code violation reports for that, but I don't know if that… I understand that you need to keep your dog on a 6' leash in a public space. I am not sure if there needs to be another option here if it's contained, if something can be longer than 6' if it's within your actual property, as long as the dog can't get across your property line.

ATTORNEY WHELAN: The proposed changes tonight were as minimal as possible, so if the Planning Commission has other changes to the existing code, that could be discussed as well, but the goal was to keep it very limited.

COMMISSIONER THOMAS: Okay.

CHAIR BURCH: I have a question on I think it's (c)(6), because we are now talking about the potentially

dangerous dog, and we do have a definition here. Is there somewhere actually in this document that relates back to all these definitions?

ATTORNEY WHELAN: Yes, there is a definition section. No, it was not in your packet for tonight.

CHAIR BURCH: But there is something that says this is the definition.

ATTORNEY WHELAN: I did distribute the definition section at the dais, and then I have it at the entrance to the Council chambers. Section 4.10.010 defines the terms "dangerous dog," "potentially dangerous dog," and "vicious dog."

CHAIR BURCH: Okay. My whole thing is I just wanted it to be cross-referenced, because I don't know, some people have opinions on what a dangerous dog is. Does anybody have anything else on the first page? Vice Chair Barnett.

VICE CHAIR BARNETT: Is it the position of the Town that the hidden underground electronic dog fence for properties over one acre is necessary to comply with the federal law about roaming wildlife?

ATTORNEY WHELAN: I don't think the State law is exactly on point, because it says, "Consider fencing when you're approving new development." It's like a related

topic, but it's not directly on point with regard to the Town's ordinance.

VICE CHAIR BARNETT: I thought I heard that. Thank you.

CHAIR BURCH: Commissioner Thomas.

COMMISSIONER THOMAS: I just want to clarify, because we have the definition of the potentially dangerous dog as "threatens the safety of persons while the persons are off the property of the owner or keeper of the dog, or without (inaudible) human," blah, blah, blah, or "injures a domestic animal to the extent that it is…" Okay, so that is… I'm just confirming that we all understand what the potentially dangerous dog is, and so I'm sorry, I know that we've really gone over this much, but who determines if these things have… How do you document and determine if these things have happened without provocation on two separate occasions?

ATTORNEY WHELAN: The Town contracts with the Silicon Valley Animal Control agency, and so they would be called to the location, probably in concert with the Town's Code Compliance Officer, and the State law provides that either a law enforcement officer or an animal control officer can petition to the Superior Court to have the dog declared potentially dangerous, dangerous, or vicious.

COMMISSIONER THOMAS: So, there is like a process and a legal pathway forward. It can't just be like the two-pound or whatever the barked at me the other day?

ATTORNEY WHELAN: Yes.

COMMISSIONER THOMAS: Okay, thank you.

CHAIR BURCH: Anything else on page 1? All right, so then 2 of 6. Not a lot of changes here, so is there any… Not necessarily only about the changes. Are there any comments on anything on this particular page? No. All right, page 3.

This does, I guess, have some definitions. We've got the definition of the hidden underground electronic dog fence. I don't know if it's a standard, so maybe I'm just going to ask something, but I actually like the idea that if the fence goes in default, there is an alarm. I used to have one like that for around my pool when my kids were little, and if like the sensor got hit or we lost power, it would actually beep. Or would I just be opening a can of worms that none of you would like me for if there was a way to say, even if you just say preferably, it has an alarm system should it go offline?

ATTORNEY WHELAN: Since it's an ordinance, I would recommend that it not say preferably, that it be

black and white. But the Commission could, if they wanted, add a requirement that it have an alarm.

CHAIR BURCH: I would like some language in there about that.

COMMISSIONER THOMAS: I think that some sort of backup battery system… I mean, this is just a recommendation to Town Council, and I don't know much about what options are out there for electronic fences, but I feel like some sort of notification that when it fails or loses power, and then some sort of specific guaranteed backup of 12 hours, 24 hours, whatever. If it needs to be specific, that's something that could be included.

ATTORNEY WHELAN: Yes, it could, and the Planning Manager just reminded me that in order to initiate the discussion, we need to have a motion on the table. Would anyone like to make a motion at this point?

VICE CHAIR BARNETT: I'll make a motion to approve the proposed redline changes as a recommendation to the Town Council.

CHAIR BURCH: Second?

COMMISSIONER THOMAS: I'll second that.

CHAIR BURCH: Apologies. Sorry about that. Thank you for bringing that up, Mr. Mullin. All right, so was

there any… No, we don't have to vote; we can have discussion.

VICE CHAIR BARNETT: Sorry about (Inaudible).

CHAIR BURCH: No, it's okay. You're making me feel better that your question is to… We're all tired.

DIRECTOR PAULSON: Through the Chair, you could vote.

CHAIR BURCH: There is like two more pages, and there's almost nothing. So, we'll get there. All right, anything else on page 3 or 4.

COMMISSIONER THOMAS: Should the definition of a potentially dangerous dog be included here too, or is that weird to include it in two places?

ATTORNEY WHELAN: I usually recommend against that, because sometimes when we have definitions in two places…

COMMISSIONER THOMAS: Then one changes.

ATTORNEY WHELAN: …when we amend it in one, we forget to amend in the other.

COMMISSIONER THOMAS: What I figured, but I wanted to confirm. Thank you.

CHAIR BURCH: Yes, and I remember when we went through all of these. This is very specific about the fencing definition section. So, if there's nothing on

those, page 5. I don't have anything. Does anyone have any thoughts on page 5? All right, and then that's 6.

So, not necessarily about the markups or anything, but are there other comments or things that we want to add if the motion passes that does get passed on to Council? For example, I'm going to say that I think no matter what size my property is, if I want deer, then should be able to do an underground fence. But that is just my opinion. Anybody else have other thoughts. Commissioner Mayer.

COMMISSIONER MAYER: I did some research on the invisible electronic fence, and it is the case, and I know people that live in unincorporated areas of the County and outside of the County that have large acreage rural properties, dog breeds with high prey drive often break it. They'll go right through it, because they see a prey animal and they just go after it, so I think the fact that this is only applying to larger acreage makes sense, because the smaller acreage properties are in sort of denser areas of town where there is more commotion and things going on, like people walking by, cars going by, so I'd be a little bit hesitant to make that change.

CHAIR BURCH: That's a good thought. Anything else anyone wants to add or discuss before we vote? Commissioner Stump and then Commissioner Burnett.

COMMISSIONER STUMP: First of all, I find it so hard to believe that somebody that's got ten acres is going to put literally an electronic fence around ten acres, and when you think about that, this brings up the issues related to the birds and the wildlife. These dogs don't even have to cross a boundary to go ten acres and chase things down.

We live on an acre. Our golden retriever loves chasing the turkeys, loves chasing the deer, loves chasing the coyotes, until they come back at her, and she stays on our property. But we have had cases where you've got fawns that are not too stable yet, they get a dog chasing after them, and if that dog has got ten acres, that dog is probably going to be able to get that deer, so I guess I'm still concerned about our wildlife in the hills.

And again, I realize it's the owners property and they can say I want my dogs to run on ten acres; that may be a different issue. But I'm just saying that I do have concerns about huge, open spaces for dogs roaming the hillside, even if it is on their property. I think that's what the Santa Clara Valley Bird Alliance was concerned

about, that these birds can't… Well, turkeys, they're pretty mean, but they can be chased down as well, and other wildlife.

So, I just don't get the idea that people are going to want to put… And maybe that's just it: they're not going to put in huge fences on property, but I don't know, there's just something that seems not right, and I can't really put my finger on it other than to say I'm concerned about wildlife.

CHAIR BURCH: But then do we say you have a big property, you can't have a dog, because the type of fencing that's required out there…

COMMISSIONER STUMP: No, I'm saying you contain your dog in a smaller space. Like we've got probably 500 square feet of our acreage fenced off, where if we need to have our dog right by the house, we need to have our dog stay in one location outside, that's where she's located. She does not have the run of the entire acre, but I think probably a lot of pet owners do that. They don't let their dogs run the full acreage.

CHAIR BURCH: Right.

COMMISSIONER STUMP: They keep them… Like I say, I just haven't thought through it enough. It's not that I'm

totally against it, it's just that something seems funny to me.

CHAIR BURCH: No, it's a good thing to think about. It's a good thing to think about. I'm sorry, Commissioner Burnett, you had had your hand up too.

COMMISSIONER BURNETT: Thank you. I just wanted Commissioner Mayer to clarify what he… Could you repeat what you said?

COMMISSIONER MAYER: So, this change applies only to hillside lots over one acre, correct? My comment was going forward I don't want it to apply to below one acre.

COMMISSIONER BURNETT: Thank you.

COMMISSIONER MAYER: What I'm saying is that what the attorney has prepared here is what I agree with and I don't want to make a change to that. Thank you.

CHAIR BURCH: Any other comments? Commissioner Stump.

COMMISSIONER STUMP: I know I've heard we have 400 installations in Los Gatos, and their acreage is .87, and so you would say well, that's not an appropriate use for this fence, because we're talking about his fencing being used for one acre or above, and so I'm assuming that we probably have a lot of people in town, if there are 400,

that are less than an acre, and so now we're basically setting them up for noncompliance.

CHAIR BURCH: Or they're all going to build fences, and then the wildlife isn't moving through any of that.

COMMISSIONER STUMP: Here's the other… I live in the hillside, and I realize some people maybe they lived in a residential area where you've got to have a fence on your property line. We have a 500 square-foot fence. Our property lines end where we live, they're all open. We do not have neighbors with 83 homes that are building fences. Now, they've got maybe some containment, but wildlife, trust me, it's running free up in our neighborhood, so I'd prefer not to see fences around ten acres, or even an acre.

CHAIR BURCH: Vice Chair Barnett.

VICE CHAIR BARNETT: Would ordinance change apply retroactively?

ATTORNEY WHELAN: No, just prospectively.

VICE CHAIR BARNETT: Thank you.

CHAIR BURCH: Anything else? Commissioner Mayer.

COMMISSIONER MAYER: I think you make a really good point, Commissioner Stump. This is a complicated issue, because there is inconsistency in the code here, and how to resolve it in a fair manner I'm actually struggling

with, but I appreciate your input as a resident in the hillside.

Honestly, I would like to hear more input from the public. I know there was outreach, and perhaps there wasn't more input, but yes, I'm really struggling with it.

CHAIR BURCH: Commissioner Thomas.

COMMISSIONER THOMAS: Can I just get clarification from Staff that either way currently if it's under an acre and people are using an electronic fence to contain their dog, whether or not we make this change, they're not complying with the current code.

ATTORNEY WHELAN: That's correct.

COMMISSIONER THOMAS: Okay, I just wanted to clarify that.

CHAIR BURCH: Commissioner Burnett.

COMMISSIONER BURNETT: I just wanted to throw this in. I have a Westie who is a small, little terrier, and I have an electronic fence, and I have almost a third of an acre, a pretty big sized lot, he has the run of the place. But I tell you, if something came by that he wanted to go after, he'd go right through it and he didn't care if he got shocked, because it was just the initial go-through, but it was worth it for him to go out there. So, I don't have a lot of faith in these electronic fences doing

anything with a pet that really wants to go after something, so that's my concern.

CHAIR BURCH: And this is where it kind of gets difficult, because it then comes down to the personality of the pet, because I have seen them work really well. I'm from an area where people have 25 acres, and you've got animals all over it, and my mom wanted to contain her dog and it worked. That's why I think this one is actually kind of difficult. I had a dog that climbed fences.

COMMISSIONER STUMP: This will be my last comment.

CHAIR BURCH: No, go ahead.

COMMISSIONER STUMP: No, seriously, because coming back to what Commissioner Mayer said, I'm also concerned this feels a little bit rushed and that we've got few voices speaking into this. Now, look, I like to be a bottom-line guy, let's get to it really quickly, but something just seems funny that we're moving this quickly on this issue without additional feedback, and could even be support from the hillside, but we just don't have a lot of voices speaking into this. We don't have voices from Silicon Valley Animal Control. We don't have voices from formerly the Audubon folks, now the Santa Clara Valley Bird

Alliance, what their concerns are. I just feel like we're racing to a quick conclusion, and that's my last comment.

CHAIR BURCH: If I'm gauging the temperature on this conversation that I've heard so far anyway, it doesn't sound like a lot of people are very comfortable with probably recommending anyway, so I was going to call the vote or see if there is another motion. Commissioner Thomas.

COMMISSIONER THOMAS: I don't have another motion, but I do just want to say that this was brought to Town Council, and Town Council directed Staff to clean it up because there is a misalignment in our current code, so that's my understanding of why we're here right now. I think we've said our concerns, and so hopefully when Town Council gets this, whichever way the vote goes, they'll take into account the questions and these concerns that we raised, but before they remedy the code issue.

COMMISSIONER STUMP: The question I would have: why would this go to Town Council first? What drove that?

ATTORNEY WHELAN: It was a request from a member of the public, and so the purpose of this study session was to gauge the Council's interest in pursuing an ordinance amendment.

CHAIR BURCH: Here's my question. I can call the vote, or does somebody want to make an alternative motion? Right now, there's a motion to recommend approval as is.

COMMISSIONER STUMP: I will move to make a recommendation to deny the passage of this ordinance as is, as recommended, and the adder to that would primarily be I think this needs more work is the editorial.

COMMISSIONER BURNETT: I'll second.

CHAIR BURCH: Is there any other discussion? So, remind me, if I remember correctly, I vote on the second one first, correct?

ATTORNEY WHELAN: Yes.

CHAIR BURCH: And then depending on how that goes.

COMMISSIONER THOMAS: The first one, were there any recommended changes? We did recommend the change that we make sure that it has an alarm, like a notification system and/or a backup.

SEAN MULLIN: Those were never offered as a friendly amendment…

CHAIR BURCH: No.

COMMISSIONER THOMAS: Oh, okay,

SEAN MULLIN: …and accepted by the Maker and the Seconder, so they were just discussion.

CHAIR BURCH: I'm going to call the question of the second motion, which is we are not recommending this to Council. So, I'm going to call that. All in favor of that motion. I think that's like 6-1.

SEAN MULLIN: 5-1, but who's counting?

CHAIR BURCH: 5-1, sorry. So, there are no appeal rights?

SEAN MULLIN: There are no appeal rights. The recommendation will be forwarded to the Council.

CHAIR BURCH: Okay, perfect. All right.

(END)