

ORDINANCE 2019-___

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 29 (ZONING REGULATIONS)
SECTION 29.40.030 - 29.40.034 OF THE TOWN CODE
REGARDING FENCES, HEDGES, AND WALLS**

WHEREAS, the Town Council at its meeting of January 31, 2017, identified amendments regarding fences in the hillside area as a strategic priority to maintain wildlife movement corridors and address movement-restrictive fences; and

WHEREAS, the Planning Commission considered proposed amendments regarding fences at its meeting of September 13, 2017, and forwarded a draft Ordinance to the Town Council for consideration without an up or down vote with consideration of comments from Commissioners and the public; and

WHEREAS, On December 5, 2017, the Town Council reviewed and commented on the proposed amendments regarding fences, and continued the matter to a date uncertain for further consideration; and

WHEREAS, On October 16, 2018, the Town Council reviewed and commented on the proposed amendments regarding fences, and forwarded the matter to the Town Council Policy Committee for consideration; and

WHEREAS, On November 15, 2018, the Town Council Policy Committee reviewed and commented on the proposed amendments regarding fences throughout the Town and forwarded recommended amendments to the Town Council for consideration; and

WHEREAS, On November 15, 2018, the Town Council Policy Committee reviewed and commented on the proposed amendments regarding fences in the hillside area and continued the matter to a date uncertain for further consideration by the Town Council Policy Committee; and

WHEREAS, On December 20, 2018, the Town Council Policy Committee reviewed and commented on the proposed amendments regarding fences in the hillside area, and forwarded a draft Ordinance to the Planning Commission for consideration; and

WHEREAS, On March 13, 2019, the Planning Commission received the staff report regarding fences in the hillside area, received public comment, closed the public hearing, and continued the matter for further discussion of the amendments; and

WHEREAS, On April 10, 2019, the Planning Commission reviewed and commented on the proposed amendments regarding fences in the hillside area, and continued the matter for further consideration; and

WHEREAS, On May 22, 2019, the Planning Commission reviewed and commented on the proposed amendments regarding fences in the hillside area and forwarded a recommendation to the Town Council for Approval of the proposed amendments with modifications; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on June 18, 2019; and

WHEREAS, on June 18, 2019, the Town Council reviewed and commented on the proposed amendments regarding fences in the hillside area and the Town Council voted to introduce the Ordinance.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Los Gatos Town Code Chapter 29, Section 29.40.030-29.40.034 is hereby repealed and reenacted to read as follows:

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

Sec. 29.40.0305. Intent.

The intent of these fence regulations, as defined in Section 29.40.0310, is to preserve the natural beauty of the Town of Los Gatos, the natural movement of wildlife, and to protect traffic view areas while acknowledging that residents have the right to fence their properties to protect children, contain their animals, protect garden or agricultural areas, and maintain privacy. Specifically, within the hillside area, the intent of these fence regulations is to allow for the movement of wildlife. Unless specified otherwise, these fence regulations are applicable Town-wide. These fence regulations incorporate portions of the Hillside Development Standards and Guidelines related to fencing.

Sec. 29.40.0310. Definitions.

The following words, terms, and phrases, when used in these fence regulations, shall have the meanings ascribed to them in this section:

Buck and rail fence means a fence constructed with wood rails where the posts are arranged to form a triangle to provide the vertical structure of the fence. The horizontal rails are then attached to the triangle support posts.

Corner sight triangle means a triangular area at street intersections having sides thirty (30) feet in length, as measured from intersecting property lines.

Double fence means two fences spaced a few feet apart regardless of height and material.

Driveway view area means a triangular area at the intersection of driveways and sidewalks and street intersections having sides ten (10) feet in length, as measured along the driveway's path of travel from the back of the sidewalk or street.

Fence means a structure constructed of posts, rails, wire, and/or barrier panels, used to define a boundary or as a means of protection, confinement, or visual obstruction.

Fence regulations means Sections 29.40.030 through 29.40.0330.

Hillside area means all properties located within the area defined by the Hillside Area Map as contained in the Town of Los Gatos Hillside Development Standards and Guidelines.

Open view fence means a fence constructed in such a way so that no more than twenty (20) percent of the surface area of the fence obstructs a view through the fence from a position perpendicular to the fence.

Perimeter fence means a fence located on the property line of a lot.

Riparian corridor means an area comprised of habitat strongly influenced and delineated by the presence of perennial or intermittent streams.

Solid fence means a fence constructed in such a way so that more than twenty (20) percent of the surface area of the fence obstructs a view through the fence from a position perpendicular to the fence.

Traffic view area means the area which is within fifteen (15) feet of a street and within two hundred (200) feet of the right-of-way line of an intersection.

Wildlife-friendly fence means a fence that allows any animal, regardless of size, to climb under, pass through, or jump over, with a maximum height of forty-two (42) inches and a minimum distance between the bottom rail and the ground of eighteen (18) inches.

Sec. 29.40.0315. Height, materials and design, and location.

(a) Height.

- (1) Fences, walls, gates, or hedges may not exceed six (6) feet in height, with one (1) foot of lattice on top (seven (7) feet high in total); except as provided in subsections (2), (3), and (4) below.
- (2) In the hillside area:
 - a. Fences, walls, gates, or hedges may not exceed six (6) feet.
 - b. On properties one (1) acre or greater, perimeter fencing shall be a wildlife-friendly fence as defined in Section 29.40.0310.
- (3) Fences, walls, gates, and hedges may not exceed three (3) feet in height when located within a required front or side yard abutting a street (as required by the zone), driveway view area, traffic view area, or corner sight triangle unless an exception is granted by the Town Engineer and Community Development Director. Trees, hedges, and vegetation within a corner sight triangle shall meet the requirements of Section 26.10.065.
- (4) Pedestrian gateways or entryway arbors may be up to eight (8) feet high. No more than one (1) gateway or entryway arbor per street frontage is allowed.

(b) Materials and design.

- (1) The following fence types and materials are prohibited:
 - a. Any fence with bare lengths of wire stretched between posts.
 - b. Electric fences, including any fence designed to produce an electric shock.
 - c. Barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors.
 - d. Transparent fences such as barriers of glass or clear plastic.
- (2) In the hillside area:
 - a. Fences located within twenty (20) feet of a property line adjacent to a street shall be open view fencing as defined in Section 29.40.0310.

- b. On properties one (1) acre or greater, perimeter fencing shall be a wildlife-friendly fence as defined in Section 29.40.0310.
 - c. Chain link, welded wire, wire mesh, or similar material shall be coated with green, brown, or black vinyl or finish and shall be supported by a wood frame.
 - d. Buck and rail, double, and solid fences are prohibited.
- (3) In the Landmark and Historic Preservation Overlay:
- a. Plastic fencing is prohibited.
 - b. Fences located in a required front yard shall be open view.
- (4) Pedestrian gateways or entryway arbors shall be open view. A gateway or entryway arbor shall have a maximum width of six (6) feet and a maximum depth of four (4) feet.
- (c) Location.
- (1) No fence, wall, or gate shall be located within emergency egress easements.
 - (2) No fence, wall, or gate shall be located within twenty (20) feet of a riparian corridor as defined in Section 29.40.0310.
 - (3) Vehicular gates shall be set back from the edge of the adjacent street a minimum of eighteen (18) feet as measured along the centerline of the driveway. A greater setback may be required when a gated entrance serves more than one house.

Sec. 29.40.0320. Exceptions.

An exception to any of these fence regulations may be granted by the Community Development Director. A fence exception application and fee shall be filed with the Community Development Department and shall provide written justification that demonstrates one of the following conditions exist:

- (a) Adjacent to commercial property, perimeter fences or walls may be eight (8) feet if requested or agreed upon by a majority of the adjacent residential property owners.
- (b) On interior lots, side yard and rear yard fences, walls, gates, 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 that either:
 - (1) A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening; or
 - (2) 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.
- (c) At public utility facilities, critical infrastructure, and emergency access locations, exceptions may be granted where strict enforcement of these regulations will result in a security or safety concern.

- (d) A special security concern exists that cannot be practically addressed through alternatives.
- (e) A special circumstance exists, including lot size or configuration, where strict enforcement of these regulations would result in undue hardship.

Sec. 29.40.0325. Exemptions.

All fences, hedges, gates, and walls existing on the effective date of this Ordinance that do not meet the regulations contained herein are nonconforming and are exempt from these regulations. Existing nonconforming fences may be maintained and/or replaced in kind, including historic stone or river rock walls.

Sec. 29.40.0330. Penalties.

A property owner who has unlawfully constructed any fence, wall, gate, gateway, entry arbor, or hedge is subject to applicable enforcement and penalties as described in Section 29.20.930 through 29.20.965 of the Town Code.

SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

SECTION III

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any

particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION V

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c),(1).

SECTION VI

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on June 18, 2019, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on August 6, 2019.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____