

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FOSTER CITY AMENDING CHAPTER 17.04, DEFINITIONS, CHAPTER 17.52, FENCES, HEDGES AND WALLS, CHAPTER 17.58, ARCHITECTURAL CONTROL AND SUPERVISION AND CHAPTER 17.70, NONCONFORMITY USES, TO TITLE 17, ZONING, OF THE FOSTER CITY MUNICIPAL CODE

CITY OF FOSTER CITY

IT IS SO ORDAINED by the City Council of the City of Foster City as follows:

Section 1. Title 17, Chapter 17.04, Chapter 17.52, Chapter 17.58 and Chapter 17.70 of the Foster City Municipal Code are hereby amended to read as follows:

Chapter 17.04
DEFINITIONS

17.04.220 Fence.

“Fence” means any structural device, forming a physical barrier by means of a wood, mesh, metal, chain, brick, stake, plastic or similar materials, erected as a deterrent to ingress and egress or as a support for vegetation.

17.04.235 Hedge.

“Hedge” means a row of closely planted shrubs or low growing trees forming a visual or physical barrier which are neatly pruned and maintained in a healthy and vigorous condition. Hedges do not include individual trees planted at least six feet apart with canopies at least forty-eight inches above the ground.

17.04.582 Wall.

“Wall” means an upright structure that surrounds an area or separates one area from another.

Chapter 17.52
FENCES, WALLS AND HEDGES

Sections:

- 17.52.010 Fences, walls and hedges in front yards – non-corner lots.
- 17.52.020 Fences, walls and hedges in side and rear yards.
- 17.52.030 Fences, walls and hedges on corner lots.
- 17.52.040 Regulations.

- 17.52.050 Non-residential properties.
- 17.52.060 Public utilities and infrastructure.
- 17.52.070 Exception process.
- 17.52.080 Enforcement.

17.52.010 Fences, walls and hedges in front yards – non-corner lots.

A. Fences in the R-1 (single-family residence) district and R-2 (two-family residence) district may be permitted in the front yard area if all of the following conditions are met:

1. The fence does not exceed forty inches in height; and
 - a. The fence is constructed of materials shown in Section 17.52.040.
2. The fence exceeds forty inches in height; and
 - a. The front yard property line of the subject lot adjoins either the front yard property line of another lot or the side yard property line of another lot; and
 - b. The fence is set back a minimum of twenty feet from the front property line; and
 - c. The fence does not exceed six feet in height; and
 - d. The fence's location does not obstruct pedestrian or vehicular access to the house and does not block the view of the house from the street; and
 - e. The fence's location is not closer to the street than the house's primary front wall from which the fence is extended; and
 - f. The fence is perpendicular to the front property line, except that location on the front property line is permitted where necessary to complete the enclosure of the side yard; and
 - g. The fence shall be placed far enough from the street such that the amount of landscaped area visible from the street is generally consistent with other lots located in the same block; and
 - h. The fence is constructed of fifty percent open-air materials shown in Section 17.52.040; and
 - i. The fence's design, location and orientation shall be subject to review and approval by the community development director; and

j. All items stored or temporarily placed behind the fence shall be lower than the height of the fence.

B. Walls. In the R-1 (single-family residence) district and R-2 (two-family residence) district, walls not exceeding forty inches in height may be permitted in the front yard area if the following conditions are met:

1. The wall is constructed of materials shown in Section 17.52.040; and
2. All items stored or temporarily placed behind the wall shall be lower than the height of the wall.

C. Hedges. In the R-1 (single-family residence) district and R-2 (two-family residence) district, hedges may be permitted in the front yard if the following conditions are met:

1. The hedge is planted parallel to the street and does not exceed forty inches in height; and

a. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

2. The hedge is planted perpendicular to the street, located within five feet of a driveway, and does not exceed forty inches in height from back of sidewalk for a distance of five feet, at which point it may increase to six feet in height; and

a. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

3. The hedge is planted perpendicular to the street, located more than five feet from the edge of a driveway, and does not exceed six feet in height; and

a. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

17.52.020 Fences, walls and hedges in side and rear yards.

A. Fences – non-waterfront properties.

In the R-1 (single-family residence) district and R-2 (two-family residence) district, fences may be permitted in the side or rear yards if all of the following conditions are met:

1. The fence does not exceed six feet in height; and

2. The fence is constructed of materials shown in Section 17.52.040; and

3. All items stored or temporarily placed behind the fence shall be lower than the height of the fence.

4. Exception – Wood fences not exceeding seven feet in height may be permitted in any side and rear yard area if all fence material above six feet in height consists of wood lattice with a weave that is approximately fifty percent open.

B. Walls – non-waterfront properties.

In the R-1 (single-family residence) district and R-2 (two-family residence) district, walls may be permitted in the side or rear yards if all of the following conditions are met:

1. The wall does not exceed six feet in height; and
2. The wall is constructed of materials shown in Section 17.52.040; and
3. All items stored or temporarily placed behind the wall shall be lower than the height of the wall.

C. Hedges – non-waterfront properties.

In the R-1 (single-family residence) district and R-2 (two-family residence) district, hedges may be permitted in the side or rear yards if all of the following conditions are met:

1. The hedge does not exceed twelve feet in height; and
2. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

D. Fences and walls – waterfront properties – side yards.

In the R-1 (single-family residence) district and R-2 (two-family residence) district, fences and walls may be permitted in the side yards if all of the following conditions are met:

1. The fence or wall does not exceed six feet in height; and
2. The fence or wall is constructed of materials shown in Section 17.52.040; and
3. All items stored or temporarily placed behind the fence or wall shall be lower than the height of the fence or wall.

4. Exception – Wood fences not exceeding seven feet in height may be permitted in any side yard area if all fence material above six feet in height consists of wood lattice with a weave that is approximately fifty percent open.

E. Hedges – waterfront properties – side yards.

In the R-1 (single-family residence) district and R-2 (two-family residence) district, hedges may be permitted in the side yards if all of the following conditions are met:

1. The hedge does not exceed twelve feet in height; and
2. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

F. Fences, walls and hedges – waterfront properties – rear yards.

In order not to significantly interfere with views of the lagoon from adjacent properties, fences, walls and hedges may be permitted in rear yards if all of the following conditions are met:

1. Rear Yards less than twelve feet in depth. The fence, wall or hedge does not exceed seventy-two inches in height in the first half of the rear yard measured from the rear wall of the house nearest to the water. The fence, wall or hedge then steps down to a height not to exceed forty-two inches in the second half of the rear yard.

2. Rear Yards twelve to thirty-five feet in depth. The fence, wall or hedge does not exceed seventy-two inches in height in the first third of the rear yard measured from the rear wall of the house nearest to the water; fifty-seven inches for the next third of the rear yard; and forty-two inches in the final third of the rear yard.

3. Rear Yards exceeding thirty-five feet in depth. The fence, wall or hedge does not exceed seventy-two inches in height in the first quarter of the rear yard measured from the rear wall of the house nearest to the water; sixty-two inches in the second quarter of the rear yard; fifty-two inches in the third quarter of the rear yard and forty-two inches in the final quarter of the rear yard.

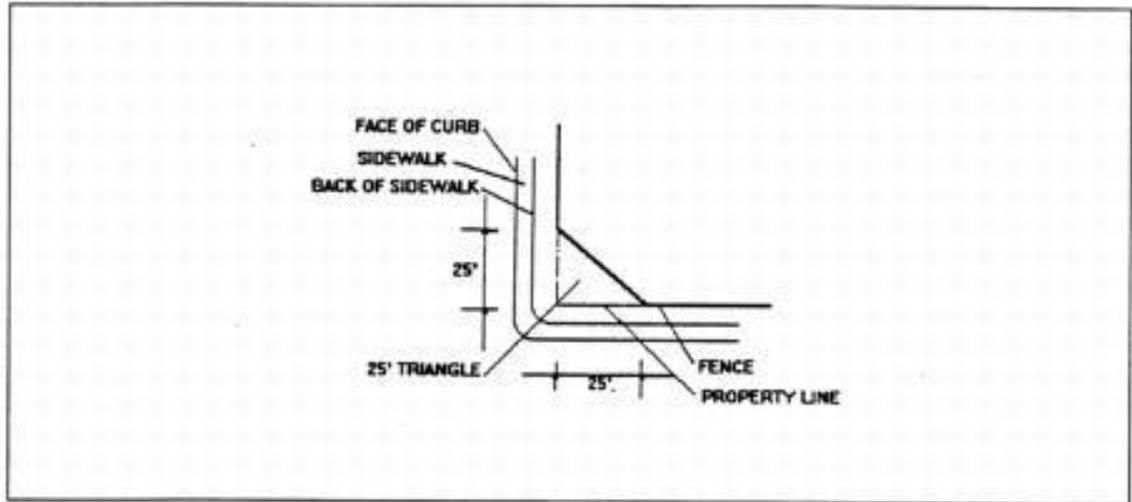
4. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

17.52.030 Fences, walls and hedges on corner lots.

A. To insure proper pedestrian and vehicular visibility, at a corner lot intersection which is not controlled by all way stop signs, no fence, wall or hedge exceeding forty inches in height shall be located within a twenty-five-foot triangle formed

at the intersection of the two streets measured at the property line, as outlined in Exhibit A below:

EXHIBIT A



1. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

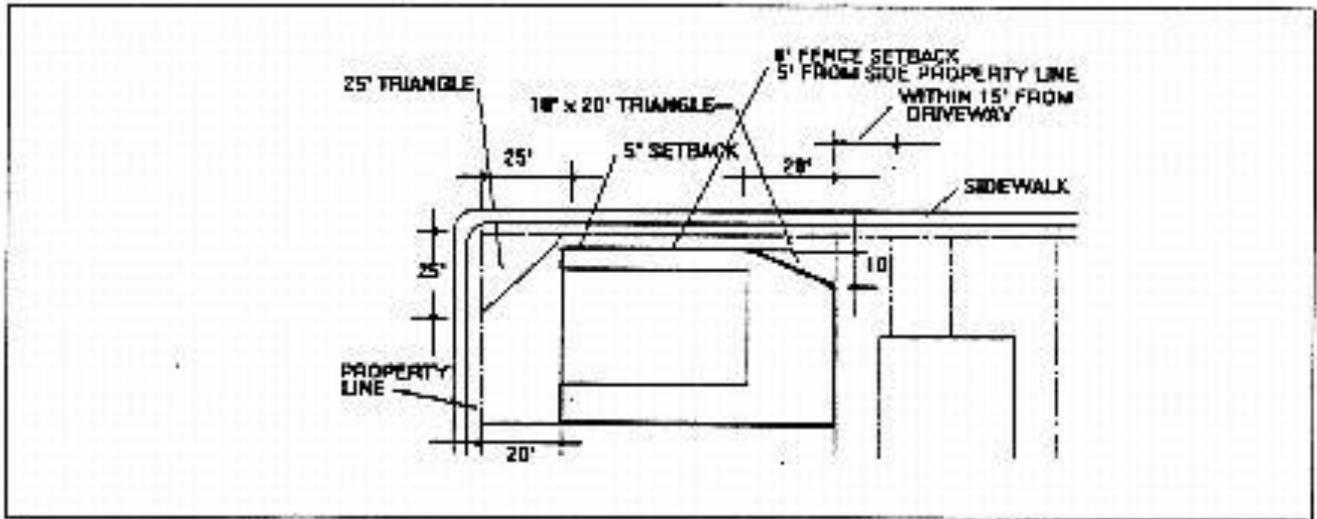
2. Corner lots controlled by all way stop signs are not subject to the limitation in subsection (A) above.

B. In order to insure pedestrian and vehicular visibility, at a corner lot where the rear yard of such corner lot abuts a property that fronts the side street which is an arterial or collector street as identified in the Foster City general plan, fences, walls and hedges may be permitted if all of the following conditions are met:

1. The fence, wall or hedge does not exceed six feet in height; and
2. The fence, wall or hedge does not extend into the front yard area; and
3. The fence, wall or hedge does not extend within five feet of the side property line along the side street (see Exhibit B below); and
4. The hedge is neatly pruned and maintained in a healthy and vigorous condition.

5. In those instances where a driveway on the adjoining property is located within fifteen feet of the rear property line of the corner lot, such fence, wall or hedge is not permitted within a triangle formed by a ten-foot line along the rear property line and a twenty-foot line along the side property line. (See Exhibit B below.)

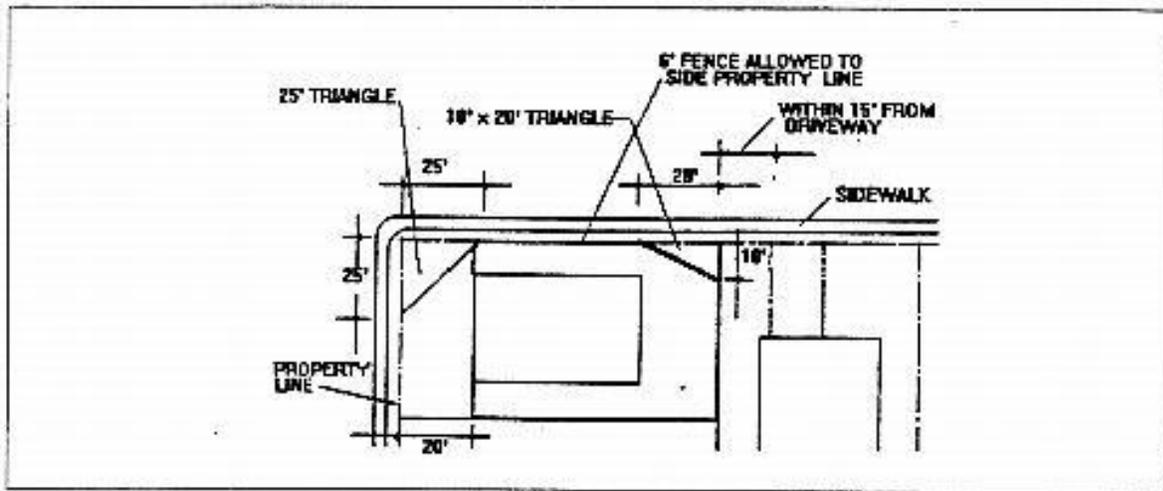
EXHIBIT B



C. In order to insure pedestrian and vehicular visibility, at a corner lot where the rear yard of such corner lot abuts a property that fronts the side street which is not an arterial or collector street as identified in the Foster City general plan, and where a driveway on the adjoining property is located within fifteen feet of the rear property line of the corner lot, fences, walls and hedges may be permitted if all of the following conditions are met:

1. The fence, wall or hedge does not exceed six feet in height; and
2. The fence, wall or hedge does not extend into any front yard area; and
3. The hedge is neatly pruned and maintained in a healthy and vigorous condition; and
4. The fence, wall or hedge is not located within a triangle formed by a ten-foot line along the rear property line and a twenty-foot line along the side property line. (See Exhibit C below.)

EXHIBIT C



17.52.040 Regulations.

In addition to the requirements outlined in Section 17.52.010-17.52.030, fences, walls and hedges located in any district shall also be subject to the following regulations:

A. The height of fences, walls and hedges shall be measured from the side which has the highest finished grade level at the base of the fences, walls and hedges.

B. Unless otherwise required by the Uniform Building Code, only fences exceeding six feet in height, and masonry or concrete walls exceeding three feet in height, will require a building permit.

C. Materials for construction of permanent fences and walls along property lines shall be limited to the following: redwood, cedar, brick, slumpstone, stucco, plaster, cement, wrought iron, or similar materials as determined by the community development director. Additionally, clear tempered glass or clear Plexiglas shall be allowed on rear and side yards of waterfront properties only. Chain-link and redwood slat may be allowed for commercial, industrial or institutional uses, depending on location and design.

D. Materials for the construction of temporary fences and walls shall be limited to: plywood, chain-link and redwood slat, or other suitable materials as determined by the community development director depending upon site location.

E. Fence and wall colors shall be neutral, not bright, and compatible with the existing residence and neighborhood.

F. Fences and walls shall be designed to be compatible with the existing site and surrounding properties.

G. Front and side-yard fence columns, decorative objects, and light fixtures which do not obstruct the line-of-sight for drivers of vehicles may exceed the established front height restriction as follows:

1. by one and one-half feet, including that over a fence gate that is at least five feet six inches in height, an arbor may be attached not to exceed twenty square feet that is one hundred percent open on two sides and at least fifty percent open on two sides, subject to architectural review and being maintained in good repair; or

2. an arbor up to seven feet six inches in height may be constructed over a front yard fence gate or opening not to exceed four feet in width and two feet in depth, not to exceed eight square feet, that is one hundred percent open on two sides and at least seventy-five percent open on two sides, subject to architectural review and being maintained in good repair.

17.52.050 Non-residential properties.

Architectural review by planning commission per Foster City Municipal Code Section 17.58.040(C) is required for fences or wall structures exceeding six feet in height which enclose commercial or industrial uses, tennis courts, semipublic swimming pools, or similar recreation areas, or school play-yard areas. Fences or wall structures over six feet may also be permitted within any building setback line, subject to the review and approvals established in this chapter for such district.

17.52.060 Public utilities and infrastructure.

A. Fences, walls and hedges shall not obstruct access to public utilities or infrastructure including but not limited to street light poles, fire hydrants, water meters, utility boxes, street signs, stop signs, traffic control signs and sidewalks.

B. Hedges shall be maintained so they do not obstruct the light fixture of a street light pole and shall not grow within four feet of the light fixture.

C. If a property owner refuses to remove fences, walls or hedges which are obstructing access to public utilities and infrastructure, including but not limited to fire hydrants, water meters, utility boxes or street light poles, the city may remove the obstruction in order to gain access.

17.52.070 Exception Process.

A. An exception may be granted by the planning commission to the standard established in this chapter. In order for the planning commission to grant an exception, all of the following findings are required to be made:

1. The applicant's property has an unusual lot configuration or orientation with houses on abutting properties.

2. The exception is necessary to allow the use and enjoyment of the applicant's property.

3. The proposed fence, wall or hedge configuration/height would be compatible with the design, appearance and scale of existing building and structures in the neighborhood.

4. The proposed fence, wall or hedge will not interfere with pedestrian and vehicular visibility.

B. Hearing—Required. The planning commission shall conduct a hearing on applications for exceptions.

C. Hearing—Notice. The notice of hearing shall include the time, date, and place of such hearing, the identity of the hearing body, a general description of the matter to be considered and real property that is the subject of the hearing, and shall be given not less than ten days prior to the hearing by the following methods:

1. Published in at least one newspaper of general circulation within the city or posted in at least three public places within the city, including one public place in the area directly affected by the proceeding;

2. Mailed or delivered to the owner of the subject real property or the owner's duly authorized agent, and to the project applicant;

3. Mailed or delivered to each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected;

4. Mailed or delivered to all owners of real property as shown on the latest equalized assessment roll within three hundred feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, the city may utilize records of the county assessor or tax collector which contain more recent information than the assessment roll. If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (B) is greater than one thousand, the city may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city;

5. Mailed or delivered to any person who has filed a written request for notice;

6. In addition to the notice required by this section, the city may give notice of the hearing in any other manner it deems necessary or desirable.

D. Appeal period—Issuance.

1. Exceptions shall not be issued until ten calendar days have elapsed from the granting thereof, to allow time for any appeal to be filed. In case an appeal is filed, the exception shall not be issued until a decision is made on the appeal by the city council.

2. Exceptions shall not have any force and effect until the permittee acknowledges receipt thereof and acceptance of any conditions thereto.

E. Appeal procedures.

1. In case the applicant, or any other person, is not satisfied with any decision of the planning commission, they may, within ten calendar days after the decision of the planning commission, appeal in writing to the city council, accompanied by a fee as set by resolution of the city council. The appeal letter or completed appeal form shall specify:

a. The person making the appeal;

b. The specific item of appeal, and all supporting documentation, written in clear and concise language;

c. The basis for such appeal; and

d. The relief or action sought.

2. Upon receipt of the complete appeal letter and fee, the city clerk shall transmit one copy of the appeal letter to the community development director and the applicant. The city shall schedule the appeal for hearing before the city council. The city council shall review the written findings of the planning commission on the matter and shall consider the written and oral argument of the appellant. New matter may not be introduced by either party to such appeal. The decision of the city council shall be final.

17.52.080 Enforcement.

Enforcement of the provisions of this chapter shall be stayed until January 1, 2016. Thereafter, the following enforcement provisions shall become effective:

A. Violation—Infraction.

Any person who commits any act declared by any provision of this chapter to be unlawful, or who violates the provisions, or fails to comply with the mandatory requirements of any section or portion of this title, shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars for a first violation;

2. A fine not exceeding two hundred dollars for a second violation of the same provision within one year;

3. A fine not exceeding five hundred dollars for one additional violation of the same ordinance provision within one year.

For purposes of this section, each day in which a nonconforming condition continues is a single violation and each subsequent day such nonconforming condition continues is a new and separate offense.

B. Violation—Nuisance declaration—Abatement.

In addition to the penalties provided in Section 17.52.080(A), any fence, wall or hedge constructed, planted, or maintained contrary to the provisions of this chapter are public nuisances. The city attorney, upon order of the city council or community development director, may commence the necessary action or proceedings for the abatement, removal and enjoinder thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in this chapter or any other law or ordinance.

C. Violation—Penalty fees.

In addition to the penalties provided in Section 17.58.080(A) and (B), if any fence, wall or hedge is constructed, planted, or maintained contrary to the provisions of this chapter, the city council, by resolution, may establish and assess a penalty fee to eliminate any violation, including violations which only require the securing of a permit but otherwise conform to the regulations of this title. Such penalty fees shall not apply to any application necessary to make a legal nonconforming use or building conform to the current regulations.

CHAPTER 17.58
ARCHITECTURAL CONTROL AND SUPERVISION

17.58.020 Improvements subject to architectural review.

A. Each improvement as defined in Section 17.04.265 which is not otherwise declared exempt below, shall be subject to architectural review as provided in this chapter. Improvements subject to architectural review include:

1. New buildings, structures or additions to existing structures;
2. Modifications to the exterior of a structure, including, but not limited to, the addition of windows, the introduction of bay or bow windows or new/unapproved window

shapes or materials (such as glass block), doors, rooftop equipment, roof material or color, non-tubular skylights, solar panels or loading docks;

3. Addition of paved area to a front yard including asphalt, cement and brick except for walkways;

4. Decks above grade at any point (except as exempted below), gazebos, patio covers, trellises, windscreens and similar improvements;

5. Exterior storage of recreational vehicles, recreational vehicle equipment, boats, boat trailers, campers and camper shells pursuant to Chapter 17.64 of this code;

6. Flagpoles more than fifteen feet in height in an "R" district or more than twenty-five feet in height in a "C" or "M" district or in multi-family common areas;

7. All improvements which the community development director deems similar to those listed above;

8. Elimination of the setback requirement between a spa or hot tub and a common area property line in the RT/PD, C-2/PD, or R-3/PD districts upon securing architectural review approval by the planning commission in each planned development;

9. Children's play structures not otherwise exempt pursuant to subsection (B)(20) of this section. These structures shall be reviewed for location, height, size, colors, materials and impact on neighboring properties.

B. Improvements Exempt from Architectural Review. The following improvements shall be exempt from architectural review:

1. Modifications to the interior of a structure;

2. Repainting or restaining of buildings or structures on properties in "R" districts, which are not in a PD (planned development) district, provided the new color is not bright pastel, fluorescent or a primary color, or out of character with the existing colors used in the neighborhood;

3. Repainting or restaining of buildings or structures on properties in C-U, C-I, C-2, C-M, M-I, PF, OSC or any PD (planned development) district, provided the new color is within the project color palette previously approved by the city with the specific development plan for the project. However, within projects zoned R1/PD, adjacent properties which front on the same street shall not use the same color scheme;

4. Exterior landscaping of single-family detached homes unless required as a condition of approval of use permit or architectural review;

5. Replacement of landscape materials with the same species of plant;

6. Replacement of portions of the exterior of structures or improvements using materials of the same size, type and color;
7. Maintenance which does not involve replacement of any parts;
8. Improvements which are otherwise subject to use permit;
9. Storage sheds and other accessory structures lower than the fence line in a side or rear yard, except that storage sheds on waterfront property which are visible from public waterways shall require an architectural review by the community development director;
10. Decks less than eighteen inches above grade at any point which are also a minimum of five feet from any property line;
11. Flagpoles which are fifteen feet or less in height in an "R" district or less than twenty-five feet in height in a "C" or "M" district or in multifamily common areas;
12. Modifications (frame materials, muntins (grids) or other similar minor modifications as determined by the community development director) to existing windows and doors;
13. Replacement of existing first story rear or side yard windows with garden or greenhouse style windows;
14. Replacement of existing doors, including garage doors;
15. Fences on nonwaterfront property which do not face a public right-of-way;
16. New windows three square feet or less in size located on the first floor on a nonwaterfront property, not in a planned development (PD) district, and not facing a public right-of-way;
17. Exterior spas, hot tubs or swimming pools, whether portable, temporary or permanent that comply with the requirements of Chapter 17.66, including but not limited to setbacks of the spa, hot tub, or swimming pool and associated equipment;
18. Replacement of exterior siding in the R-1 district with stucco, wood, wood shingle, vinyl or fiber cement siding, except that changes of siding on Eichlerstyle houses as determined by the community development director shall require an architectural review permit;
19. Tubular style skylights;

20. Children's play structures located in a side or rear yard, with a maximum height of eight feet, set back a minimum of five feet from any property line and located behind a minimum five-foot tall fence with no electrical outlets or lights;

21. Basketball standards or similar equipment as determined by the community development director.

C. Improvements Which are Prohibited. The following types of improvements are prohibited:

1. Repainting or restaining which uses a bright pastel, fluorescent, or a primary color or a color out of character with existing colors used in the neighborhood;

2. Repainting or restaining which uses murals, multi-colored patterns, or similar features.

CHAPTER 17.70 NONCONFORMITY USES

17.70.130 Nonconforming fences, walls and hedges.

Other sections of this chapter notwithstanding, the following regulations shall apply to fences, walls and hedges.

A. Existing fences and walls which were legally constructed or installed pursuant to the regulations in effect at the time of construction but do not meet the criteria established in Chapter 17.52 shall be considered legal nonconforming and shall be allowed to remain until such time as twenty-five percent of the area of the subject fence or wall is replaced or remodeled, except that fences and walls which are in violation of Section 17.52.010(C)(2) and thereby interfere with sight-distance at intersections shall conform to the most current regulations. At such time as any legal nonconforming fence or wall is replaced or remodeled, it shall conform to the criteria established in Chapter 17.52 and shall be subject to the architectural review process as described therein.

B. Fences or walls which do not conform to current regulations shall be presumed to have been legally constructed and therefore be considered legal nonconforming unless it can be demonstrated by the city that the fence or wall did not conform to the regulations in effect at the time of construction.

C. Existing hedges which do not conform to the height requirements established above shall be pruned in accordance with requirements established in Chapter 17.52 by January 1, 2016, unless granted an exception pursuant to Section 17.52.070.

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 3. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 4. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the _____ day of _____, 2014, and passed and adopted on the _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHARLIE BRONITSKY, MAYOR

ATTEST:

DORIS L. PALMER, CITY CLERK