



Date: September 3, 2013
To: Mayor and Members of the City Council
Via: James C. Hardy, City Manager
From: Curtis Banks, Community Development Director
Subject: Amendment of Chapter 17.52, Fences, Hedges and Walls

RECOMMENDATION

Introduce and pass to second reading an Ordinance amending Chapter 17.52, Fences, Hedges and Walls of the Foster City Municipal Code, to amend provisions regarding the height of fences, hedges and walls and to allow arbors in the front yard.

If the Council feels the recommendations proposed by the Planning Commission should be changed, the Council can amend them or return the Ordinance to the Planning Commission to consider additional information or options.

It is further recommended that the City Council, by Minute Order, provide direction regarding the enforcement of Chapter 17.52, Fences, Hedges and Walls and other city regulations relative to the enforcement of landscaping near street lights poles and fixtures and encroaching on sidewalks, public right-of-ways or other public utilities.

EXECUTIVE SUMMARY

At the request of several residents at the March 18, 2013 Council meeting, the City Council has requested the Planning Commission's recommendation on amendments to Chapter 17.52, Fences, Hedges and Walls of the Foster City Municipal Code. The City Council also directed that pending code enforcement related to this provision of the Foster City Municipal Code be held in abeyance pending its consideration of this matter and further direction.

The Planning Commission held a Study Session on June 18, 2013 to discuss the questions adopted by the City Council in the Resolution of Intention on April 1, 2013.

The recommended amendments would:

- Allow front yard hedges along side property lines to be up to 6' in height (instead of the current maximum of 40"), provided they are set back at least 10' from the front property line;
- Allow hedges in side or rear yards of non-waterfront properties up to 12' in height (instead of the currently allowed 8');

- Limit fences, hedges and walls on waterfront properties to 40” in height within 10’ of the waterline (instead of the current requirement to not significantly interfere with views of the lagoon);
- Limit side yard hedges on waterfront properties to 6’ in height (instead of the currently allowed 8’).

A separate request by John and Marguerite Igoe to amend Chapter 17.52 to allow gate arbors within the front yard is also recommended by staff and the Planning Commission for approval by the City Council.

It should be noted, the Public Works Director has determined that a clearance of 18 inches from the street light poles will be sufficient versus the prior requirement of four (4’) and revised the standard accordingly. The current standard requiring landscape clearance of four (4’) from the street light fixture was not changed.

BACKGROUND

A chronology of the consideration of the proposed amendments to Chapter 17.52, Fences, Hedges and Walls is contained in the table below. Further background related to each of these review steps is contained in the previous staff reports and minutes (attached). Two different amendments of Chapter 17.52 have been combined into one proposed action for the City Council’s consideration: 1) an amendment related to fences and hedges, and 2) an amendment related to front yard gate arbors.

Table 1: Chronology of Proposed Amendments to Chapter 17.52

Date	Action
2/7/13	The Planning Commission held a Study Session to consider a proposed amendment to Chapter 17.52 related to gate arbors requested by John & Marguerite Igoe.
2/8/13	The Public Works Department received a complaint that a tree between 921 & 925 Constitution was blocking the street light. The complaint was forwarded to the Planning/Code Enforcement Division.
2/13/13	Planning/Code Enforcement Division investigated the complaint. The hedge did not meet the required 4’ clearance from the light pole (which is a standard of the Public Works Department). It was also observed that the front yard hedge between 921 & 925 Constitution Drive exceeded the 40” height limit allowed by Chapter 17.52. It was also observed that other front yard hedges in the immediate vicinity exceeded the 40” height limit.

Date	Action
2/14/13	23 code enforcement letters were sent.
3/18/13	Several residents spoke at the City Council meeting to request that an amendment to Chapter 17.52 be considered.
3/21/13	The Planning Commission held a Public Hearing to consider an amendment to Chapter 17.52 related to gate arbors and adopted Resolution P-04-13, recommending approval of the amendment.
4/1/13	The City Council adopted Resolution 2013-22, a Resolution of Intention to initiate consideration of an amendment to Chapter 17.52.
6/18/13	The Planning Commission held a Study Session to consider the Resolution of Intention adopted by the City Council and directed staff to prepare the draft ordinance for the amendment.
7/18/13	The Planning Commission held a Public Hearing to consider the proposed amendment to Chapter 17.52 and adopted Resolution P-19-13 recommending the amendment.

History of Chapter 17.52

Chapter 17.52 of the Foster City Municipal Code was originally adopted in 1972, but it has been modified several times since then, most recently in 2003. In 1989, amendments to Chapter 17.52 and 17.70 included provisions specifically regarding hedges.

- 17.52. Nonwaterfront properties were added which allows hedges located in the side and rear yards to a height of eight feet, if neatly pruned and maintained in a healthy and vigorous condition.
- Section 17.70.130.C Non-conforming fences, hedges and walls, existing non-conforming hedges was modified to state hedges which do not conform to the height requirements established per Chapter 17.52 are required to be pruned to comply with the height requirements of Chapter 17.52 (i.e., forty-inches (40") in front yards). The forth-inch (40") height regulation also applies along the rear yard of waterfront properties so they will not significantly interfere with the view of the lagoon from adjacent properties.

ANALYSIS

The regulation of fences, hedges and walls is necessary in order to balance several competing interests:

- safety issues related to sight distance and illumination from street lights
- aesthetics of having front yards remain visually open rather than “walled off”
- view impacts along the waterfront
- privacy for residents
- aesthetics provided by landscaping

Please see the previous staff reports for additional discussion of these issues.

In the Planning Commission’s review of the questions raised in the City Council’s Resolution of Intention, the consensus of the Planning Commission is indicated in the table below.

Table 2: Planning Commission Responses to Questions in Resolution of Intention

Question	Consensus of Planning Commission
1. Should the Foster City Municipal Code Chapter 17.52 be amended to allow hedges in front yards to exceed forty inches (40”) in height?	Hedges along the side property line within the front yard should be allowed up to 6’ in height if they are set back at least 10’ from the front property line
2. Should Foster City Municipal Code Chapter 17.52 also be amended to allow fences and walls in front yards to exceed forty (40”) in height?	No
3. Should proposed amendments to Foster City Municipal Code Chapter 17.52 be limited to hedges, fences and walls between properties or also include hedges, fences and walls along or parallel to the front property line?	Additional height in the front yard should be limited to hedges along the side property line and set back at least 10’ from the front property line
4. Should there be a height limitation for hedges, fences and walls on non-waterfront properties?	Yes, retain current 6’ plus 1’ of lattice for fences and allow hedges up to 12’ in side and rear yards
5. Should there be a height limitation on hedges, fences or walls in general?	Yes
6. Should hedges, fences and walls along the rear property line of waterfront properties be allowed to exceed forty inches (40”) in height?	No
7. Should there be different height limitations for	No, base different height limit

Question	Consensus of Planning Commission
hedges, fences and walls based on their proximity to the property's driveway?	for hedges on distance from front property line
8. Should there be different height limitations for hedges, fences and walls or should height limitations vary between neighborhoods?	Should be the same for all neighborhoods
9. Should the pedestrian/visibility provisions of Foster City Municipal Code Chapter 17.52, Section 17.52.01(C)(2)(3), (4) and (5), for corner lots be revised?	Keep existing regulations
10/ Should the City retain the current Public Works Department Standard which requires that landscaping (e.g., hedges, trees, etc.) be located no closer than four feet (4') from the street light poles?	Concur with Public Works Director's determination: The Public Works Director has determined that a clearance of 18 inches from the base of the pole will be sufficient and has revised the standard accordingly. The Director has also determined that the current standard requiring landscape growth clearance be four feet (4') from the street light fixture should remain the same.

The amendments recommended by the Planning Commission are summarized in the table below. Please refer to Exhibit A to the Planning Commission Resolution P-19-13 for a "track changes" version of the proposed amendments showing the specific language changes. The proposed Ordinance for City Council consideration incorporates the recommended changes.

Table 3: Comparison of Existing and Proposed Regulations

Section	Existing	Proposed	Rationale
<p>17.04.220 Fence</p>	<p>“Fence” means any structural device forming a physical barrier, including hedges</p>	<p>Fences shall include hedges except where hedges are specifically referenced.</p>	<p>Will allow hedges to have different allowed heights than fences in some instances</p>
<p>17.04.235 Hedge</p>	<p>NA</p>	<p>Definition of hedge added: “Hedge” means a row of closely planted shrubs or low-growing trees, other than individual trees planted at least six feet apart, forming a visual and/or physical barrier.”</p>	<p>Will allow hedges to have different allowed heights than fences in some instances</p>
<p>17.52.010.C.1</p>	<p>Fences, walls and hedges, not exceeding six feet in height...shall not extend into any front yard.</p>	<p>Fences, walls and hedges, not exceeding six feet in height...shall not extend into any front yard except as provided in Sections 17.52.010.J, K, L or N.</p>	<p>Specifically references the sections that do allow front yard fences or hedges taller than 40” and not exceeding 6’: C.6: some hedges (see below) J: 50% open and 20’ back (existing regulation) K: fence columns & gate arbors (see below) L: front yard fences, hedges and walls on cul-de-sac lots in specific circumstances (existing regulation) N: front yard hedges along side property lines may exceed 40” up to 6’</p>

Section	Existing	Proposed	Rationale
			in height as long as they are set back at least 10' from the front property line
17.52.010.K	Front and front-side yard fence columns, decorative objects and light fixtures which do not obstruct the line-of-sight for drivers may exceed the established front yard fence height restriction by 18", including that over a gate that is at least 5'6" in height an arbor may be attached ...	Additional language: An arbor up to 7'6" in height may be constructed over a front yard fence gate or opening not to exceed 4' in width and 2' in depth, not to exceed 8 sq. ft., that is 100% open on two sides and at least 75% open on two sides, subject to architectural review and being maintained in good repair.	Allows "gate arbors" over shorter front yard fences or openings in addition to above taller fences at least 5'6" in height, subject to architectural review
17.52.010.N	NA	Front yard hedges along side property lines may exceed 40" up to 6' in height, provided they are set back at least 10' from the front property line.	Allows hedges to be higher than 40" but only up to 6' in height if they are at least 10' from the front property line, to provide adequate sight distance
17.52.020 Nonwaterfront properties	Hedges located in side and rear yards may be allowed to a height of 8', if neatly pruned and maintained in a healthy and vigorous condition.	Hedges located in side and rear yards may be allowed to a height of 12', if neatly pruned and maintained in a healthy and vigorous condition.	Hedges in side or rear yards up to 12' may be desired by the homeowners for additional privacy or screening and will not have the same visual effect as in the front yards.
17.52.030 Waterfront properties	B. Fences, hedges and walls shall be limited to a height and/or materials that do not	Add new section C: Fences, hedges and walls shall be limited to 40" in height within 10' of	Maintaining a height of 40" within 10' of the waterline will help protect views of the water

Section	Existing	Proposed	Rationale
	significantly interfere with the view of the lagoon from adjacent properties.	the waterline.	
		Add new section D: Hedges located in side yards may be allowed to a height of 6', if neatly pruned and maintained in a healthy and vigorous condition.	Side yard hedges on waterfront properties are more likely to interfere with waterfront views from neighboring properties and should have a lower maximum height than the 12' hedge height recommended for nonwaterfront properties

The Commission felt that hedges or fences over 40" were not appropriate along the section of the front yard parallel to the street and they would "wall off" homes from the street. They did feel hedges over 40" would be appropriate in the side yard, provided it steps down toward the street. This was based on safety, security and aesthetics. As such, they have recommended that hedges up to 6' in the front yard if they are set back 10' from the property line.

At the June 20, 2013 Study Session, a property owner raised the idea of establishing a sight line vision triangle adjacent to driveways similar to provisions in the City of Sunnyvale. Staff did review the City of Sunnyvale fence regulations. Fences and hedges within the visibility triangle are limited to three feet in height. Sunnyvale discourages fences over four feet in the front yard but has a process to allow taller fences. Fences four to six feet in height require a staff approval and fences over six feet require a Use Permit by the Planning Commission. Hedges are subject to the fence height restrictions for the front yard. Ultimately, the Commission preferred an approach where hedges step down as they get closer to the street.

In the side yards of non-waterfront properties, the Planning Commission was amendable to allowing hedges in side or rear yards up to 12', instead of the current 8' limitation as they would have impacts similar to trees in the same locations and may be desired by the homeowners for additional privacy or screening.

Maintaining views on waterfront properties has been a high priority in Foster City. The existing fence ordinance currently states that fences and hedges on waterfront properties shall be limited in height so they do not significantly interfere with views of the lagoon from adjacent properties, but there is no standard. With this in mind, the Commission recommends maintaining the existing 40" height limitation on fences and hedges along the rear property line. To further clarify what had been a standard practice in the community, the Commission also recommends that side yard fences and hedges within 10' of the waterline also be limited to 40" to maintain views from the adjoining properties. The proposed amendment provides clarity to property owners and staff regarding what is allowed. In the side yard, the Commission has recommended a maximum for hedges of 6' rather than the current standard of 8' because side yard hedges on waterfront properties are more likely to interfere with waterfront views from neighboring properties and should have a lower maximum height.

The Public Works Director reviewed the policy to require that landscaping (e.g., hedges, trees, etc.) be located no closer than four feet from the street light fixtures. In reviewing the standard the Public Works Director has looked at two aspects of the street light assembly: clearance from the light fixture which allows light to spread out onto the street and sidewalk; and clearance from the street light pole for inspection and maintenance purposes. The Public Works Director has determined that a clearance of 18 inches from the pole will be sufficient and has revised the standard accordingly. The Director has also determined that the current standard requiring landscape growth clearance be four feet from the street light fixture should remain the same.

Enforcement of the existing regulations has been a challenge and staff acknowledges enforcement of the proposed regulations will also be difficult. As such staff recommends allowing a grace period for owners to come into compliance with the new regulations. Staff is recommending one year. During that time, staff will distribute information to property owners regarding the new regulations. Prior to the end of the one year grace period, staff will notify homeowners in all neighborhoods that are out of compliance of the timeframe to make any necessary changes.

Staff is also requesting guidance regarding the enforcement of hedges and/or trees growing into sidewalks and the public right-of-way. Staff has received complaints from the property owners about hedges and tree limbs blocking the sidewalk and tree limbs blocking stop signs. Tree limbs blocking stop signs are considered a safety hazard and staff has worked with property owners to address this type of issue.

However, since the Council directed staff to hold in abeyance the enforcement of hedge requirements, pending its consideration of this matter and further direction, staff has not required property owners to trim or remove hedges that are blocking the sidewalk. In some cases, the hedges are extended two or three feet onto the

sidewalk and it can be difficult for pedestrians to walk by. Staff is seeking direction from the City Council regarding the enforcement of hedges and/or trees growing into sidewalks and the public right-of-way.

ALTERNATIVES

The City Council has the following alternatives:

1. Introduce the proposed Ordinance as recommended by the Planning Commission or as amended by the City Council.
2. Remand the matter back to the Planning Commission to consider additional information or options.
3. Take no action, which would let the existing regulations remain “as is.”

Attachments:

Ordinance

Planning Commission Resolution P-19-13

Planning Commission Minutes of July 18, 2013

Planning Commission Staff Report, dated July 18, 2013 (without attachments)

Planning Commission Minutes of June 18, 2013

Planning Commission Study Session Staff Report, dated June 18, 2013 (without attachments)

City Council Resolution No. 2013-22

City Council Staff Report, dated April 15, 2013 re: Chapter 17.52 (without attachments)

City Council Staff Report, dated April 15, 2013 re: Arbors (without attachments)

City Council Staff Report dated April 1, 2013 (without attachments)

Planning Commission Resolution P-04-13

Planning Commission Minutes of March 21, 2013

Planning Commission Staff Report dated March 21, 2013 (without attachments)

Planning Commission Study Session Staff Report, dated February 7, 2013 (without attachments)

Yard Areas on a Typical Residential Lot Diagram

Landscape Clearances at Light Poles