

Memo

To: Honorable Mayor and City Council

From: Sheri Marie Spediacci, City Clerk

Date: City Council Meeting of April 4, 2011

Re: Ordinance 557 – Amendments to Code on Fences, Hedges and Walls

The attached Ordinance was introduced at the City Council Meeting of March 21, 2011. There were no changes made at that time. It is on this agenda for consideration of adoption.

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Ordinance No. 557, Zoning Text Amendment RZ-4-10 to Amend Brisbane Municipal Code Title 17 Regarding Fences, Hedges and Walls

DATE: Meeting of March 21, 2011

City Council Goals:

To preserve and enhance livability and diversity of neighborhoods (Goal #14).
To preserve the unique current character of Brisbane (Goal #16).

Purpose:

To amend the Municipal Code's fence regulations by increasing the height limit for specified types of fences in specified zoning districts to allow for increased privacy and security, while restricting the use of chain-link, razor-wire and similar types of fencing materials.

Recommendation:

Introduce Ordinance No. 557.

Background:

Over the past 6-8 months, several issues pertaining to the City's fence regulations have come to the City's attention. These include concerns regarding sufficient fence heights to secure outdoor storage/parking, inquiries regarding the use of lattice atop 6 ft. tall solid wood fences to provide increased privacy in residential neighborhoods. The Planning Commission held study sessions on November 18, 2010, and January 27, 2011, regarding possible revisions to the fence regulations.

At the Commission's request, an on-line public survey was conducted (see attached), which received 51 responses. Almost 70% responded that they were in favor of allowing lattice to be used to extend the height of 6 ft. tall fences in residential areas. While only 61% of the respondents expressed a preference, 55% of those were in favor of allowing 2 ft. of lattice to be used to extend the height of fences to 8 ft. Of those who responded to the question, 57% would

Ord. No. 557

only allow the taller fences in the side and rear yards, not in the front yards. Approximately 53% of the total respondents opposed the use of chain-link in residential areas, and even among those who did not oppose its use, 58% would not allow chain-link fences over 6 ft. and 74% would only allow chain-link fences in the side and rear yards.

Discussion:

On February 10, 2011, the Planning Commission considered and unanimously recommended the ordinance be amended to allow 8 ft. tall fences within the required side and rear setbacks in the R and NCRO-2 Districts, as long as the upper 2 ft. consists of wooden lattice. In the C-1, TC-1 and M-1 Districts, the Planning Commission recommended an increase in permitted height for metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences from 6 to 8 feet. without the current requirement for Planning Commission approval of a Fence Exception. Per the recommended ordinance, razor wire, barbed wire and similar materials could only be permitted through a public hearing before the Planning Commission.

In addition, the ordinance would clarify that the Planning Commission may restrict the height, location and/or design of fencing, as a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, so as to maintain sufficient openness, particularly in the vicinity of potential butterfly flight corridors, while remaining consistent with Building Code requirements.

The Commission also wanted to regulate other types of “non-standard” fencing materials (such as plastic k-rail) through guidelines to be approved later. In lieu of this somewhat vague and subjective standard, the City Attorney has revised the draft ordinance to specify that K-rail and similar barriers shall not be used as a wall in or adjoining any R Residential District or NCRO Neighborhood Commercial District, except through a Fence Exception approved by the Planning Commission. Other minor refinements in the language recommended by the Planning Commission have been incorporated into the draft ordinance per the City Attorney.

Fiscal Impact:

None.


Measure of Success:

Results satisfactory to the community in terms of increased security and privacy with minimum adverse impacts to neighbors and the general public.

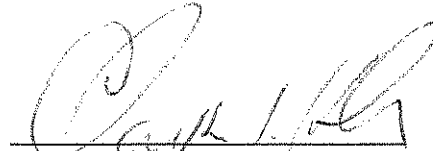
Attachments:

- Redline Version of Planning Commission Recommended Changes to BMC Section 17.32.050 as Revised by the City Attorney
- Draft Ordinance No. 557 as Revised by the City Attorney
- Planning Commission Resolution RZ-4-10
- Planning Commission Minutes for 2/10/11 Meeting (excerpt)

Agenda Report for 2/10/11 Planning Commission Meeting



Department Head



City Manager

REDLINE VERSION OF PLANNING COMMISSION RECOMMENDED CHANGES TO
BRISBANE MUNICIPAL CODE SECTION 17.32.050
AS REVISED BY THE CITY ATTORNEY

(additions to the current regulations shown in *italics* and deletions shown in ~~strike through~~)

A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:

1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area: ~~provided, however, that, except as follows:~~

a. ~~on corner lots will~~ *here the director of public works determines that visibility would be affected, the height of fences, hedges and walls shall be reduced to a maximum height determined by the director to assure adequate sight distance not exceed three (3) feet in height.*

b. *Chain-link fences shall not be constructed in or adjoining any R Residential District, except as provided in subsections B.4 and B.5. K-rail and similar barriers shall not be used as a wall in or adjoining any R Residential District or NCRO Neighborhood Commercial District, except as provided in subsection B.5.*

c. *Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection B.5.*

d. *As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the Planning Commission may restrict the height, location and/or design of fencing to maintain sufficient openness [with openings more than three (3) inches in the smallest dimension] while remaining consistent with Building Code requirements.*

2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.

3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.

B. Exceptions.

1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:

a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.

b. Water-conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.

c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.

2. *Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2*

R-3, R-BA and NCRO-2 Districts, but not within the front setback required per the district's development regulations.

3. *Metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 Districts.*

4. *Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.*

5. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:

a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.

b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.

c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

Recommended
DRAFT ORDINANCE NO. 557
As Revised by the City Attorney

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 17.32.050 OF THE MUNICIPAL
CODE REGARDING FENCES, HEDGES AND WALLS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.32.050 of Chapter 17.32, General Use Regulations, is amended to read as follows:

§17.32.050 – Fences, hedges and walls. A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:

1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area, except as follows:

a. Where the director of public works determines that visibility would be affected, the height of fences, hedges and walls shall be reduced to a maximum height determined by the director to assure adequate sight distance.

b. Chain-link fences shall not be constructed in or adjoining any R Residential District, except as provided in subsections B.4 and B.5. K-rail and similar barriers shall not be used as a wall in or adjoining any R Residential District or NCRO Neighborhood Commercial District, except as provided in subsection B.5.

c. Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection B.5.

d. As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the Planning Commission may restrict the height, location and/or design of fencing to maintain sufficient openness [with openings more than three (3) inches in the smallest dimension] while remaining consistent with Building Code requirements.

2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.

3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.

B. Exceptions.

1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:

a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.

b. Water-conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.

c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.

2. Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2, R-3, R-BA and NCRO-2 Districts, but not within the front setback required per the district's development regulations.

3. Metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 Districts.

4. Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.

5. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:

a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.

b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.

c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION NO. RZ-4-10

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING ZONING TEXT AMENDMENT RZ-4-10 TO THE CITY COUNCIL,
SUCH AMENDMENTS PERTAINING TO
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING FENCES, HEDGES AND WALLS

WHEREAS, concerns have been expressed regarding the ability of fencing to assure adequate security and privacy under the Brisbane Municipal Code's current regulations; and

WHEREAS, the Planning Commission has determined that the draft ordinance amending Brisbane Municipal Code Section 17.32.050 is consistent with General Plan Policies 4, 5, 6, 25, and 377 and Program 22a; and

WHEREAS, clear standards to allow greater flexibility in fencing design to assure public safety and security may be provided through amending the Zoning Ordinance; and

WHEREAS, on February 10, 2011, the Planning Commission held a public hearing on the draft ordinance; and

WHEREAS, the minutes of the Planning Commission meeting of February 10, 2011, are attached and incorporated by reference as part of this resolution; and

WHEREAS, the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303(e) of the State CEQA Guidelines; the exceptions to the use of this categorical exemption referenced in Section 15300.2 do not apply.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.



JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-4-10 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on February 10, 2011, by the following roll call vote:

AYES: Cunningham, Parker, Reinhardt, Munir
NOES: None
ABSENT: Do



JOHN SWIECKI
Community Development Director

**DRAFT
ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 17.32.050 OF THE MUNICIPAL
CODE REGARDING FENCES, HEDGES AND WALLS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.32.050 of Chapter 17.32, General Use Regulations, is amended to read as follows:

§17.32.050 – Fences, hedges and walls. A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:

1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area, except as follows:

a. Where the director of public works determines that visibility would be affected, the height of fences, hedges and walls shall be reduced to not less than three (3) feet.

b. Chain-link fences shall not be constructed in or adjoining any R Residential District, except as provided in subsections B.4 and B.5.

c. Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection B.5. Other non-standard fencing materials may be similarly restricted per guidelines approved by the Planning Commission.

d. As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the Planning Commission shall restrict the height, location and/or design of fencing to maintain sufficient openness to allow passage of butterflies while remaining consistent with Building Code requirements.

2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.

3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.
B. Exceptions.

1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:

a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.

b. Water-conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.

c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.

2. Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2, R-3, R-BA and NCRO-2 Districts, but not within the front setback required per the district's development regulations.

3. Metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 Districts.

4. Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.

5. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:

a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.

b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.

c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

excerpt
BRISBANE PLANNING COMMISSION
Action Minutes of February 10, 2011
Regular Meeting

1. **PUBLIC HEARING:** Zoning Text Amendment RZ-4-10 to Amend Brisbane Municipal Code Title 17, Chapter 17.32, Section 17.32.050, Regarding Fences, Hedges and Walls; City of Brisbane, applicant

Senior Planner Tune presented the item and responded to questions from the Commission.

Commissioner Parker suggested revising Section 17.32.050.A.1.d to change “may” to “shall” and to delete “so as.”

The Commissioners discussed options in regulating fences and similar barriers constructed of unusual materials, such as the green plastic barriers used at the Brisbane Village. It was the consensus of the Commission that the ordinance should include a provision allowing the Commission to adopt guidelines to identify fencing materials that would not require Commission approval and those that would.

Chairman Munir suggested that Section 17.32.050.A.1.a be revised to delete “On corner lots” so as to include lots on sharp bends in the street where sight distance could also be a concern. Commissioner Cunningham added that the Public Works Director should have the option to reduce the height to as low as 3 ft., so that the height could taper gradually where appropriate.

Chairman Munir opened the public hearing.

There being no one wishing to speak, Chairman Munir moved that the public hearing be closed. The motion was seconded by Commissioner Cunningham and approved 4-0 (Commissioner Do absent).

In response to Commissioner Parker’s concern, Chairman Munir noted that the guidelines could also specify the size of the openings needed in fences to allow butterflies to pass through per Section 17.32.050.A.1.d.

Commissioner Cunningham moved to approve Resolution RZ-4-10 to recommend that the City Council adopt the draft ordinance as revised by the Commission. The motion was seconded by Commissioner Parker and approved 4-0 (Commissioner Do absent).

City of Brisbane Planning Commission Agenda Report

TO: Planning Commission
For the Meeting of 2/10/11

FROM: Tim Tune, Senior Planner, via John Swicki, Community Development Director

SUBJECT: Zoning Text Amendment RZ-4-10 to Amend Brisbane Municipal Code Title 17, Chapter 17.32, Section 17.32.050, Regarding Fences, Hedges and Walls

Request: Brisbane Municipal Code Section 17.32.050 is proposed to be amended to allow 8 ft. tall fences within the required side and rear setbacks in the R and NCRO-2 Districts, as long as the upper 2 ft. consists of wooden lattice. Fences no taller than 6 ft. would continue to be allowed within the front setback on properties not located at a street corner, where the Director of Public Works would be authorized to reduce the height limit to 3 ft. to avoid impact to sight distance at the street intersection.

In the C-1, TC-1 and M-1 Districts, 8 ft. tall metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences would be allowed. Chain-link fences would not be allowed in or adjoining any R Residential District without Planning Commission approval, except for temporary chain-link demolition/construction barricades not exceeding 8 feet in height. Planning Commission approval would be required for razor-wire fencing in any district.

In addition, it would be clarified that the Planning Commission may restrict the height, location and/or design of fencing, as a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, so as to maintain sufficient openness to allow butterflies to pass through while remaining consistent with Building Code requirements.

Recommendation: Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-4-10.

Environmental Determination: Accessory (appurtenant) structures are categorically exempt from the provisions of the California Environmental Quality Act per Section 15303(e) of the State CEQA Guidelines. The exceptions to the use of this categorical exemption referenced in Section 15300.2 do not apply.

Background: At the Planning Commission meeting of September 23, 2010, concerns were expressed about the adequacy of the City's 6 ft. standard fence height to secure outdoor storage at 600 Tunnel Avenue (Interim Use Permit UP-14-10) and overflow parking at 5 Beatty Avenue (Temporary Use Permit UP-15-10). In addition, the City had received inquiries about the use of

RZ-4-10
2/10/11 Meeting
Page 2

lattice atop 6 ft. tall solid wood fences to provide increased privacy in residential neighborhoods. In response, the Planning Commission held study sessions on November 18, 2010, and January 27, 2011, regarding revisions to the fence regulations.

As directed by the Commission, staff prepared and circulated the attached survey to solicit input from citizens regarding the residential fence regulations. The survey was posted on the City's website (noting that paper copies were available at City Hall) and publicized in the City's on-line blog and on the front page of the January edition of the Brisbane City News, which was mailed to all residents. As of January 18, 2011, 51 responses had been received. Almost 70% responded that they were in favor of allowing lattice to be used to extend the height of 6 ft. tall fences in residential areas. While only 61% of the respondents expressed a preference, 55% of those were in favor of allowing 2 ft. of lattice to be used to extend the height of fences to 8 ft. Of those who responded to the question, 57% would only allow the taller fences in the side and rear yards, not in the front yards. Approximately 53% of the total respondents opposed the use of chain-link in residential areas, and even among those who did not oppose its use, 58% would not allow chain-link fences over 6 ft. and 74% would only allow chain-link fences in the side and rear yards.

Staff Analysis: Brisbane Municipal Code Section 17.32.050 currently exempts fences not over 6 ft. in height from regulation in the City of Brisbane, except when located on a street corner where they might block sight distance. The 6 ft. height limit parallels California Building Code Section 105.2's exemption of fences not over 6 feet in height from the requirement to obtain a Building Permit. The Deputy Building Official reports, though, that many jurisdictions do not include lattice with at least a 50% open area in calculating that height, because such materials would not necessitate the submittal of wind load calculations that would typically be required for solid wood fences over 6 ft. tall.

The results of the public survey support amending the fence regulations to allow 8 ft. tall fences within side and rear yards in residential areas, subject to the requirement that the upper 2 ft. consist of lattice. This height is similar to that allowed for fences to screen the visibility of development in the NCRO-2 District from adjoining residential districts per BMC Section 17.14.060.G, and for trellises and arbors as noted above. It would also be consistent with the approach taken by the Cities of San Mateo and San Bruno (see attached survey of jurisdictions within the County). Fences located on shared private property lines in the side and rear setbacks typically assume a degree of cooperation between neighbors regarding the construction and maintenance of the fence owned in common (see attached State law).

To address concerns regarding the use of chain-link fencing in residential areas, the draft ordinance would require Planning Commission approval of its use in or adjoining any R Residential District through the existing Fence Exception procedure. A public hearing would be

G-1-2

G-1-1

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE,
RECOMMENDING ZONING TEXT AMENDMENTS RZ-4-10 TO THE CITY COUNCIL,
SUCH AMENDMENTS PERTAINING TO
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING FENCES, HEDGES AND WALLS

required at which the property owner could present the case for using chain-link in the particular situation, while giving neighbors an opportunity to provide input.

As for the security concerns originally expressed by the Commission regarding outdoor storage and parking in nonresidential districts, the draft ordinance would allow 8 ft. tall chain-link or metal rail-and-picket fences in the trade commercial zoning districts. This would be a simpler alternative to the Fence Exceptions previously approved by the Planning Commission for 7 to 10 ft. tall chain-link fences in the TC-1 District, typically at the Public Works Department's recommendation to separate private properties from the adjoining Crocker Park public trail. Chain-link would also be allowed for temporary 8 ft. tall demolition/construction barricades in all zoning districts.

The proposed ordinance would also specify that the Planning Commission may, as a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan (HCP), restrict the height, location and/or design of fencing so as to maintain sufficient openness to allow passage of butterflies while remaining consistent with Building Code requirements. Some properties subject to the HCP may be expected to provide butterfly flight corridors between areas of endangered species' habitat. Depending upon its height and openness, a fence might act as a barrier within these corridors. An example of acceptable fencing would be the 6 ft. tall steel tubing fences with approximately 4 inch openings approved at Landmark at the Ridge (note that California Building Code Section 1013.3 generally requires that guardrails be designed so that a 4-inch-diameter sphere cannot pass through any opening).

Attachments:

- Draft Resolution RZ-4-10
- Draft Ordinance (Redline Version)
- Survey of Jurisdictions in San Mateo County
- List of Fence Height Exceptions
- List of Fences Over 6 Ft. Tall in Crocker Park
- California Civil Code Sections 841 & 841.4
- On-Line Fence Survey & Results

WHEREAS, concerns have been expressed regarding the ability of fencing to assure adequate security and privacy under the Brisbane Municipal Code's current regulations; and

WHEREAS, the Planning Commission has determined that the draft ordinance amending Brisbane Municipal Code Section 17.32.050 is consistent with General Plan Policies 4, 5, 6, 25, and 377 and Program 22a; and

WHEREAS, clear standards to allow greater flexibility in fencing design to assure public safety and security may be provided through amending the Zoning Ordinance; and

WHEREAS, on February 10, 2011, the Planning Commission held a public hearing on the draft ordinance; and

WHEREAS, the minutes of the Planning Commission meeting of February 10, 2011, are attached and incorporated by reference as part of this resolution; and

WHEREAS, the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303(e) of the State CEQA Guidelines; the exceptions to the use of this categorical exemption referenced in Section 15300.2 do not apply.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-4-10 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on February 10, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director

DRAFT
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 17.32.050 OF THE MUNICIPAL
CODE REGARDING FENCES, HEDGES AND WALLS**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.32.050 of Chapter 17.32, General Use Regulations, is amended to read as follows:

§17.32.050 – Fences, hedges and walls. A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:

1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area, except as follows:
 - a. On corner lots where the director of public works determines that visibility would be affected, fences, hedges and walls shall not exceed three (3) feet in height.
 - b. Chain-link fences shall not be constructed in or adjoining any R Residential District, except as provided in subsections B.4 and B.5.
 - c. Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection B.5.
 - d. As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the Planning Commission may restrict the height, location and/or design of fencing so as to maintain sufficient openness to allow passage of butterflies while remaining consistent with Building Code requirements.
2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.
3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.
B. Exceptions.
 1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:
 - a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.
 - b. Water-conserving, non-invasive landscaping of sufficient size and maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.
 - c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.

C.I. 5

2. Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2, R-3, R-BA and NCRO-2 Districts, but not within the front setback required per the district's development regulations.

3. Metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 Districts.

4. Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.

5. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:

- a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.
- b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.
- c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

C.I. 6

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

REDLINE VERSION OF PROPOSED CHANGES TO
BRISBANE MUNICIPAL CODE SECTION 17.32.050
(additions to the current regulations shown in *italics* and deletions shown in ~~strikethrough~~)

- A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:
 - 1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area; ~~provided, however, that, except as follows:~~
 - a. ~~On corner lots where the director of public works determines that~~ visibility would be affected, fences, hedges and walls shall not exceed three (3) feet in height.
 - b. *Chain-link fences shall not be constructed in or adjoining any R Residential District, except as provided in subsections B.4 and B.5.*
 - c. *Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection B.5.*
 - d. *As a condition of approval for properties subject to the Sun Bruno Mountain Area Habitat Conservation Plan, the Planning Commission may restrict the height, location and/or design of fencing so as to maintain sufficient openness to allow passage of butterflies while remaining consistent with Building Code requirements.*
 - 2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.
 - 3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.
- B. Exceptions.
 - 1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:
 - a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.
 - b. Water-conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.
 - c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.
 - 2. *Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2, R-3, R-BA and NCRO-2 Districts, but not within the front setback required per the district's development regulations.*
 - 3. *Metal rail-and-picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 Districts.*

SURVEY OF JURISDICTIONS IN SAN MATEO COUNTY

City	Fence Height
Burlingame	6' w/ 1' lattice
Daly City	6'
San Bruno	6' w/ 2' lattice
San Mateo (City)	6' w/ 2' lattice
Menlo Park	7'
Redwood City	7'
Foster City	(over 6' requires a permit)
Millbrae	6' w/ 1' lattice
South San Francisco	6' w/ 1' lattice
Pacifica	6' w/ 1' lattice

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G.I. 9

4. *Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.*
5. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:
 - a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.
 - b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.
 - c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.

FENCE HEIGHT EXCEPTIONS

FENCES OVER 6 FT. TALL IN CROCKER PARK

APPLICATION	ADDRESS	HEIGHT AND TYPE OF FENCING	ADDRESS	HEIGHT	APPROVAL
V-4-87	278 Santa Clara St	Up to 9 ft. (wood plank topped by 1.5 ft. lattice)	88 North Hill Drive	7' (6' CL + 1' SL)	FD-1-08
V-4-90	385 Valley Dr	9 ft (8 ft. chain-link topped by 1 ft. barbed wire)	50 North Hill Drive	7' (6' CL + 1' BW)	City Property
V-1-93	435 Valley Dr	7 ft. (6 ft. chain-link topped by 1 ft. barbed wire)	280 Old County Road	10' MRP	Use Permit UP-1-98
V-4-93	371 Klamath St	8 ft. masonry block	52 Park Lane	10' CL	City Property
DP-1-96	123 South Hill Dr.	7.5 ft. metal rail & picket	60 Park Place	7' (6' CL + 1' BW)*	Predates Annexation
FD-1-96	3840 Bayshore Bl	7 ft. metal rail & picket	123 South Hill Drive	7.5' MRP	Design Permit DP-1-96
FD-1-97	269 Humboldt Rd	Up to 9 ft. (wood plank topped by 1 ft. lattice)	155 South Hill Drive	8' (7' CL + 1' BW)	Predates Annexation
UP-1-98	280 Old County Rd	10 ft. metal rail & picket to secure postal vehicles	175 South Hill Drive	7' (6' CL + 1' BW)	Predates Annexation
FD-1-01	398 Klamath St	Up to 8 ft. (wood plank topped by 2 ft. lattice)	201 South Hill Drive	7' (6' CL + 1' BW)	Predates Annexation
FD-3-01	430 Valley Dr	10 ft. chain-link	240 Valley Drive	7' (6' CL + 1' BW)*	Predates Annexation
DP-1-04	425 Valley Drive	10 ft. black chain-link adjoining public trail	280 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
FD-1-08	88 North Hill Dr	7 ft. chain-link with slats adjoining public trail	355 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
			385 Valley Drive,	9' (8' CL + 1' BW)	Variance V-4-90
			425 Valley Drive	10' CL	Design Permit DP-1-04
			430 Valley Drive	10' CL	Fence Exception FD-3-01
			435 Valley Drive	7' (6' CL + 1' BW)	Variance V-1-93
			450 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
			455 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
			470 Valley Drive	8' CL*	Predates Annexation
			480 Valley Drive	6.5' (5.5' CL + 1' BW)	Predates Annexation
			485 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
			499 Valley Drive	7' (6' CL + 1' BW)	Predates Annexation
			1 West Hill Drive	11' (10' CL + 1' BW)	(Not in Setbacks)
			151 West Hill Place	7' (6' CL + 1' BW)	Predates Annexation

CL = Chain-link
 BW = Barbed Wire
 SL = Stick Wire
 MRP = Metal Rail & Picket
 * = Small Enclosure Only



**CALIFORNIA CIVIL CODE
SECTIONS 841-841.4**

841. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;
2. The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

841.4. Any fence or other structure in the nature of a fence unnecessarily exceeding 10 feet in height maliciously erected or maintained for the purpose of annoying the owner or occupant of adjoining property is a private nuisance. Any owner or occupant of adjoining property injured either in his comfort or the enjoyment of his estate by such nuisance may enforce the remedies against its continuance prescribed in Title 3, Part 3, Division 4 of this code.

City of Brisbane Fence Survey

The Planning Commission Needs Your Input

The Planning Commission would like to get more public input on the City's current fence regulations before considering any changes. Please take a few minutes to provide them with your input. Thank you in advance for your participation!

Fences in Brisbane's Residential Areas

1. Any type of 6 ft. tall fence (e.g. wood, chain link, concrete block) is currently allowed anywhere in residential areas (except on corner lots where fences need to be less than 3 ft. in height so drivers' views of cross-street traffic are not blocked). Should taller fences be allowed if the portion over 6 ft. tall consists of lattice (an ornamental and/or structural criss-crossed framework)? If you answered Yes, please answer Q2 and Q3.

- Yes
- No

2. How much taller would you allow the fence to go?

- 7 ft.
- 8 ft.
- taller than 8 ft.

3. Where on the lot would you allow taller fences?

- Anywhere
- Side and rear yards only, not in front yard

4. Should chain link fences be allowed in residential areas? If Yes, please answer Q5 and Q6.

- Yes
- No

5. How tall would you allow them?

- 6 ft.
- 7 ft.

G.1.13

G.1.14

8 ft.

taller than 8 ft.

6. Where in a lot would you allow chain link fences?

Anywhere

Side and rear yards only, not in front yard

Thank You

1. Do you have any other comments regarding fences that were not addressed in the previous questions? If so, indicate them below.

2. This fence survey will be an item the Planning Commission will discuss at future public hearings. If you would like to be notified via e-mail the dates of those hearings, please write your e-mail below.

Fence Survey

Response Summary

Total Started Survey: 51
Total Completed Survey: 49 (96.1%)

PAGE: FENCES IN BRISBANE'S RESIDENTIAL AREAS

1. Any type of 6 ft. tall fence (e.g. wood, chain link, concrete block) is currently allowed anywhere in residential areas (except on corner lots where fences need to be less than 3 ft. in height so drivers' views of cross-street traffic are not blocked). Should taller fences be allowed if the portion over 6 ft. tall consists of lattice (an ornamental and/or structural criss-crossed framework)? If you answered Yes, please answer Q2 and Q3.

	Response Percent	Response Count
Yes	69.4%	34
No	30.6%	15
	answered question	49
	skipped question	2

2. How much taller would you allow the fence to go?

	Response Percent	Response Count
7 ft.	19.4%	6
8 ft.	54.8%	17
taller than 8 ft.	25.8%	8
	answered question	31
	skipped question	20

3. Where on the lot would you allow taller fences?

	Response Percent	Response Count
Anywhere	42.9%	15

G. I. 16.

Side and rear yards only, not in front yard	57.1%	20
	answered question	35
	skipped question	16

4. Should chain link fences be allowed in residential areas? If Yes, please answer Q5 and Q6.

	Response Percent	Response Count
Yes	44.9%	22
No	55.1%	27
	answered question	49
	skipped question	2

5. How tall would you allow them?

	Response Percent	Response Count
6 ft.	57.7%	15
7 ft.	11.5%	3
8 ft.	23.1%	6
taller than 8 ft.	7.7%	2
	answered question	26
	skipped question	25

6. Where in a lot would you allow chain link fences?

	Response Percent	Response Count
Anywhere	25.8%	8
Side and rear yards only, not in front yard	74.2%	23
	answered question	31
	skipped question	20

Fence Survey

Response Summary

Total Started Survey: 51
Total Completed Survey: 49 (96.1%)

1. Do you have any other comments regarding fences that wasn't addressed in the previous questions? If so, indicate them below.

Response
Count

18

- | | |
|--|---------------------------|
| 1. sometime people want to be in their yard and not have their neighbor looking at them every chance they are out side. also fence height depends on if you are on a hill or on flat land sometimes you need a higher fence depending on location of property. | Thu, Jan 13, 2011 3:30 PM |
| 2. Chicago used to offer a rebate for wrought iron, which helped beautify the city. Masonry (brick or stone) and wrought iron are both much more attractive than any other options. Cement block should be banned. Razor wire anywhere should be banned for aesthetic and humane reasons. | Tue, Jan 11, 2011 9:43 PM |
| 3. There are many homes and areas that considerations on a basic standard can be in place. Brisbane's lot are all very unique, so a standard may not be appropriate. The most important consideration - NEIGHBORS and their input. | Mon, Jan 3, 2011 7:24 PM |
| 4. Fences in front yards should require setbacks so as to not obstruct visibility of the sidewalk and street. This is a safety issue and important for anyone pulling out of a driveway. Very hard to pull out if you cannot see pedestrians or cars. We don't have a fence obstructing our view of sidewalk and street but neighbors on either side have allowed shrubs and hedges to grow over 4-6 feet. I think if you are considering guidelines over fences, you should include parameters for residents who use hedges or shrubs as a fence. We also have a neighbor who planted bamboo as a hedge and now this migrating species has come under our driveway and cracked it. Please include guidelines on vegetation! Thank you. This is a great topic. | Mon, Jan 3, 2011 6:25 PM |
| 5. keep them maintained and or painted. | Mon, Jan 3, 2011 12:35 PM |
| 6. Person who installs a fence over 6 ft should need written permission from any neighbor who's property lies directly north of the fence in case the taller fence will shade the persons property/landscaping. People's access to sunshine should be protected. | Mon, Jan 3, 2011 12:05 PM |
| 7. The best rear and side yard fence on a property line is one whose costs are born by both property owners. I replaced such a fence that after 35 plus years rotted | Mon, Jan 3, 2011 11:14 AM |

answered question 18
skipped question 33

away with absolutely no consideration from the terminally cheap absentee landlord of the rental property next door.

8. When our fence broke, we were unsure of who was responsible for replacing it. I wish the City had some guidelines about this. Luckily, we have nice neighbors, but not everybody is so easy to negotiate with. Mon, Jan 3, 2011 10:30 AM
9. Safety should be a consideration...if an emergency arises and all fencing is over 6ft tall around an entire property, the emergency personnel would have a hard time getting into a home. Maybe the front of the house should be easily accessible, side and back yards, not so much. Sun, Jan 2, 2011 2:04 PM
10. I truly believe good fences make good neighbors & high fences with lattice for vines to grow beautify not only both neighbors' views, but the town as well! Wed, Dec 29, 2010 3:09 PM
11. I think it is just awful the city allowing 6 foot high fences in the front yard. I live at 29 Tulare and a couple of houses from the owners who erected a fence wall across the front of their house. I called the city and complained the only thing they could do was get them to remove it from the garage entrance (I guess they don't park a car in there). It spoils the character of the street. These types of people should live in a condo and not a house. We need strong zoning. Wed, Dec 29, 2010 3:09 PM
12. Chain link fences last for years and allow many creeping vines/plants to disguise their ugliness if the owner is hopefully so inclined. However, they should not be allowed on the street/front side of a property, next to the depth plus some determined footage to an adjoining house, and would only wish them to be used in the very rear of a back yard. And within that partial area, don't wish to see them as part of a retaining wall, divider, etc. either. Sun, Dec 26, 2010 2:43 PM
13. Closed fencing is currently NOT allowed on the NE Ridge development due to habitat concerns and this should be fully enforced. Thu, Dec 23, 2010 8:53 AM
14. What about fences directly on top of retaining walls? They create the appearance of a taller fence. Wed, Dec 22, 2010 5:46 PM
15. Fences are often required to secure animals and owners should be allowed to do so without the complaint of neighbors. If you look around town, most fences are 6 feet tall with at least a foot of lattice already. The only people that complain are those who think they own "their" view. People should be allowed privacy in a town where homes are built right on top of each other and where everyone complains on everyone else. Wed, Dec 22, 2010 5:42 PM
16. all chain link fencing and framework (posts-rails] should be black. any where in the city ! skate park= basket ball courts ect. Sat, Dec 18, 2010 8:28 AM
17. Fences make for bad neighbors, low hedges are much more pleasant. Fri, Dec 3, 2010 8:04 PM
18. If your lot runs uphill and your neighbors house sits above you, a larger fence is often needed for privacy issues. Thu, Dec 2, 2010 12:38 PM

answered question 18
skipped question 33

2. This fence survey will be an item the Planning Commission will discuss at future public hearings. If you would like to be notified via e-mail the dates of those hearings, please leave your e-mail in the space below.

Response
Count

8

answered question 8
skipped question 43