

ORDINANCE NO. 2017-1450

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA AMENDING VARIOUS PROVISIONS UNDER TITLE 20 OF THE SAN MARCOS MUNICIPAL CODE (ZONING ORDINANCE) TO REGULATE WALLS AND FENCES; AND HEARING PROCEDURES TO AMEND THE ZONING ORDINANCE OR THE SAN MARCOS GENERAL PLAN

WHEREAS, the City desires to amend certain provisions under Title 20 of the San Marcos Municipal Code (SMMC) (Zoning Ordinance) to clarify the City's desired land use practices; and

WHEREAS, on May 15, 2017, the Planning Commission adopted a resolution recommending that the City Council adopt an ordinance to amend various Zoning Ordinance provisions, including, but not limited to, modifying existing regulations relating to walls and fences and the procedures for amending the text, regulations and maps under the Zoning Ordinance or the San Marcos General Plan (General Plan); and

WHEREAS, Section 65867 of the California Government Code (GC) authorizes the City Council to modify a recommendation of the Planning Commission, provided that any modification of the proposed ordinance by the City Council that was not previously considered by the Planning Commission during its hearing shall first be referred to the Planning Commission for report and recommendation; and

WHEREAS, on June 27, 2017, the City Council considered the Planning Commission's recommendation and adopted certain amendments to the Zoning Ordinance pursuant to the Planning Commission's recommendation, but referred other regulations back to the Planning Commission for reconsideration pursuant to GC section 65857; and

WHEREAS, on July 17, 2017 the Planning Commission held a hearing to reconsider modification of existing regulations relating to walls and fences and the procedures for amending the text, regulations and maps under the Zoning Ordinance or the San Marcos General Plan (General Plan) in accordance with GC section 65857; and

WHEREAS, the City currently regulates the development, installation and maintenance of private walls and fences within the community under Chapter 20.335 of the Zoning Ordinance. The City desires to clarify those provisions to allow flexibility in front yard fence heights on lot parcels of one acre or more located in agricultural zones to provide for greater security for those rural properties while allowing visibility into the property and retaining community character; and

WHEREAS, the City further desires to expressly include vinyl-coated chain link fencing as an example of permissible open-style fencing in the agricultural zone pursuant to City's Council's recommendation during the June 27, 2017 meeting; and

WHEREAS, the City currently regulates amendments to the Zoning Ordinance and the General Plan under Chapter 20.530 of the Zoning Ordinance; and

WHEREAS, during the June 27, 2017 meeting, the City Council noted that it was inconsistent to require a 4/5th supermajority vote of the City Council for approval of any amendments to the Zoning Ordinance or the General Plan, whether or not the amendment receives public protest, when the process to adopt the initial text, regulations and maps under the Zoning Ordinance or the General Plan only requires a majority vote of the City Council; and

WHEREAS, the City desires to modify the procedures to amend the Zoning Ordinance or the General Plan by requiring a majority vote of the City Council to make such a modification; and

WHEREAS, pursuant to the direction of the City Council, the Planning Commission has reconsidered the proposed amendments to the Zoning Ordinance provisions governing walls and fences and the procedures for amending the Zoning Ordinance or the General Plan pursuant to GC section 65857, and recommends amending those provisions in accordance with the modifications suggested by the City Council; and

WHEREAS, the hearing held on July 17, 2017 was duly advertised and held in the manner prescribed by law; and

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally, and by the Charter of the City of San Marcos specifically, does ordain as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. Existing Chapter 20.335 of the Zoning Ordinance is hereby amended as shown in blacklined, underlined additions and strikeouts in the attached Exhibit A; new text recommended by the Planning Commission are shown in red.

Section 3. Existing Section 20.530.040 of the Zoning Ordinance is hereby amended as shown in blacklined, underlined additions and strikeouts in the attached Exhibit

B; new text recommended by the Planning Commission are shown in red.

Section 4. This is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because there is no potential for it to result in a physical change in the environment, either directly or indirectly. In the event this Ordinance is found to be subject to CEQA, it is exempt from CEQA pursuant to the exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility of a significant effect on the environment

Section 5. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall certify to the passage of this Ordinance and cause the same, or the title thereof as a summary, to be published in a newspaper of general circulation designated for the publication of legal notices in the City of San Marcos in accordance with the provisions of State Law.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 8<sup>th</sup> day of August, 2017, and thereafter

PASSED, APPROVED AND ADOPTED at a regular meeting of the San Marcos City Council on the day of September 12, 2017, by the following roll call vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

---

James M. Desmond, Mayor  
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

---

Phillip Scollick, City Clerk  
City of San Marcos

---

Helen Holmes Peak, City Attorney  
City of San Marcos

EXHIBITS

- A Amended SMMC Chapter 20.335 governing walls and fences
- B Amended SMMC Section 20.530.040 and Figure 20.530-1 governing hearing procedures to amend the Zoning Ordinance, Zoning Map, or the General Plan

EXHIBIT A

Text Amendment amending Chapter 20.335 governing walls and fences

**AMENDED SMMC CHAPTER 20.335**

**TABLE OF CONTENTS**

**ARTICLE 3 GENERAL DEVELOPMENT STANDARDS**

Chapter 20.335 Walls and Fences

Section 20.335.010	Purpose of Chapter
Section 20.335.020	Applicability
Section 20.335.030	General Development Standards
Section 20.335.040	Non-Residential and Mixed Use Requirements
Section 20.335.050	Single Family Residential Requirements
Section 20.335.060	Agricultural Zone Requirements

## **CHAPTER 20.335      WALLS AND FENCES**

### **Sections:**

- Section 20.335.010    Purpose of Chapter
- Section 20.335.020    Applicability
- Section 20.335.030    General Development Standards
- Section 20.335.040    Non-Residential and Mixed Use Requirements
- Section 20.335.050    Single-Family Residential Requirements
- Section 20.335.060    Agricultural Zone Requirements

### **Section 20.335.010    Purpose of Chapter**

The purpose of this chapter is to regulate the development, installation, and maintenance of private walls and fences within the community. Specifically, this chapter does the following:

- A.      Promotes the public health, safety, and general welfare of the City by regulating the fences and walls protecting or separating real property.
- B.      Further modifies the operation of allowable land uses by regulating the installation, operation, and maintenance of all walls and fences.

### **Section 20.335.020    Applicability**

The provisions of this chapter shall be applicable to all walls and fences required by any land use or within any Zone of this Title except as modified by chapter 20.400 (Specific Use Standards) or 20.445 (Refuse and Recycling).

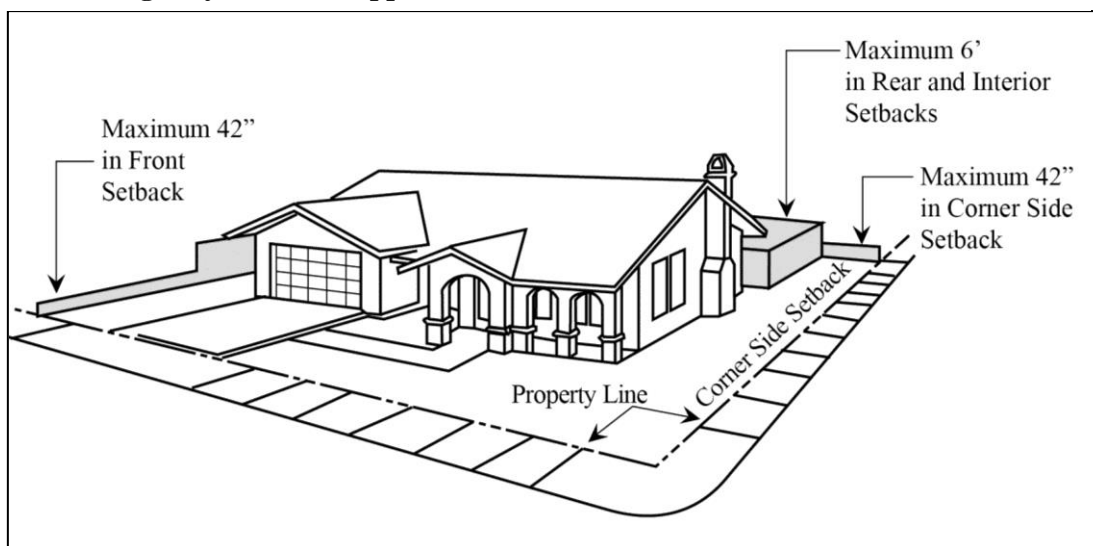
- A.      **Review Required.** The review of fences and walls shall be an integral part of any site plan, permit, or Site Development Plan Review application. Compliance with all wall and fence standards shall be required, unless otherwise modified by a DP.
- B.      **Swimming Pools, Spas, and Similar Features.** Swimming pools, spas, and similar features shall be fenced in accordance with the California Building Code.

### **Section 20.335.030    General Development Standards**

- A.      **Architectural Compatibility.** Walls, fences, and architectural screening elements shall be compatible with the architectural treatment of the primary building on the parcel, and shall meet all standards applicable to the Zone unless otherwise modified by this chapter.
- B.      **Visibility.** No wall, fence, or landscaping element shall interfere with intersection visibility or line of sight or other safety issue. See Figure 20.300-4.

- C. **Blank Walls Prohibited.** Blank walls are prohibited. Where screening or security walls (excluding wrought iron fences) are located within ten (10) feet of a public ROW, landscaping shall be provided between the wall and the ROW to a minimum height of forty-two (42) inches to minimize opportunities for crime and unsafe conditions.
- D. **Permitted Materials.** Approved materials include wood, vinyl, stone, masonry, brick, block, stucco, wrought iron, and concrete. Where opaque walls are required, they shall be constructed of brick, split-face block, stone, or frame-stucco.
- E. **Prohibited Materials.**
1. Barbed, razor, concertina, corrugated metal and plastic, tarps, and electrified wire of any kind or configuration is prohibited in all Zones, except as modified by section 20.335.030 (E) (2) below.
  2. Woven wire, barbed wire, or electrified fencing may be permitted in the front and side yards of all Agricultural (A) Zones only if needed to secure livestock and/or horses; maximum height not to exceed seventy-two (72) inches.
  3. Chain-link fencing and similar material are prohibited along any public ROW regardless of setback. Where chain-link fencing is used, it shall not be visible from the public ROW. This standard shall apply to all Zones except Agricultural (A) Zones.
- F. **Maximum Height.** The height of all walls, fences, and architectural screening elements shall be measured from the finished grade of the property to the highest point of the element.
1. Table 20.335-1 established maximum wall/fence heights by Zone.
  2. Where additional height is needed based on security or specific site operating requirements, additional wall/fence height may be approved through a DP, subject to evaluation of agencies and necessity.

3. Hedges or other vegetation shall not exceed the maximum height of walls permitted in the Zone so located.

**Figure 20.335-1****Fence Height by Location (applicable to R Zones)****Table 20.335-1****Wall/Fence Maximum Height Standards by Zone**

Setback Location	Maximum Permitted Height by Setback									
	A & R Zones*		P-I Zone		MU Zones		Commercial		Industrial	
	<Min. Setback	≥Min. Setback	<Min. Setback	≥Min. Setback	<Min. Setback	≥Min. Setback	<Min. Setback	≥Min. Setback	<Min. Setback	≥Min. Setback
Front PL	42"	6'	42"	42"	---	6'	42"	6'	---	6'
Public ROW	42"	6'	6'	6'	---	6'	42"	6'	---	6'
Interior PL	---	6'	6'	6'	7'	7'	8'	8'	10'	10'
Adjacent to R PL	---	6'	6'	6'	6'	6'	6'	6'	6'	6'

Note: --- = not permitted. Heights may be modified by DP or the standards of chapter 20.400 (Specific Use Standards).

\*Or as regulated by section 20.335.050 (Single-Family Residential Requirements); and 20.335.060 (Agricultural Zone Standards); privacy fence allowed along rear and interior property lines to the maximum height indicated.

### **Section 20.335.040 Non-Residential and Mixed Use Requirements**

Walls and fences define space, provide buffers between properties and uses, and may be used for security purposes. Where fences and walls are used they shall comply with the provisions of

this chapter. Fences and walls shall comply with one (1) or a combination of the following fencing standards, as appropriate for the parcel and adjacent uses:

**A. Required.**

1. The use of fences and walls along public ROWs is not required in non-residential and Mixed Use Zones, unless specifically required in conjunction with a land use per the standards of chapter 20.400 (Specific Use Standards).
2. Opaque decorative masonry walls, fixed height of six (6) feet, shall be constructed along all property lines abutting properties that have more restrictive Zone.

**B. Open-Style Standards.** Open-style fences such as spaced wood, chain link with redwood slats, and ornamental iron, can be provided when that type of fencing complies with one (1) of the following landscaping requirements, subject to Director approval:

1. Gaps in spaced wood (or simulated wood) fences not to exceed four (4) inches, or one-half ( $\frac{1}{2}$ ) the width of the average board or slat, whichever is less.
2. Planting with sufficient vines or climbing ivy of an acceptable density to ensure complete view-obstructing screening within one (1) year of planting.
3. Combination of landscaped berm and solid masonry block wall to a minimum height of six (6) feet. Trees of the evergreen variety or other year-round leaf-bearing type shall be planted so that they exceed this minimum height.
4. Combination of trees and shrubs of the evergreen variety, or other similar year-round leaf-bearing type, set away and in front of the fence line so as not to encroach over the fence. Such plants shall be of such variety and shall be clustered so as to allow only minimal gaps between foliage of mature trees and shrubs within one (1) year after planting.
5. Evergreen shrubs or other similar year-round leaf-bearing shrub, planted with such spacing so as to form a solid hedge with a minimum of eight (8) feet in height within one (1) year after planting.
6. All planting and landscaping shall be in compliance with chapter 20.330 (Water Efficient Landscape Standards).

**C. Mixed Use Limitations.**

1. Mixed Use Zones may use wrought iron or decorative metal fencing and gates along public ROW setback lines to a maximum height of six (6) feet.
2. Walls along the ground floor public ROW shall be limited to forty-two (42) inches in height and may only be allowed in conjunction with a residential use or outdoor dining. Walls/fences in conjunction with other non-residential uses are prohibited.

3. No fence or wall shall be closer to the front or public ROW property line than the minimum setback applicable to the Zone or ROW, except for outdoor dining per chapter 20.400 (Specific Use Standards).
- D. **Maintenance.** Fences and walls shall be constructed of new material and shall be maintained in a state of good repair. Any dilapidated, dangerous, or unsightly fences or walls shall be repaired or removed.

#### **Section 20.335.050 Single-Family Residential Requirements**

- A. **Property Boundary Walls.** Walls and/or fences for privacy or aesthetics along property boundaries are permitted per the following standards; see Figure 20-335-1.
1. Front setback area maximum height forty-two (42) inches.
    - a. Residential parcels adjacent to major thoroughfares may be permitted a sound wall to an increased height of six (6) to eight (8) feet based on lot configuration and sound wall needs subject to Director and City Engineer approval and building permit requirements.
  2. Side street setback area maximum height of forty-two (42) inches within the front setback area, otherwise six (6) feet.
  3. Side, interior and rear property lines maximum height six (6) feet.
    - a. Residential parcels adjacent to non-residential uses/parcels may be permitted a wall to an increased height of six (6) feet based on lot configuration and sound wall needs subject to Director approval and building permit requirements. Wall/fence requirements for the non-residential use shall apply.

#### **Section 20.335.060 Agricultural Zone Requirements**

- A. **Property Boundary Fences/Walls.** Walls and/or fences for privacy or aesthetics along property boundaries are permitted per the following standards:
1. Front setback area maximum height forty-two (42) inches, except as follows:
    - a. On lots of one (1) gross acre or larger in size, open fences consisting of wrought iron, tubular steel, pipe corral, vinyl-coated chain link, or rails may be a maximum of sixty (60) inches in height. For the purposes of this chapter, “open fences” means any fence which is ninety (90) percent open/transparent. For all corner lots, the line-of-sight triangle shall not be obstructed and fences shall not exceed forty-two inches within this area (see Figure 20.300-4).
    - b. Posts, pilasters, or other support elements for such fences shall not exceed twenty-four (24) inches in any horizontal measurement (width

and diameter), shall be spaced a minimum of eight (8) feet apart (edge to edge), and shall not exceed a height of sixty-six (66) inches.

- c. The maximum height of driveway entry gates and associated pilasters shall not exceed seventy-eight (78) inches. A driveway entry gate and associated pilasters shall be located adjacent to a driveway and may be located within the front yard setback area, provided a minimum twenty (20) foot setback is maintained to the edge of the street intersecting the driveway to allow the vehicle entering the property to stop in the driveway during operation of the gate without impacting traffic in the street.
2. Side street setback area maximum height of forty-two (42) inches within the front setback area, otherwise, six (6) feet. In the side street setback area for corner lots, fencing shall have a maximum height of 6 feet except for any portion that extends into the front yard setback area where the maximum height shall be 42 inches, except as follows:
  - a. On lots of 1 acre or larger in size, an open fence as described in Section 20.335.060(A)(1)(a) may be allowed up to sixty (60) inches in height within the front yard setback area. The line-of-sight triangle shall not be obstructed therefore any fence within this area shall not exceed forty-two (42) inches in height (see Figure 20.300-4).
3. Side, interior and rear property lines maximum height of six feet.

EXHIBIT B

Text Amendment amending Section 20.530.040 and Figure 20.530-1 governing amendments to the Zoning Ordinance, Zoning Map, or the San Marcos General Plan

**AMENDED SMMC SECTION 20.530.040**

**Section 20.530.040 Notice and Hearings**

Amendments are subject to approval by the Planning Commission and the City Council in a hearing or hearings noticed in accordance with chapter 20.505 (Noticing and Public Hearings).

- A. **Decisions.** The Planning Commission shall announce its decision and shall recommend the adoption of the amendment by the City Council or recommend that the application be denied by the City Council.
- B. **City Council Action.** The City Council shall hold a public hearing on the matter, notice of which shall be given as prescribed in chapter 20.505 (Noticing and Public Hearings).
  - 1. Where the Planning Commission recommends denial of the application and makes no alternate recommendation, the City Council shall not be required to hold a hearing on the matter unless the applicant files with the City Council a written request that said City Council holds a hearing on the matter.
  - 2. The action of the City Council is final and conclusive.

**Figure 20.530-1  
Amendment Process**

