

ORDINANCE NUMBER 2236 (CCS)

(City Council Series)

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA TO EXTEND THE CURRENT INTERIM ORDINANCES MODIFYING FENCE, WALL AND HEDGE STANDARDS, GRANDPARENTING EXISTING NONCONFORMING HEDGES, FENCES AND WALLS, AND ESTABLISHING ADMINISTRATIVE AND DISCRETIONARY HEIGHT MODIFICATION PROCEDURES; TO CLARIFY THE CRITERIA FOR ASSESSING OBJECTIONS TO NONCONFORMING FENCES, WALLS, AND HEDGES; TO REQUIRE ALL LEGAL NONCONFORMING FENCES, WALLS, AND HEDGES TO BE REGISTERED, TO REQUIRE THE MAINTENANCE OF HEDGES; AND SPECIFYING A SELF-HELP REMEDY FOR OVERHANGING HEDGES

THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings and Purpose. The Council finds and declares:

(a) During the past several years, the City received numerous complaints regarding fences and hedges that exceed the City's height limits and the lack of enforcement of these regulations.

(b) In response to these complaints, the City's Code Enforcement staff began a program to encourage compliance and increase enforcement.

(c) In 2003-04, the City initiated hundreds of complaints for fences, hedges, and walls violations.

(d) The enforcement procedures undertaken by the City and the number of violations that the City pursued resulted in a significant public negative response.

(e) Based on this public reaction, at City Council direction, enforcement of fence, hedge, and wall height violations, except safety—related violations, was stayed until the regulations and enforcement practices could be reevaluated.

(f) On October 12, 2004, the City Council heard extensive public testimony and discussed current regulation and enforcement practices pertaining to wall, fences, and hedges. At this meeting, the City Council directed to staff to consider a number of issues including alternative wall, fence and hedge height limits, opportunities to seek height adjustments, appropriate standards for design elements such as pergolas, and enforcement of nonconforming hedges. The Council also directed staff to review regulations in neighboring cities and conduct a public workshop.

(g) City staff held the public workshop on March 9, 2005. The Planning Commission addressed these issues at a public hearing on April 6, 2005.

(h) On May 10, 2005, the City Council reviewed regulations from other cities and results from a public workshop and received extensive public testimony.

(i) Many people testified that the excessive regulation of hedge heights raise issues of paramount importance including infringement on personal security and privacy. Others residing adjacent to nonconforming hedges testified that these hedges impede their access to light and air and create detrimental shade and shadow impacts.

This testimony highlighted the significant concern in the community regarding the appropriate standards that should govern walls, hedges, and fences.

(j) At the May 10th hearing, the City Council directed staff to return with an interim ordinance which would retain certain existing regulations but authorize greater hedge heights in side and rear yards, allow decorative features in front yards, grandparent existing hedges, and establish a low cost height modification process.

(k) As detailed above, the existing fence, wall, and hedge Zoning regulations pose a current and immediate threat to the public health, safety, and welfare of the residents. For these reasons, the Zoning Ordinance requires review and revision as it pertains to the appropriate standards that should govern fences, hedges, and walls.

(l) Pending completion of this review and revision, which will occur as part of the Land Use Element/Zoning Ordinance update, in order to protect the public health, safety, and welfare, it is necessary on an interim basis to change the current fence, wall, and hedge standards, including changes to the hedge definition, allowable hedge heights, defined front yard area, front yard ornamental structures, front yard safety guardrails, and terraced wall; to grandparent existing nonconforming hedges, wall, and fences, and to establish administrative and discretionary height modification procedures.

(m) In light of the above-mentioned concerns, the City Council adopted Ordinance Number 2161(CCS) on July 26, 2005 changing the current fence, wall, and hedge standards, including changing the hedge definition, allowable hedge heights, defined front yard area, front yard ornamental structures, front yard safety guardrails, and terraced wall; grandparenting existing nonconforming hedges, walls, and fences;

and establishing administrative and discretionary height modification procedures. The City Council adopted Ordinance Number 2169 (CCS) on September 13, 2005 which extended Ordinance Number 2161 (CCS).

(n) On February 27, 2007, the City Council adopted Ordinance Number 2219 (CCS) which extended Ordinance Number 2161 (CCS) and Ordinance Number 2169 (CCS) up to and including September 30, 2007. At that time, the City Council requested that the interim ordinance be amended in several ways, including but not limited to: clarifying the criteria for evaluating pending objection appeal applications, requiring property owners to register nonconforming fences, walls, and hedges with the City in accordance with modified administrative procedures to be adopted by the City Manager, and requiring property owners to maintain their hedges and providing adjoining property owners with the right to remove those portions of the hedge that encroach on his/her property. This ordinance has been prepared in accordance with the City Council direction.

(n) As described above, the City Council finds that an extension of this interim ordinance is necessary because there exists a current and immediate threat to the public safety, health, and welfare should the interim ordinance not be adopted. Consequently, this ordinance extends Ordinance Number 2161 (CCS), Ordinance Number 2169 (CCS), Ordinance Number 2219 (CCS) up to and including January 9, 2010. This extension will allow sufficient time for staff to amend the City's Zoning ordinance on a permanent basis in conjunction with the Land Use Element/Zoning Ordinance update.

Interim Zoning. Subject to the hazardous visual obstruction requirements of Santa Monica Municipal Code Section 9.04.10.02.090, any fence, wall, hedge, or flagpole shall comply with the following standards:

(a) Definitions.

(1) Hedge. A boundary or barrier of plant material formed by a row or series of shrubs, bushes or trees that enclose, divide or protect an area or that prevent a person from passing between any combination of individual shrubs, bushes, or trees.

(2) Front yard area. The area between the front property line and the nearest building wall or front setback line, whichever is the shorter distance.

(b) Maximum Heights in Front Yard Area.

(1) Hedges, fences and walls shall not exceed forty-two inches in height.

(2) One pergola or similar feature limited to eight feet in height and width, and three feet in depth shall be permitted. Ornamental attachments atop a fence, wall, or hedge shall be permitted up to twelve inches above the maximum height limit with a maximum width of twelve inches for each attachment and a minimum distance of five feet between each attachment.

(3) A guardrail may exceed the maximum height limit for a fence or wall, but only to the minimum extent required for safety by the Building Code. Safety guardrails must be at least 50% visually transparent above the fence or wall height limit.

(4) Each terraced fence, wall or hedge, or combination thereof, shall be set back a minimum distance from each other equal to the height of the nearest fence, wall or hedge.

(c) Maximum Heights in Side and Rear Yards.

(1) A hedge shall not exceed twelve feet in height, except that there shall be no height limit for hedges adjacent to and located within 10 feet of an alley, measured perpendicularly from the side or rear property line that is adjacent to the alley.

(2) Fences and walls shall not exceed eight feet in height.

(3) A guardrail may exceed the maximum height limit for a fence, but only to the minimum extent required for safety by the Building Code. Safety guardrails must be at least 50% visually transparent above fence height limit.

(d) Measuring Heights. The height of a fence, wall, or hedge shall be measured from the lowest finished grade on either side of the fence, wall, or hedge.

(e) Height Modifications – Administrative Process. The owner of a fence, wall or hedge may request that the Zoning Administrator administratively grant a modification to the height limit of side and rear fences, walls and hedges provided the height modification does not extend more than four feet above the height limit established in subsection (c) of this Section. The Zoning Administrator may grant this modification request if the following findings of fact are made:

(1) The adjacent property owner(s) that share a common property line nearest to the fence, wall or hedge have agreed to the proposed increase in height.

(2) The adjacent property owner(s) have provided verification of ownership in the adjacent property, have executed a notarized letter agreeing to the proposed height modification, and have agreed that notice of the modification determination can be recorded on their property with the Los Angeles County Recorder's Office.

The Zoning Administrator modification determination is not appealable and shall be recorded with the Los Angeles County Recorder's Office on each property.

(f) Height Modification - Discretionary process: If an adjacent affected owner does not agree to a proposed fence, wall, or hedge height modification in accordance with subsection (e) of this Section or if the owner of a fence, wall or hedge requests a height modification in excess of four feet in the side or rear yards or any modification to the height limits in the front yard area, the owner of the fence, wall or hedge may request that the Zoning Administrator grant a height modification to allow greater fence, wall, or hedge height in the front, side, or rear yard of the subject property based on the following findings:

(1) The subject fence, wall, or hedge will be compatible with other similar structures in the neighborhood and is required to mitigate impacts from adjacent land uses, the subject property's proximity to public rights-of-way, or safety concerns.

(2) The granting of such modification will not be detrimental or injurious to the property or improvements in the general vicinity and district in which the property is located.

(3) The modification will not impair the integrity and character of the neighborhood in which the fence, wall, or hedge is located.

This modification process shall be conducted in accordance with Santa Monica Municipal Code Section 9.04.20.10.040. However, the variance application findings set forth in Section 9.04.20.10.050 shall not be required. The decision of the Zoning Administrator may be appealed to the Planning Commission within 14 consecutive

calendar days of the date the decision is made in the manner provided in Part 9.04.20.24, Sections 9.04.20.24.010 through 9.04.20.24.050.

(g) Existing Nonconforming Hedges, Fences and Walls. All existing nonconforming hedges, fences and walls that have been properly registered with the City shall be grandparented at their height as of August 26, 2005 unless an objection was filed in accordance with the following procedure:

(1) No later than October 25, 2005, adjacent property owner(s) or tenant(s) with intersecting or shared property lines with the owner of the nonconforming hedge, fence or wall may file a written objection to the nonconforming hedge, fence or wall with the Zoning Administrator. Upon receipt of the written objection, the Zoning Administrator shall send notice to the nonconforming hedge, fence or wall property owner(s) and provide an opportunity for them to submit any relevant information in response to the objection within ten calendar days. The Zoning Administrator may grant the objection only if the Zoning Administrator finds that allowing the hedge, fence or wall to remain at its existing height would be significantly detrimental or injurious to the complainant due to the hedge's, fence's or wall's substantial impact on light, shadow, air, or safety, or other objective quality of life impacts, such as impacts on sunlight sensitive outdoor uses, e.g., pools, spas, and gardens. It is the complainant's burden to demonstrate this substantial impact. In assessing the objection, the Zoning Administrator shall take into account the nonconforming hedge's, fence's or wall's: (A) location, including its proximity to the complainant's dwelling, especially windows; (B) age, including its age and height at the time of the complainant's acquisition or occupancy of the property; (C) height, including its effect on reasonable privacy expectations; and (D) other related

factors such as the history of prior complaints, presence of vermin, and history of hedge maintenance. If the Zoning Administrator grants the objection, the height of the hedge, fence or wall shall only be reduced to the extent necessary to address the identified impacts. The Zoning Administrator's determination shall be in writing. The decision of the Zoning Administrator may be appealed to the Planning Commission within 14 consecutive calendar days of the date the decision is made in the manner provided in Part 9.04.20.24, Sections 9.04.20.24.010 through 9.04.20.24.050.

(h) Flagpoles. Freestanding flagpoles may not exceed the height restrictions of the district in which they are located.

(i) Registration. Property owners shall have up to and including November 15, 2007 to register any nonconforming fence, wall, or hedge located on their property with the City that meet the requirements of this Ordinance. The City Manager shall promulgate rules to permit the registration of grandparented hedges, fences and walls in accordance with the requirements of this Ordinance.

(j) Overhanging Hedges. The owner of a hedge shall maintain the hedge so that it does not overhang onto the property of an adjoining property owner. If any portion of a hedge overhangs onto the property of an adjoining property owner, the adjoining property owner shall, after giving thirty days notice and opportunity to cure, have the right to remove those portions of the hedge that encroach on his/her property back to the property line so long as he/she acts reasonably and the removal does not cause unnecessary injury. The adjoining property owner shall have the right to file a civil action to recover all costs reasonably incurred in removing the encroaching portions of the hedge.

SECTION 3. To the extent of any conflict between this Ordinance and the hazardous visual obstruction requirements of Santa Monica Municipal Code Section 9.04.10.02.090, the hazardous visual obstruction requirements shall control.

SECTION 4. This ordinance shall be of no further force and effect after January 9, 2010.

SECTION 5. Nothing in this Ordinance shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

SECTION 6. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the

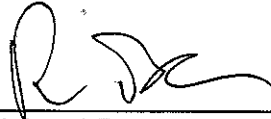
official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:



MARSHA JONES MOUTRIE
City Attorney

Approved and adopted this 14th day of August, 2007.



Richard Bloom, Mayor

State of California)
County of Los Angeles) ss.
City of Santa Monica)

I, Maria M. Stewart, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2236 (CCS) had its introduction on July 24, 2007, and was adopted at the Santa Monica City Council meeting held on August 14, 2007, by the following vote:

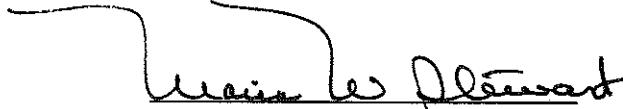
Ayes: Council members: Genser, Holbrook, McKeown, O'Connor, Shriver
Mayor Bloom, Mayor Pro Tem Katz

Noes: Council members: None

Abstain: Council members: None

Absent: Council members: None

ATTEST:


Maria M. Stewart, City Clerk