

Ordinance No. NS-1200.XXX

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF SANTA CLARA AMENDING APPENDIX I
OF THE COUNTY OF SANTA CLARA ORDINANCE CODE
TO IMPLEMENT NEW REGULATIONS RELATED TO
VIEWSHED PRESERVATION



SUMMARY

This ordinance adds additional standards, procedures and regulations to properties rezoned pursuant to the viewshed protection study, to preserve and protect the scenic quality of the hillsides that frame the Santa Clara Valley.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:

SECTION 1: Section 3.20.040 of Chapter 3.20, Article 3 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

§ 3.20.040 — ~~d₁~~ District (West Valley Hillsides)

The ~~d₁~~ combining district is intended to preserve the integrity of the West Valley hillsides by mitigating the visual impacts of development on those lands where the ~~d₁~~ zoning district is applied. The following supplementary development standards shall apply to structures, including new construction and exterior modifications or additions to existing structures, on properties zoned ~~d₁~~.

- A. ~~Height.~~ Maximum height of dwellings shall be 30 feet. The maximum height of accessory buildings shall be in accordance with Section 4.20.020, except that in no case shall the height of any accessory building exceed 30 feet.
- B. ~~Color.~~ The light reflectivity value (LRV) of exterior surfaces shall not exceed 60. Lower LRV requirements may be required by the zoning administrator when a structure's visibility and potential contrast against the site's background warrant darker tones. The zoning administrator may waive this reflectivity requirement for minimal trim or other minor architectural features.

~~C. Rebuilding. A structure in the -d₁ district may be rebuilt exactly as it previously existed if it is destroyed by acts of nature such as earthquake, fire or landslide, provided the following provisions are met:~~

- ~~1. The original structure was lawfully constructed with appropriate building permits required at the time of construction.~~
- ~~2. The application for a building permit to construct the new structure is filed within two years of the date of destruction of the original structure. The rebuilding exemption shall not be applicable to any subsequent building permit application filed after the foregoing two-year period expires if the initial application referred to above is abandoned or if any building permit issued thereunder is revoked or lapses.~~
- ~~3. The new structure is located on the same footprint as the original building and is in accordance with current building code, health and safety requirements.~~
- ~~4. The new structure does not exceed the height or size of the original structure.~~
- ~~5. Design review approval, limited in scope to landscaping and the color of the structure only, is obtained for the new structure.~~

§ 3.20.040 -d₁ District (Santa Clara Valley Viewshed)

The -d₁ combining district is intended to conserve the scenic attributes of those hillside lands most immediately visible from the valley floor. It is intended to minimize the visual impacts of structures and grading on the natural topography and landscape, using a combination of supplemental development standards, design guidelines, design review, and use of process incentives for smaller and less visible projects.

A. Project Classifications: Development standards and procedures shall utilize a tiered regulatory structure based primarily on building size, as follows:

1. Tier 1: Projects where gross floor area (see § 1.30.030) of primary dwelling is 5,000 square feet or smaller, and cumulative gross floor area of primary dwelling and detached accessory buildings and/or secondary dwellings constructed after [ordinance effective date] does not exceed 6,500 square feet. Additions to existing primary dwelling resulting in total floor area of 5,000 square feet or smaller shall also be reviewed as Tier 1.

a. Administrative Review. Building projects classified as Tier 1 shall normally be reviewed without a public hearing. Such projects shall be subject to a discretionary design review exemption (see § 5.50.060), which shall focus on the project's compliance with color standards, and any other Tier 1-applicable standards of this Section.

b. Color; Light Reflectivity Value (LRV). The provisions of subsection B shall apply to Tier 1 projects.

- c. **Grading.** Except where subsection G, *Exemption for Sites Not Visible*, applies, Tier 1 projects requiring a grading permit shall not be eligible for a discretionary exemption when:
 - i. Earthwork quantities exceed 1,500 cubic yards (excepting excavation quantities for foundations, basements and pools), or
 - ii. Retaining walls where elevations exceeding five (5) vertical feet extend more than 80 horizontal feet.
 - d. **Other Circumstances Requiring a Hearing.** When an exception is proposed to deviate from the massing or retaining wall standards of subsections C or D, a full design review application and hearing shall be required.
- 2. **Tier 2:** Projects where gross floor area (see § 1.30.030) of primary dwelling is between 5,001 square feet and 12,500 square feet, or cumulative gross floor area of primary dwelling and detached accessory buildings and/or secondary dwellings constructed after [*ordinance effective date*] exceeds 6,500 square feet.
 - a. **Design Review Required.** Building projects classified under Tier 2 shall be subject to the design review procedure, per Chapter 5.50, and are not eligible for a discretionary exemption except when subsection G, *Exemption for Sites Not Visible*, applies.
 - b. **Siting.** A Tier 2 category building should, to the extent possible, be sited where natural topography, or a combination of topography and existing vegetation, provides a basic level of visibility mitigation.
 - c. **Story Poles.** Story poles shall be required of all new buildings subject to Tier 2 design review. Story poles shall be fully erected, per the County's story poles standards, at least seven (7) days prior to the scheduled hearing.
- 3. **Tier 3:** Projects where gross floor area (see § 1.30.030) of any proposed dwelling, accessory building or other building exceeds 12,500 square feet.
 - a. **Design Review Required.** Building projects classified under Tier 3 shall be subject to the design review procedure, per Chapter 5.50, and are not eligible for a discretionary exemption except when subsection G, *Exemption for Sites Not Visible*, applies. The Planning Commission shall be the approving authority for all Tier 3 design review applications.
 - b. **Low Visibility Siting.** Tier 3 review is intended to ensure that very large buildings are sensitively sited and designed such that they do not result in viewshed impacts greater than what might result from a sensitively designed Tier 2 or Tier 1 building. A Tier 3 category building must be sited in an area where natural topography, or a combination of topography

and existing vegetation, provide a basic level of visibility mitigation, upon which additional landscaping conditions and design may be combined for strong and effective mitigation.

- c. **Story Poles.** Story poles shall be required of all new buildings subject to Tier 3 design review. Story poles shall be fully erected, per the County's story poles standards, at least seven (7) days prior to the scheduled hearing.

B. **Color; Light Reflectivity Value (LRV).** The light reflectivity value (LRV) of exterior surfaces shall not exceed 45. The Zoning Administrator may additionally specify subdued chroma (color saturation) when warranted for a structure deemed to have high visibility and contrast against the site's background. The Zoning Administrator may waive this LRV requirement for minimal trim or other minor architectural features. LRV restrictions may be waived entirely when subsection G, *Exemption for Sites Not Visible*, applies.

C. **Building Massing.** Buildings with moderate to high visibility shall be designed following the massing guidelines within the adopted Design Review Guidelines. In addition, the following specific limitations on wall dimensions shall apply to all Tier 1, Tier 2 and Tier 3 projects not deemed exempt under subsection G:

1. Maximum horizontal length of a continuous wall plane shall be 80 feet.
2. Maximum height of a wall plane, including foundation and other continuous components, shall be 24 feet, with the following exceptions: (a) Any architectural component where façade dimension does not exceed 18 horizontal feet, or (b) multiple such components (18 horizontal feet maximum) where combined horizontal dimension does not exceed 25% of the total horizontal dimension of the façade. This limitation may be varied through the design review process for wall planes not facing the valley floor or otherwise having demonstrably low visibility.
3. Portions of a wall plane must be offset by at least five (5) horizontal feet to be deemed discontinuous for the purposes of this provision.

Massing restrictions may be waived when subsection G, *Exemption for Sites Not Visible*, applies.

D. **Retaining Walls.** Retaining walls visible from the valley floor shall not exceed 10 feet in height as measured from grade at face to top of wall. Multiple "stepped" retaining walls whose total height exceeds 10 feet must each be offset by at least six (6) horizontal feet. Visible walls shall be colored and textured to complement the background land and vegetation, per the adopted Design Review Guidelines.

- E. Ridgeline Development.** The ridgeline protection policies of the General Plan Growth and Development chapter shall be applied to any project situated on or adjacent to a ridgeline.
- F. Design Review Guidelines.** All projects subject to design review shall comply with applicable provisions of the adopted Design Review Guidelines document.
- G. Exemption for Sites Not Visible.** Any project where structures would be situated on portions of a lot outside of the visible viewshed area (based on GIS visibility analysis) shall be eligible for a discretionary exemption (see § 5.50.060). The exemption may not be approved for Tier 3 projects if it is determined that any portion of the proposed building would be visible from the valley floor.
- H. Ongoing Compliance.** All conditions established through the design review procedure shall be the ongoing obligation of the property owners, including future property owners. A copy of the design review permit and conditions applicable to the property shall be recorded with the Recorder's Office, to ensure that present and future property owners are aware of the conditions and their obligation to uphold them.
- I. Rebuilding.** A building in the -d₁ district may be rebuilt in the same location as the original structure (regardless of visibility) if it is destroyed by earthquake, fire or other casualty event, provided the following provisions are met:
- 1. The original building was lawfully constructed with all appropriate County permits required at the time of construction.**
 - 2. The floor area of the replacement building does not exceed the legally established (permitted) floor area of the original structure.**
 - 3. The application for a building permit to construct the new building is filed within two years of the date of the casualty event. The Director shall be authorized to extend this deadline when warranted by special circumstances.**
 - 4. A replacement building designed according to the approved building plans for the original building shall be exempt from the massing standards of subsection C. Where original building plans cannot be produced, massing standards shall apply.**
 - 5. The replacement building shall be subject to a discretionary design review exemption (see § 5.50.060), which shall focus on the project's compliance with color standards, and any other Tier 1-applicable standards of this Section.**

A replacement building that is sited in a different location than the original, or is larger in floor area, or both, shall be subject to the standard procedures and requirements of this Section.

SECTION 2: The section headings for Chapter 3.20: Design Review Combining Districts shall be appropriately revised as follows (additions are underlined, deletions ~~overstruck~~):

CHAPTER 3.20 -d DESIGN REVIEW COMBINING DISTRICTS

Sections:

§ 3.20.010	Purpose
§ 3.20.020	Applicability
§ 3.20.030	Design Review Required
§ 3.20.040	-d₁ Combining District, West Valley Hillsides
§ 3.20.040	<u>-d₁ Combining District, Santa Clara Valley Viewshed</u>
§ 3.20.050	<u>-d₂ Combining District, Milpitas Hillsides</u>

SECTION 3: Section 3.20.050 of Chapter 3.20, Article 3 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

§ 3.20.050 -d₂ District (Milpitas Hillsides)

The purpose of establishing the -d₂ zoning district is to maintain the predominantly natural appearance of the Milpitas hillside areas to which the -d₂ zoning district is applied. In furtherance of that objective, the following supplementary development standards shall apply to structures, including new construction and exterior modifications/additions to existing structures, on properties zoned -d₂. In addition, the provisions contained within the adopted design review guidelines shall be appropriately applied as part of the design review process.

- A. **Maximum House Size.** For lots that are less than 10 acres, the gross floor area of dwellings shall not exceed 6,000 square feet. For lots that are 10 acres or greater, gross floor area of dwellings shall not exceed 8,000 square feet.
- B. **Height.** The maximum height of dwellings shall be 27 feet and two (2) stories. The maximum height of accessory structures shall be in accordance with Section 4.20.020, except that in no case shall the height of any accessory building or structure exceed 27 feet.
- C. **Color.** The light reflectivity value (LRV) of the exterior surfaces of any structure shall not exceed 60 45. ~~Lower LRV requirements may be required by the zoning administrator when warranted by a structure's visibility, prominence, and its potential contrast against the site's background.~~ The Zoning Administrator may

additionally specify subdued chroma (color saturation) when warranted for a structure deemed to have high visibility and contrast against the site's background. The Zoning Administrator may waive this light reflectivity requirement for minimal trim or other minor architectural features.

- D. **Crestline Area Development Restrictions.** Placement and height of any proposed structure may be restricted to ensure that no structure protrudes above the perceived crestline, as delineated on the official City of Milpitas zoning map. To ensure that proposed structures, whether east or west of the crestline, do not protrude above the crestline, story poles, line-of-sight analyses, or other visualization methods may be required for each project subject to design review. Story poles shall be the preferred means of evaluating potential impacts to the crestline and the basis for necessary determinations that the structures do not protrude above the perceived crestline.

SECTION 4: Section 1.30.030 of Chapter 1.30, Article 1 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

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Floor area, gross: The sum of the gross horizontal areas of the several floors of a building, as measured from the rough exterior faces of the exterior walls, or (if applicable) from the centerline of a common wall between two attached buildings. ~~Also included in this definition are any attached structures over 30 inches in height, including, but not limited to, decks (covered and uncovered), earports, arbors and similar structures, stairwells, as well as attached garages; however, eaves that are unsupported and do not project more than two and one-half (2.5) feet are excluded.~~

"Floor area, gross" also includes the total area of any attached garage, and includes any carport, porch or similar attached structure or feature that is both: (a) covered, and (b) greater than 50% enclosed by perimeter walls. It includes the horizontal area of an interior stairway at each of the two or more stories to which the stairway provides access. Any space located between the topmost floor and the ceiling or roof above and which attic space that has a minimum

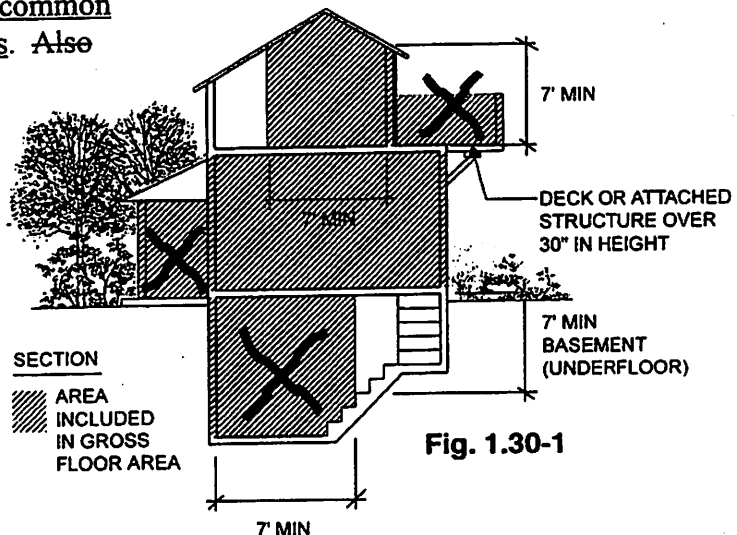


Fig. 1.30-1

clearance of seven (7) feet in each of three (3) dimensions for at least 70 contiguous square feet shall be included.

Any underfloor (basement) space that ~~has a minimum clearance of seven (7) feet in each of three dimensions for at least 70 contiguous square feet in floor area shall be included~~ does not constitute a story, per the definition of "story" as provided in this chapter, shall be excluded when calculating residential floor area ratio. Such underfloor space shall, however, be included as part of "floor area, gross" when determining required nonresidential parking spaces as stipulated in §4.30.040.

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SECTION 5: Section 5.50.030 of Chapter 5.50, Article 5 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

§ 5.50.030 Approval Authority

The Zoning Administrator shall ~~hear and decide~~ be the approval authority for design review applications, except where otherwise expressly specified.

SECTION 6: Section 5.50.050 of Chapter 5.50, Article 5 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

§ 5.50.050 Statutory Exemptions

The following types of structures are deemed minor in character and are in all cases exempt from the design review process, except where any conflicting "-d₁" process requirements apply (§ 3.20.040):

- ~~A. Detached accessory buildings that are exempt from the building permit requirement on the basis of size and are not within any easement or right of way;~~
- A. House additions of 1,000 square feet or less in floor area;
- B. Detached accessory buildings and structures 1,000 square feet or less in floor area;
- ~~B. Any accessory building or structure whose combined above-ground dimensions (maximum length + maximum width + maximum height) do not exceed 16 feet.~~
- C. Any decks, carports, trellises or other structures attached to a dwelling that are 1,000 square feet or less in floor area;

- ~~C. D.~~ Decks whose floor surface is 30 inches or less above final grade, and grade-level pavement for which grading performed prior to paving does not require a grading permit;
- ~~D. E.~~ Fences three (3) feet or less in height.
- F. Open fences, having a composition (solid components vs open "gap" components) where not more than 25% of the surface area is solid when viewed from a position perpendicular to the fence; and that meet the applicable fence height requirements of Section 4.20.050.
- ~~E.~~ Grade-level pavement for which grading performed prior to paving does not require a grading permit;
- ~~F. G.~~ Retaining walls that are not subject to a grading permit;
- ~~G. H.~~ Solar (photovoltaic) panels; and
- ~~H. I.~~ Swimming pools;

The cumulative construction of multiple statutory exempt projects on a lot may, at the discretion of the Zoning Administrator, be subject to the design review process.

SECTION 6: Section 5.50.060 of Chapter 5.60, Article 5 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code, is amended as follows (additions are underlined, deletions ~~overstruck~~):

§ 5.50.060 Discretionary Exemptions

The following ~~use~~ project categories may, at the discretion of the Zoning Administrator, be considered minor and exempt from the design review process, except where any conflicting "-d₁" process requirements apply (§ 3.20.040):

- ~~A.~~ Additions of 500 square feet or less in floor area to a dwelling;
- ~~A.~~ House additions with floor area between 1,001 and 2,500 square feet;
- ~~B.~~ Detached accessory buildings of 500 square feet or less in area;
- ~~B.~~ Detached accessory buildings with floor area between 1,001 and 2,500 square feet;
- ~~C.~~ Decks whose floor surface is over 30 inches in height above grade;

- C. Decks where those portions of floor surface that exceed 30 inches in height above grade comprise a total surface area exceeding 1,000 square feet;
- D. Fences in “-d” combining districts or along designated scenic roads which conform to the provisions of this ordinance regulating fence height (excluding certain “open” fences, see subsection 5.50.050(F)); and
- E. Projects in “-d₁” zoning districts meeting exemption criteria specified in Section 3.20.040 (i.e. “Tier 1,” and “Sites Not Visible”), regardless of any conflicting standards within this section, and;
- ~~E.~~ F. Other minor construction similar in scale to the above categories and having low potential for visual impact.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

James T. Beall, Jr., Chair
Board of Supervisors

ATTEST:

Phyllis A. Perez
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Lizanne Reynolds
Deputy County Counsel