



Legislation Text

File #: 22-0092, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Carrie Tai, AICP, Community Development Director

Ryan Heise, Building Official

Neda Lyle, Senior Plan Check Engineer

SUBJECT:

Discuss Building Code Regulations Pertaining to Building Permit Exemptions for Fences Over Six Feet High (Community Development Director Tai).

(Estimated Time: 30 Min.)

DISCUSS AND PROVIDE DIRECTION

RECOMMENDATION:

Staff recommends City Council discuss and provide direction on the Manhattan Beach Municipal Code (MBMC) requirements in Title 9 (Building Regulations) pertaining to permit exemptions for fences.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

On November 19, 2019, the City Council adopted Ordinance No. 19-0015 (2019 California Building Standards Codes ("Codes") by reference) and associated Resolution No. 19-0095, adopting local amendments to those Codes. California Health and Safety Code Sections 17958.5 and 18941.5 allow local amendments if the City makes findings that those amendments are reasonably necessary due to unique local climatic, geological, or topographical conditions. Resolution No. 19-0095 established express findings for each local amendment based on one or more of these conditions.

The Codes include the California Building Code (CBC) and California Residential Code (CRC), both of which have an Administration section; local amendments to this section typically do not require justification through findings. Section [A] 105.2 and R105.2 of each respective Administration section includes a list of construction projects that are exempt from building permits. One local amendment made in the Administration section pertains to permit exemptions for fences. Whereas the CBC and CRC exempt fences not over seven feet high from building permits, the City's local amendment exempts fences not over six feet high.

Subsequent to the adoption of the Codes, staff was required to submit the adoption findings to the

California Building Standards Commission (CBSC) for review. Later that same year, CBSC informed the City that the local amendments to the Administration sections in CBC Section [A] 105.2 and CRC Section R105.2 required justification. The local amendment for the permit exemption for fences was included in these sections and required specific findings substantiating that amendments are reasonably necessary due to unique local climatic, geological, or topographical conditions.

On January 7, 2020, staff presented Resolution No. 20-0005, amending Resolution 19-0095 to provide a geologic finding for the fence height permit exemptions contained in CBC [A] 105.2 and CRC R105.2. The geologic finding is due to Manhattan Beach's close proximity to active earthquake faults. The City Council declined to adopt Resolution No. 20-0005; rather, the City Council directed staff to return with analysis comparing the pros and cons of amending the fence exemption regulations. Shortly after City Council provided direction, the City had to respond to the COVID-19 pandemic causing staff to shift priorities to address the pandemic. The City is required to update the Codes every three years, with the next update scheduled for fall 2022. Staff is presenting this analysis of permit exemptions for fences to the City Council in advance of the upcoming Codes update.

DISCUSSION:

Building codes provide rules, regulations, provisions, and conditions to be observed and followed in the construction, alteration, or repair for any buildings or structures, including fences, in the City. Building permits are required for such work to ensure compliance with the applicable codes, through the City's plan check process. The construction inspection process is required after the issuance of a permit to ensure the final built structure meets the strength and size requirements documented during the plan check process. Construction inspections are only required for buildings or structures that obtain a building permit. If a building permit is not required based on one of the limited exemptions discussed below, there are no construction inspections required. The Codes, plan check, and inspections all exist to ensure a safe, resilient infrastructure in the City for all properties.

Every three years, the International Code Council adopts and publishes the International Codes ("I-Codes") as the base code standards throughout the United States. States then adopt their version of the I-Codes. As such, the California Building Standards Codes ("Codes") are based on the corresponding I-Codes. Each local jurisdiction then adopts the Codes by reference, along with any local amendments to reflect conditions of that jurisdiction. The City's local amendments are contained in Title 9 of the MBMC.

The Codes contain a list of construction projects that are exempt from building permits. One of those exemptions is the construction of a freestanding fence. Fences constructed out of wood, masonry, concrete, vinyl, and any other types of materials are included in the permit exemption. The permit exemption for fences not higher than six feet has been in the Codes since the 1970s. However, this exemption was revised from six feet to seven feet in the 2012 edition of the I-Codes, based upon a formal proposal from the City of Maple Grove, Minnesota and associated governmental consensus process including committee hearing, public hearing, and adoption vote. The reason given for the proposed change in the 2012 edition was that fence boards are typically cut slightly longer than six feet in length (roughly one to two inches) and installed to provide a marginal ground clearance resulting in fences exceeding the previous permit exemption height limit by a few inches.

When the State of California amended and adopted the 2012 I-Codes as the 2013 California Codes, California did not change the new seven-foot I-Code permit exemption for fences on a Statewide

level. This change in the exemption height allows the construction and installation of a seven-foot fence consisting of any material without acquiring a building permit per the State Codes and I-Codes. During the 2013 local code adoption, South Bay cities such as Manhattan Beach, Redondo Beach, and Rolling Hills Estates adopted a local amendment of a six-foot limit for all types of fences to remain consistent with the previous permit exemptions, due to risk associated with the high seismic activity in the area and proximity to fault lines. This retained a building permit requirement for fences higher than six feet that had been required since the 1970s in California. The U.S. Geological Survey 2018 Long-term National Seismic Hazard Map confirms that Manhattan Beach is located in an area of Highest Seismic Hazard. Other cities in Los Angeles County had previously adopted three-and-a-half foot or four-foot height limit after wall failures caused by the 1994 Northridge earthquake and continued to enforce this lower height requirement with local amendments to the Codes. See Current Fence Height Permit Exemptions (attached) for a chart of adjacent cities current permit height requirements for fences.

The American Society of Civil Engineers/Structural Engineering Institute Standard (ASCE/SEI) 7-16, *Minimum Design Loads and Associated Criteria for Buildings and Other Structures*, sets minimum standards for design to meet intended performance levels. Minimum standards are the minimum loads and strength requirements that the walls must be designed and constructed to in order to meet safety requirements. The Codes, with reference to applicable structural standards, exist to reduce loss and damage but also help create stronger structures designed to withstand disasters. Contractors and homeowners can choose to build above or stronger than minimum standards, but the Codes, plan check, and inspection only require the minimum standards be met for safety purposes.

Section 15.6.8 of the ASCE/SEI 7-16 Standards requires that fences six feet or higher be designed for the earthquake ground motions specified in the Standards. This requires a licensed Engineer or Architect to perform calculations and provide details to clarify the required foundation size, concrete strength and amount of rebar to use to construct fences such that they withstand forces during and after an earthquake. Similarly, Section 29.3.1 of ASCE/SEI contains structural design requirements for solid fences to withstand specific levels of wind loading. Wind loading also requires that a licensed Engineer or Architect provide calculations and details for proper construction of a fence in order to remain standing during a high wind event. Removing the local amendment will create a condition allowing legal construction of a fence higher than six feet but less than seven feet without a building permit and without provisions for City plan check review or construction inspection to ensure safety and resiliency.

In addition to a building permit, the City also currently requires that fences over six feet high meet all other applicable MBMC requirements; therefore, changing the building permit exemption does not entirely exempt the fence from City review or approval. For example, MBMC Title 10 (Planning and Zoning) Section 10.12.030P allows proposed fences higher than six feet high in residential areas, only if the additional height over six feet meets specific regulations (including neighbor coordination and notification). Currently, to confirm compliance with these regulations, Planning Division staff reviews fence plans during the building permit plan check process. The building inspectors then confirm compliance with the plans during the construction inspections. Removal of the building permit requirement for fences higher than six feet will require changes to internal review and inspection processes, to ensure compliance Title 10 regulations. Additionally, the Planning Division staff inspections will be limited to height and placement only, and not include a safety aspect. Retaining the local amendment to the Codes to require building permits for fences over six feet high

allows review of all MBMC requirements during City review and inspection process.

To assess the volume of fence permits issued in the City, building records indicate that the City has issued seven Residential Landscape/Hardscape building permits pertaining to fences since January 2021. All of the seven permits were for fences above seven feet high, which would still require a building permit with the removal of the local amendment. The standard freestanding fence height throughout the City is six feet or under, which does not currently require a building permit application, review, or inspection.

The existing requirement to obtain a building permit for a freestanding fence that exceeds six feet high has been in existence since the 1970s. Since the 2013 Codes adoption cycle, the local amendment maintained this requirement due to the change in the I-Codes in 2012. Many adjacent jurisdictions limit the the building permit exemption to fences six feet or less. The local amendment exempting permits for fences not over six feet high ensures compliance with minimum design standards for safety and resiliency needed due to the close proximity to active earthquake faults. Additionally, the removal of the building permit exemption of six feet does not remove the need for Planning staff to review and approve residential fences that exceed six feet high.

Staff will be returning to City Council this fall for the next Codes adoption, and would include local amendments reflecting the City Council direction for the building permit exemptions for fences with the rest of the Codes adoption material.

POLICY ALTERNATIVES:

ALTERNATIVE 1:

Maintain local amendment for permit exemption of fences not over six feet high in the upcoming 2022 Code adoption that will become effective January 2023.

PROS:

This approach corresponds with existing municipal code requirements and other department requirements for fences six feet and higher. A building permit assures the safety and resilience of fences between six to seven feet with proper City plan check review and construction inspections. This will also be consistent with neighboring cities that have similar requirements. Presentation of the permit exemption will occur with the Codes adoptions in fall of 2022.

CONS:

None.

ALTERNATIVE 2:

Remove the local amendment for permit exemptions for fences six feet and under in the upcoming 2022 Code adoption that will become effective January 2023.

PROS:

A building permit will not be required for fences between six and seven feet high.

CONS:

Fences between six to seven feet high would not be reviewed or inspected to ensure compliance with the minimum design standards for earthquake or wind loading. Other Municipal Code regulations governing fences higher than six feet would still apply. Therefore, an amended internal process to establish a separate Planning division review, approval, and inspection process will be needed.

PUBLIC OUTREACH:

Public outreach will occur at the time when staff returns with the new code adoption in fall 2022.

ENVIRONMENTAL REVIEW:

The City Council's discussion of existing regulations and future options is not a "project" as defined under Section 15378 of the State California Environmental Quality Act (CEQA) Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is necessary. In the event that the City Council directs staff to prepare amendments to the Municipal Code, at that time, said activity would be subject to CEQA.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENT:

1. Current Fence Height Permit Exemptions