



## MEMORANDUM

To: Mayor Stille and St. Anthony Village City Council  
From: Stephen Grittman, City Planner  
Date: October 5, 2022  
Meeting Date: October 11, 2022  
NAC Project No. 323.01 – 22.01  
Request: Request for an amendment to the City Code related to fence height  
Property Address: NA  
Property PID: NA

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### STAFF AND PLANNING COMMISSION RECOMMENDATION

As the Council may recall, this item came before the City as an independent code amendment request related to fence height. On a parallel track, the City's Code Review Committee was considering recommendations to a more comprehensive overhaul of the fence section in the code. As time has passed, the two items have converged, with the larger Code amendment incorporating the changes requested by the private property owner/applicant, along with the other Committee-generated elements. Both the applicant's request, and the City's proposed ordinance, have resulted in a proposed fence height of 6'-6".

Since the Council has conducted two prior readings of Ordinance 2022-07 (the City Code Committee version) as now written, staff believes that it would be appropriate to dismiss action on Ordinance 2022-06 (the Tomas application version) with the height specification as moot.

Therefore, the requested Council Action below recommends dismissing Ordinance 2022-06, pending adoption of 2022-07 in a prior action.

For additional background:

The applicant for this item proposed an increase in fence height from the current 6 foot maximum to 6 feet, 6 inches to accommodate variations in the grade causing measurements of a standard 6 foot fence panel to exceed the height standard. Staff had recommended shifting the amendment to 7 feet, as this was consistent with building code thresholds, and the Planning Commission passed that proposal.

Following the Commission's action, the Council took up work session discussion of a broader code amendment (separately brought forward in this agenda). When this applicant's request was brought forward to Council, there was concern noted over the full 7 feet height, and the

item was tabled. In the interim, the Planning Commission took up the broader amendments, which included other fence standards. The Commission agreed that a height of 6 feet, 6 inches would suffice for the purposes of both the applicant and the general code overall. As such, this amendment is changed to the 6'-6" height standard, adjusting the request downward from 7 feet as had been proposed by staff.

In the larger City Code amendment on this same agenda, we have adjusted the fence height to match this request.

With the Planning Commission recommendation, Staff recommends approval of the attached amendment increasing maximum height of residential fences at 6'-6", and establishing clearer standards for measurement.

### **REQUESTED COUNCIL ACTION:**

**Motion to dismiss Ordinance No. 2022-06 as moot**, related to residential fence height and measurement in Section 150.070(C), based on the finding that the proposed change has been incorporated into a prior adopted amendment as Ordinance No. 2022-07.

Alternative Actions: 1. Motion to Adopt Ordinance 2022-06, based on findings identified by the Council.  
2. Motion to Table action on the amendment, pending addition information from staff, applicant, or other sources.

### **GENERAL INFORMATION**

Applicant: Mark Tomas  
Address: 3308 Skycroft Drive

Deadline for Agency Action:  
60 Days: August 20, 2022  
Letter Sent: August 12, 2022  
120 Days: October 19, 2022

### **ANALYSIS**

#### **1. Background**

The applicant is proposing that the City amend the current fence regulations to allow an increase in residential fence height. The amendment would alter fence height throughout the zoning districts or land uses to which it is effective. In this case, the relevant land uses are single family residential parcels in the R-1 zoning district.

The current fence ordinance has a number of issues related to permit processing, code consistency (including consistency with building code), and technical or practical aspects including measurement. The City's Code Review Committee has separately been contemplating a series of amendments to the fence regulations for these reasons. While a

number of those amendments are likely to come forward with other code amendment recommendations, this resident is seeking amendments to the height regulations as a separate application. The applicant's request specifically relates to the section of the fence code relating to height. That section reads as follows:

*(C) Fence size. All fence and wall heights shall be measured from the finished grade, except that the height of a railing, wall, fence, or screening affixed to a deck constructed on the ground but raised above ground level, will be measured from the elevation of the raised deck for that portion which is affixed to the raised deck. The grade at the fence line shall not be altered in any way that artificially increases the maximum permitted height of the fence.*

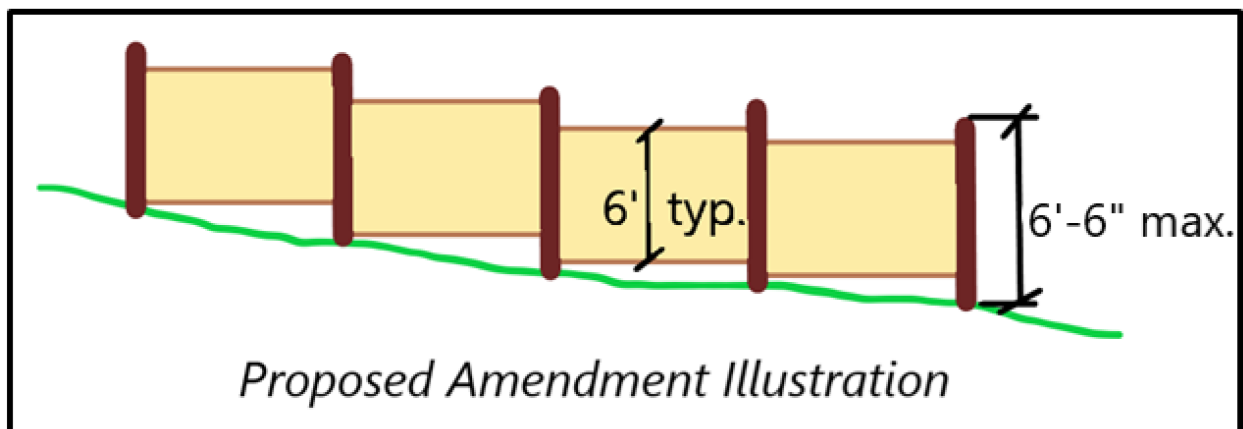
*(1) Residential Uses.*

*a. Front Yards. No fence shall be over four (4) feet in height within a required front yard setback.*

*b. Side Yards. No fence shall be over six (6) feet in height. A fence up to six (6) feet in height shall be allowed on corner lots along the corner side behind the nearest front corner of the principal building.*

*c. Rear Yards. No fence shall be over six (6) feet in height.*

When this code was written, fences of more than 6 feet in height required a building permit, with review and permitting through the Building Official. The revised building code has changed this height to 7 feet. One of the reasons for this change is an acknowledgement that fence construction often occurs over uneven terrain, and a fence that uses 6 feet tall material (a commonly available dimension) is often a few inches more than 6 feet above the ground below it. Moreover, many types of fence construction include post design where the tops of the posts extend a few inches above the top line of the fence panel.



These conditions have been prevalent for many years. Technically, such fences were required to obtain building permits, be reviewed by building inspection staff, and be inspected by the building official. In practice, this was not happening, whether in St. Anthony or most any other locality when these variations were only a few inches above the 6 foot mark. As such, the writers of the Building Code amended that code from 6 feet to the 7 feet now in force.

The taller dimension accommodates the variations noted (terrain and post design), with the understanding that the majority of such fences utilize fence panels of 6 feet (see illustration above).

To remedy this conflict, staff believes that an amendment to the existing code is appropriate. As noted, the applicant has suggested that the fence height be increased to 6 feet, 6 inches, and thus the following amendments are proposed, with the changes shown in **redline**:

*(C) Fence size. All fence and wall heights shall be measured from the finished grade, except that the height of a railing, wall, fence, or screening affixed to a deck constructed on the ground but raised above ground level, will be measured from the elevation of the raised deck for that portion which is affixed to the raised deck. The grade at the fence line shall not be altered in any way that artificially increases the maximum permitted height of the fence. **Required fence height shall be measured and applied only at each post, and no section of fence between posts shall exceed the height of the higher of the two posts between which such fence is constructed.***

*(1) Residential Uses.*

*a. Front Yards. No fence, **fence post, or post cap**, shall be over four ~~(4)~~ **feet fifty-two (52) inches** in height within a required front yard setback.*

*b. Side Yards. No fence, **fence post, or post cap**, shall be over six feet **six inches (6'-6")** in height. A fence up to over six feet **six inches (6'-6")** in height shall be allowed on corner lots along the corner side behind the nearest front corner of the principal building.*

*c. Rear Yards. No fence, **fence post, or post cap**, shall be over six feet **six inches (6'-6")** feet in height.*

The applicant notes in his application materials that other nearby communities have amended their fence regulations to make this change, or something similar. These include Columbia Heights, New Brighton, Fridley, and Roseville. It is planning staff's experience that many other communities have adopted similar changes.

On a separate track, there are related amendments that would be relevant to other portions of the fence code, including permitting, and the application of fence height in commercial and industrial areas. Those amendments are expected to accompany other general code updates being proposed by the Code Review Committee.

## **1. Representative Codes Referenced.**

Title XV Land Usage, Chapter 150 Zoning Code, Section §150.70 (Fence Regulations).

2. **Criteria for Consideration of a Zoning Amendment.** Title XV Land Usage, Chapter 152 Zoning Code, Section §152.242 lists the process the City Council must consider for an amendment.

## **STAFF/PLANNING COMMISSION RECOMMENDATION AND FINDINGS OF FACT**

**Application 1.** Staff recommends dismissal of an amendment to the fence regulations as identified in this report based on adoption of Ordinance No. 2022-07 incorporating the proposed amendment with other fence language.

If the Council wishes to act separately, adoption of Ordinance 2022-06 could proceed based on the following findings:

- A. The current fence regulations related to height are inconsistent with the regulations of the Building Code.
- B. The current fence permitting practices are not consistent with the procedures required by the code
- C. The current height regulations for residential fences do not comport with common construction practices, nor account for inconsistencies in grade or terrain.
- D. The amendment would be consistent with current practice, with the language of the Building Code, and the practices of many other nearby communities.

## **ATTACHMENTS**

1. Application and Supporting Material
2. Proposed Ordinance No. 2022-06
3. Ordinance Redline