



MEMORANDUM

To: Mayor Stille and St. Anthony Village City Council
From: Stephen Grittman, City Planner
Date: City Council Meeting – August 8, 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

STAFF AND PLANNING COMMISSION RECOMMENDATION

Staff has reviewed for consistency with related codes, including the building code, and practical issues related to construction styles, permitting, city review, and common building practices, both in St. Anthony and nearby communities. The Planning Commission considered the request during a public hearing at its July 19, 2022 meeting. The applicant and a resident commented during the hearing. The resident's comments included both written and oral testimony at the hearing. Those comments related to concerns over public safety issues that could be a concern with taller fences, and concerns over what may be described as neighborliness issues that tall fences could create.

During its deliberations, the Planning Commission discussed whether the proposed increase in height would likely result in significant change in the height of many fences, and whether the increased height (from six to seven feet) could have a significant impact over the current allowance. Following the hearing, Planning Commission voted 6 to 1 to recommend the amendment, with the negative vote supported by an interest in waiting until the full fence ordinance was being discussed to allow for additional context. As a part of its motion, the Commission added a recommendation that the City initiate a review and inspection process for fence permits. Because this is not a component of the ordinance itself, staff will consider that aspect of the process on a separate track.

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

Two procedural notes:

First, most general City Code amendments require three readings by the Council prior to formal adoption (unless this process is specifically waived by the City Council during its review). Zoning Ordinances are an exception to this three-reading rule, which are to be considered for adoption after a single reading by the Council. The fence amendment under consideration is a zoning regulation (even though it is not numbered with the other Section 152 zoning section). As such, the Council may consider adoption as a part of this reading.

Second, the Council discussed a series of code amendments that were being researched by the Code Committee at a recent Work Session. These included changes to the Fence height section which are being considered with the application. The resident bringing this proposed amendment was made aware of the staff work on the larger ordinance, but made a separate application requesting this regulation go forward on its own schedule to address potential code enforcement issues for their recently constructed fence.

REQUESTED COUNCIL ACTION:

Motion to adopt Ordinance 2022-05 amending Section 150.070(C) related to residential fence height and measurement, based on the findings adopted by the Planning Commission and as listed in this report.

Alternative Actions: 1. Motion to Deny adoption of the amendment, 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:
 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.

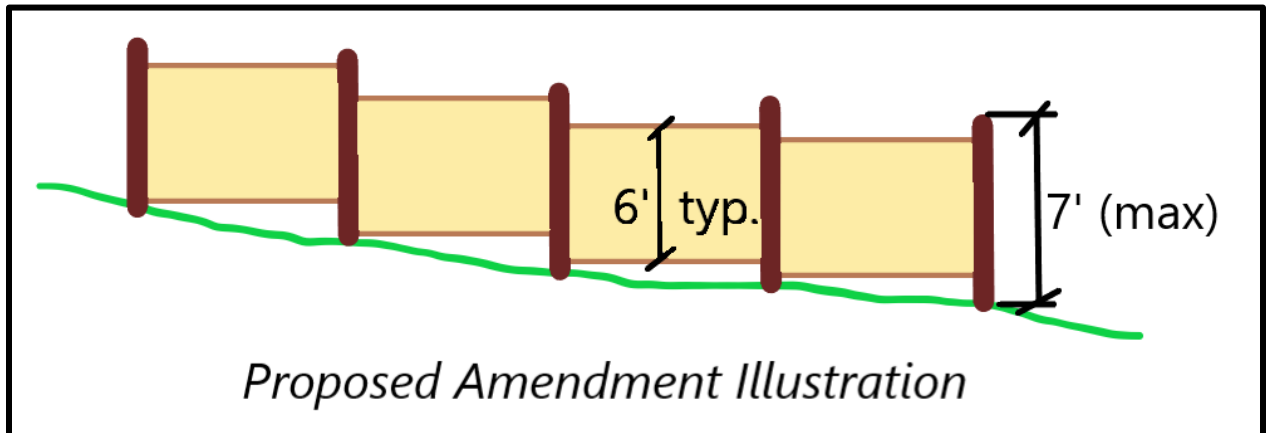
(1) Residential Uses.

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. Although the applicant has suggested that the fence height be increased to 6 feet, 6 inches, staff recommends the 7 feet dimension used by the Building Code, 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)~~ **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 (6)~~ **seven (7)** feet in height. A fence up to ~~six (6)~~ **seven (7)** 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, **fence post, or post cap,** shall be over ~~six (6)~~ **seven (7)** 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 approval of an amendment to the fence regulations as identified in this report, with 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. Ordinance Redline
- 3. Proposed Ordinance 2022-05