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*Supplementary Narrative for View Fencing Text Amendment*

**Proposed Landscaping Restriction**

The following is a supplement to Alan Garner's proposed text amendment regarding view fencing.

During the Planning Commission work study session on August 16, 2016, staff raised a concern that residents electing to install a view fence at 20' might also install vegetation behind the fence to create an opaque wall.

Respectfully, we think the risk of hedges in that situation is low because hedge walls are already permitted by right at a 0' setback. Why go to the expense of installing a view fence only to block the view with time consuming landscaping? Additionally, those wishing to install landscaping hedges could do so today, without any wall amendment.

Nevertheless, we respect what appeared to be the Commissioners' desire to add language to the proposed wall amendment that could prevent such hedge walls. And we wish to assist in that effort.

**Option #1:**

We are proposing the language below to prevent the installation of hedges behind new view fencing. This proposed language would require an applicant to have a landscaping plan approved by staff prior to obtaining a building permit for the view fence. Staff would review the landscaping plan to ensure that, based on the plant/tree species in the landscaping plan and the spacing of those plants/trees, there would not be a possibility for a hedge over 3 feet to emerge within 5 feet of the fence:

In addition to obtaining the proper building permit, residential property owners along local, collector, and minor arterial roadways seeking to install a view fence or combination view fence set back between 20' and 40' from the street right of way must also submit for review and approval by the Paradise Valley Planning Department a landscaping plan for the front yard that does not feature shrubs or trees within 5' of the proposed fence that, when considering the shrubs' or trees' growth characteristics and spacing, could grow together into a hedge over 36" in height.

Under this language, homeowners would have freedom to create an attractive landscaping plan in their front yard. The only restriction would be to not install plants or trees that could grow into a 3'+ hedge wall within five feet of the fence. In essence, by utilizing the extra wall allowance, homeowners are agreeing to a trade-off: the view fence would be allowed at a nearer set back in exchange for a hedge wall not being allowed near the fence.

We believe this provision would be very simple for staff to effectuate because the standard is objective and easily determined based on a simple review of the landscaping plan. It also provides the homeowner with notice up front about the restrictions on installing hedge walls near view fencing that is installed between 20' and 40' of the front setback.

### *Landscaping Plans*

Requiring a landscaping plan would be consistent with other instances within the existing Town Code. Under Section 6-3-12, prior to the installation of a subdivision wall, the Town must approve a plan that shows the location and dimensions of the wall, "and must include detailed landscape plans." Thus, the code already contemplates approval of a landscaping plan prior to the installation of the wall.

In the case of subdivision walls, the landscaping plan must be ultimately approved by the Town Council. In our proposed provision, however, the landscaping plan could be approved administratively by staff.

Landscaping plans are also required when installing a Personal Wireless Service Facility, when building within the Hillside Development area, and in other various settings as required by zoning stipulations.

### **Option #2:**

In the alternative, the Town could add language to the proposed wall amendment similar to the standard in Fountain Hills. In Fountain Hills, no hedges<sup>1</sup> are permitted in the required front yard setback that exceed a certain height.

Under a similar rule, the following could be added to the proposed wall amendment:

Properties that contain view fencing or combination view fencing between 20' and 40' of the front yard setback may not also contain hedges in the front yard setback that exceed 3' in height.

As a reminder, the proposed amendment allows a combo fence featuring a solid block portion that extends up to 3'. Thus, this additional language would ensure no hedges extended past the same point. Staff could give notice of this limit during the building permit process.

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<sup>1</sup> Note the Fountain Hills Zoning Ordinance does not contain a definition for the word "hedge." We have found this to be a common occurrence among other jurisdictions. Indeed, Paradise Valley's own building code uses the word "hedge" but does not define it. In our view, the term "hedge" is universally understood and thus it is not necessary to try and construct a definition for it.

We recognize this Option #2 relies on homeowners monitoring their landscaping and keeping it within certain limits. However, Paradise Valley already requires homeowner to monitor the growth of landscaping in their yards, as outlined below.

*Deteriorated Conditions*

Under 8-6-2.C of the Town Code, it is already unlawful to allow “deteriorated conditions” on a residential property. The definition for “deteriorated conditions” under Section 8-6-1 includes “landscaping that is dead, damaged, characterized by uncontrolled growth or lack of maintenance.”

This is echoed by section 8-6-2.F of the Town Code, which makes it unlawful “to cause or permit any vegetation or landscaping, that is visible from public property, that is substantially dead or damaged, characterized by uncontrolled growth or lack of maintenance, or any other deteriorated condition.”

Accordingly, the Town Code already requires homeowners to properly maintain front yard landscaping, including landscaping hedges.

It would be perfectly in keeping with this provision to restrict landscape hedges to 3’ when accompanied by a view fence (or combination view fence) between 20’ and 40’ of the front yard setback. In fact, this proposed provision would be even easier to enforce because a 3’ standard is objective. Standards like “uncontrolled growth or lack of maintenance” are subjective and more difficult to enforce.

*Interference with Sidewalks*

Under 8-6-2.E of the Town Code, homeowners are again required to monitor the growth of their landscaping. Under that provision, it is unlawful for homeowners to allow landscaping to grow to a point where it obstructs the view on a public sidewalk or other right of way. The provision states it is unlawful:

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To cause or permit any object, debris, building, tree, bush or landscaping to interfere with, obstruct, tend to obstruct, or render dangerous the free passage, use or vision in the customary manner of any sidewalk, street, or right of way or in violation of the Town Code.

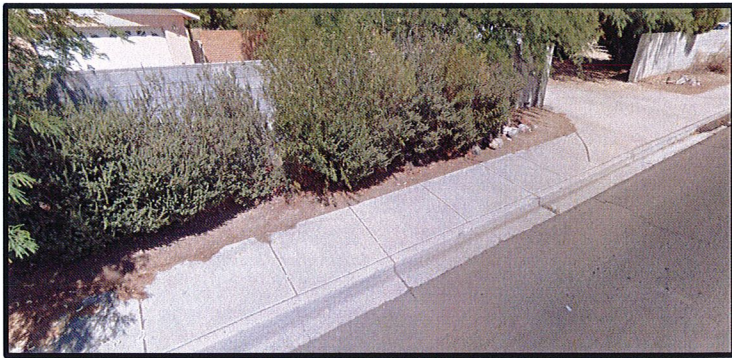
The proposed add-on requiring hedges to be limited to 3’ in height would be consistent with this provision, which requires homeowners to monitor the growth of landscaping.

*Landscaped Area Adjacent to Wall*

The proposed amendment seeks to modify the wall section of the Zoning Ordinance. Within that section, there is already a provision that requires homeowners to maintain landscaping near walls. Under Section 2406 it states:

Each property owner shall be responsible for landscaping the land located between the edge of road pavement, including any unpaved right-of-way, and the wall or fence. The landscaped area shall be maintained at all times in conformance with the Town's Landscape Guidelines.

This provision contemplates a side wall adjacent to a public roadway in which there is landscaping, such as the picture below shows:



Under the wall section of the Zoning Ordinance, this landscaping must be maintained by the adjacent homeowner in a condition in conformance with the Town's Landscape Guidelines.

#### *Zoning Stipulation*

When zoning cases are approved, zoning stipulations are routinely added. These stipulations often include restrictions on landscaping. Thus, again, the Town's zoning system is already set up to handle the enforcement of certain landscaping restrictions when property owners wish to seek an extra allowance from the Town (such as zoning).

The same would be true of residential property owners seeking this extra wall allowance. Nobody would be forced to use this new provision. However, if they chose to build the wall anywhere between 20' and 40' of the front setback, they would be choosing to accept a restriction regarding landscape hedges. This is a trade-off we believe residents seeking greater security would gladly accept.

#### **Conclusion**

The proposed landscaping provisions in this supplemental narrative are just two examples of how the Town could modify the proposed text amendment to ensure hedges are not planted behind new view fences (or combination view fences).

We believe the risk of hedges being installed behind the view fencing is low because homeowners can already plant hedges today and wouldn't need to install a wall to be able to do so. Nevertheless, if the Commission wishes to add this extra layer within the amendment, we believe there are effective and simple ways to do so.