

# **TOWN OF PARADISE VALLEY**

## **Walls & Fences (Article XXIV) Text Amendment**

**Town Council Public Hearing  
December 1, 2016**



# REQUEST

- Proposed amendments to Article XXIV of Zoning Ordinance:
  - Combination view fence (at 20' front yard setback) with landscape requirements
  - Modify definition of view fence (to accommodate decorative elements such as knuckles, scrolls, and spears )
  - Modify definition of wall finish



# BACKGROUND

- Proposed text amendment in response to a burglary at previous home
- Current home - applicant hired metal works company to install wrought iron fencing on top of existing fence in order to secure house
- Applied for variance to keep metal fence; however, request was denied by B of A
- Seeking text amendment to allow 6' tall combination view fence located at 20' front yard setback



# BACKGROUND (CONT.)

- PC Discussion:
  - Reviewed at 6 meetings.
  - November 15<sup>th</sup> - Recommendation of Approval by a vote of 5 to 2
- TC Discussion:
  - Council requested that disclosure penalty be added to hedge maintenance agreement
  - Clarify that minimum finish of stucco and paint if neighbors cant agree on type of fence finish



# SCOPE OF APPLICANT REQUEST



- Current Code:
  - 3' tall fence at 10' front setback
  - 6' tall fence at 40' front setback
- Combination View Fence
  - 6' tall fence at 20' front setback
  - At least 50% of wall being view fence and view portion of fence located on top or upper half of wall
  - Subject to landscape requirements – hedge restrictions



## DEFINITIONS – ORD 2016-07

- **Combination View Fence - A combination view fence (including gates) is a free - standing, upright structure that meets this Section's definition for "view fence" for at least 50% of the height of the structure and meets this Section's definition for "wall" for the remaining portion. The portion of the Combination View Fence meeting the definition of "view fence" must be positioned above the portion meeting the definition of "wall."**

# DEFINITIONS – ORD 2016-07 (CONT.)



- **Hedge – Dense planting of shrubs, bushes, or any kind of plant designed, installed, maintained, and planted in line or in groups that form a compact, dense, living barrier that protects, shields, separates, or demarcates an area from view.**
- **Hedge and Landscape Area - The area between the back of curb or edge of asphalt and the front building setback line of the primary residence.**
- **Yard, Front - A front yard is the area between the right-of-way line and the front building setback line.**

TABLE 2404A – ALL RESIDENTIAL DISTRICTS SETBACK AND HEIGHT REGULATIONS FOR WALLS / VIEW FENCES/**COMBINATION VIEW FENCES**



<i>FRONT YARD ALONG RIGHTS-OF-WAY</i>			
<b>***Refer to Section 2404.d for landscape restrictions</b>			
<b>STREET TYPE</b>	<b>TYPE OF WALL OR FENCE</b>	<b>SETBACK FROM PROPERTY LINE, FEET</b>	<b>MAXIMUM HEIGHT, FEET</b>
Major	View Fence	10, Minimum	**8, including berm
	Meandering Wall	15, Average	**8, including berm
	All Others	20, Minimum	**8, including berm
	Any	10, Minimum	3
Local, Collector, Minor	Any	10, Minimum	3
	Any	*40, Minimum	<b>6</b>
	<b>View Fence/Combination View Fence</b>	<b>***20, Minimum (Landscape Restrictions with Maintenance Requirements)</b>	
	All Others	*40, Minimum	6





# ADDITIONAL CRITERIA – ORD 2016-07

- **Additional Criteria for View Fences and Combination View Fences**
  - **Properties that contain view fencing or combination view fencing over 3' in height and between 20' and 40' of the front yard setback may not also contain hedges over 3' in height in the front yard or in any unpaved sections of right-of-way and must have a hedge maintenance agreement executed and recorded. The maintenance of the hedge is the responsibility of the property owner. The hedge maintenance agreement shall:**



# ADDITIONAL CRITERIA (CONT.)

- a. Be in a form acceptable to the Town Manager or Designee,**
- b. Grant Town easement rights and a right of entry in, over, and across the Hedge and Landscape Area for purposes of complying with this section,**
- c. Specify that the maintenance responsibility for the Hedge and Landscape Area remains private,**
- d. Be recorded in the Maricopa County Recorder's office, and**
- e. Specify that the property owner shall maintain the hedge within the Hedge and Landscape Area in compliance with all applicable Town codes.**



When recorded mail to:

Town of Paradise Valley  
Town Attorney  
6401 E. Lincoln  
Paradise Valley, AZ 85253

**VIEW FENCE/COMBINATION VIEW FENCE HEDGE MAINTENANCE AGREEMENT**

This View Fence/Combination View Fence Hedge Maintenance Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

[Insert Grantor/Owner name as appears in the title to the Property] ("Grantor), and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Grantee" or "Town") each a "Party" and collectively "Parties."

1. Grantor is the fee simple owner of subject property located in the Town of Paradise Valley, County of Maricopa, State of Arizona, and located at the following address:

\_\_\_\_\_(the "Property") and the Assessor's Parcel Number \_\_\_\_ - \_\_\_\_ - \_\_\_\_.

2. Grantee has accepted the View Fence/Combination View Fence Hedge Maintenance Agreement (as evidenced by the execution of this Agreement by the Mayor of the Town).

3. Grantor, for Grantor, its successors, and assigns (hereinafter "Owners") covenants with the Grantee and its successors and assigns, that Grantor and Owners, at all times after the effective date of this instrument, at its own cost and expense, will maintain any hedge in the front yard in compliance with all applicable Town ordinances, codes, rules and regulations (collectively "Town Regulations"). Grantor, and all future Owners, lessees, and residents of all or any part of the Property are bound by the provisions of this Agreement. This Agreement cannot be terminated, released, amended or modified without the express prior written consent of Grantee, or unless automatically terminated according to the provisions of Section 7 of this Agreement.

4. If for any reason the Grantor (or Owners) does not fulfill its duty to maintain the front yard hedge and the Town notifies Grantor via certified mail that the hedge is in violation of Town Regulations, the Grantee shall have the right of self-help, in addition to powers and enforcement authorized by the Town of Paradise Valley Town Code and Arizona state law, and in connection with such rights shall have the right to enter the Property as needed to bring the hedge into compliance with Town Regulations and to be compensated by Grantors (or Owners) for the full and actual amount of the maintenance and any other work performed by Grantee as required by this Agreement and applicable Town Regulations.

5. The Grantors (or Owners) shall be liable to the Town for reasonable maintenance and other costs incurred by the Town pursuant to Paragraph 4, together with interest at the legal rate and reasonable attorneys' fees. If those amounts are not paid within thirty (30) days after written demand to Grantors (or Owners) for maintenance and other costs incurred by the Town pursuant to Paragraph 4, the Town may record a Notice of Claim of Lien against the Property to secure the payment of such amounts, a copy of which will be forwarded to Grantor, or as appropriate, the Owners.

6. The failure by Grantors (or Owners) to maintain the front yard hedge in compliance with Town Regulations may be prosecuted by the Town as a violation of the Town Code in accordance with §2404(d) of the town Zoning Ordinance and punishable as provided in Article XIV of the Zoning Ordinance and Article 1-9 of the Town Code, which may include civil penalties, monetary penalties, or imprisonment, depending on the severity of the offense and the discretion of the Town prosecutor. The Town also shall have the right, at its option, to enforce collection of any amounts owed to the Town under Paragraph 4 in any manner allowed by law, including, without limitation, bringing an action against Grantor (or Owners) to pay such amounts or bringing an action to foreclose its lien against the Property in the manner provided by law for the foreclosure of a realty mortgage. The Town shall have the power to bid at any foreclosure sale and to purchase the Property so sold.

7. This Agreement shall be in addition to any other agreements, or Town law, ordinances and regulations relating to maintaining hedges and the subject matter herein.

8. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors, assigns, affiliates, agents and tenants. This Agreement and other rights and obligations created, granted and conveyed shall run with the land as a burden upon the Property.

9. Grantor warrants that (i) it is the fee simple owner of the Property, (ii) it has full right, power and authority to execute this Agreement, and (iii) the execution hereof by Grantor does not conflict with or constitute a default under any agreement to which Grantor is a party or by which Grantor of the View Fence/Combination Fence Hedge Maintenance Agreement is bound.

10. This Agreement shall terminate only upon mutual written agreement between the Town and Property Owner or automatically in the event the view fence/combination view fence that triggered the requirement to execute this Agreement is removed or not constructed.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written:

**GRANTOR:** [insert Grantor/Owner name below as appears in the title to the Property]

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA )  
) ss  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_, the \_\_\_\_\_ on behalf thereof.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**GRANTEE:**

# DISCUSSION

- Combination view fence - Staff has differing views:
  - Chief of Police supportive of view fencing or any means to be able to see front of house from the street
  - Planning staff not supportive:
    - Landscape regulations often difficult to enforce
- Update definition of view fence to accommodate decorative features – Staff supports





# SCOPE OF REQUEST (CONT.)

- View Fence
  - Currently code - 80% minimum openness
  - Proposed change - 70% minimum openness (to accommodate decorative features such as knuckles, scrolls and ball caps)



# DECORATIVE FENCE ELEMENTS



**Ball Cap**



**Knuckles**



**Spears**



**Scrolls**

Decorative Elements Included in Height Measurement of Fence





# DEFINITIONS – ORD 2016-07

- View Fence – A view fence (including gates) is a free-standing, upright structure, constructed with openings between the materials used for construction of the fence, where the openings represent at least ~~80~~ **70** percent of the total fence surface area



# STAFF AMENDMENT

- Wall Finish – Staff Recommended Update





# WALL FINISH

- Current Code
  - Wall adjacent to adjoining property finished to match architectural character of neighboring house
  - Minimum finish of stucco and paint
  - Or a finish that is agreed upon by the neighbors
- Staff Recommendation:
  - Limit finish to minimum of stucco and paint
  - Limit finish with colors and materials agreed upon by property owners



# WALL FINISH (CONT.)

- Commission Recommendation:
  - Identify number of attempts to contact neighbor of type of fence finish
- Council Recommendation:
  - Add disclosure penalty to hedge maintenance agreement
  - Add language to clarify that exterior finish is limited to stucco and paint if neighbors cannot agree on finish



# Section 2403.b - Walls Adjacent to Adjoining Properties

When such wall is adjacent to an adjoining property, the wall shall be finished on the exterior side, ~~compatible with the architectural character of the neighboring house.~~ The minimum standard for a wall finish shall be stucco and paint.

## EXCEPTIONS:

1. The side of the wall facing the adjoining property may be finished with such materials and colors as agreed upon by the property owner and adjoining property owner. **If the property owners cannot agree on the type of finish, the minimum standard for the wall finish shall be stucco and paint.**
2. If the owner of adjoining property grants no reasonable access to the applicant to finish the side of the wall facing the adjoining property, the applicant will be relieved of any obligation to improve that side of the property wall. **At least two (2) attempts shall be made to try to contact the adjoining property owner. The minimum standard of notification shall be a written letter sent via certified mailed to the owner at his last known address by certified mail, or the address to which the tax bill for the property was last mailed.**



# ACTION

- The Council may approve, approve with changes, deny, or continue the ordinance for further review and discussion





# Questions?

