

SUMMARY OF AGENDA ITEM

DATE: August 7, 2008

TO: Mayor and Council

FROM: Ray Erlandsen 
Zoning Administrator

SUBJECT: Ordinance 745, Resolution 2409
Proposed Addition of "Fences" to the Unified Development Code (UDC)

PURPOSE:

Historically, requirements for fences were included in the original Zoning Code of Payson. When the Unified Development Code (UDC) was adopted in 1996, these fence requirements were inadvertently left out. This request would update and re-establish development standards for fences in the current UDC.

SUMMARY:

On December 13, 2007, the Council held the First Reading of Ordinance 730 and Resolution 2346, Fences, and requested staff make revisions and bring the ordinance and resolution back to Council. In order to maintain a current numbering sequence, new ordinance and resolution numbers were assigned, Ordinance #737 and Resolution #2372.

On May 15, 2008, the Council reviewed the revisions from comments at the previous meeting. Further discussion highlighted more revisions and staff was directed to revise and bring the proposed changes back to Council. One of the directions was to conduct a public meeting to allow citizen input prior to another Council meeting. A public meeting was conducted on July 9, 2008, after posting a public notice with all media representatives in the Payson area.

The list of changes directed by Council are as follows:

- 1) Conduct a public meeting in addition to already conducted public meetings to involve citizen input before bringing back to the Council.
- 2) Delete the requirement for scale drawings.
- 3) Expand language pertaining to the keeping of livestock.
- 4) Address vacant lot situations.
- 5) Eliminate cost associated with a fence permit application.
- 6) Develop language that considers Covenants, Conditions, and Restrictions (CC&R's).
- 7) Create a "grandfather" clause exempting existing fences.
- 8) Avoid "one size fits all" language.

Since the May 15, 2008 Council meeting, staff has made modifications to the Ordinance and Resolution as requested by Town Council and with additional input from the community.

Enclosed is a strikeout/italics copy depicting these changes, as well as a "clean" copy for review.

First Reading & Public Hearing AUG 07 2008 G.5

ORDINANCE NO. 745

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 15-03-006 AND AMENDING SECTIONS 15-03-002(E)(1), 15-03-002(C)(1) AND 15-11-002 OF CHAPTER 154 (THE UNIFIED DEVELOPMENT CODE) OF THE CODE OF THE TOWN OF PAYSON. (REGULATING FENCES)

WHEREAS, the Town of Payson desires to regulate the type and placement of fences to assure safety on its roadways and to protect the public's health and safety; and

WHEREAS, the Town additionally desires to regulate the type and placement of fences to maintain the aesthetic quality of the Town and to maintain and increase property values of the citizens of the Town,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. That Section 15-03-006 (Fences) and the amendments to Sections 15-03-002(E)(1) (Landscaping) and 15-11-002 (Definitions) of Chapter 154 (the Unified Development Code) of the Code of the Town of Payson set forth in Resolution 2409 were heretofore declared to be a public record by such Resolution, and that Section 15-03-006 and the amendment to Sections 15-03-002 and 15-11-002 are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance Number 745.

Section 2. That at least three copies of Section 15-03-006 (Fences) and the amendments to Sections 15-03-002(E)(1) (Landscaping) and 15-11-002 (Definitions) of Chapter 154, as adopted by this Ordinance Number 745 shall be filed in the Office of the Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.

Section 3. All references to the number eight (8) in Section 15-03-002(C)(1) of Chapter 154 (the Unified Development Code) of the Code of the Town of Payson are hereby amended to the number six (6).

Section 4. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance Number 745 are hereby repealed to the extent of such conflict.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance Number 745 is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance Number 745. The Mayor and Common Council of the Town of Payson declares that it would have adopted this Ordinance Number 745 and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases or portions would be declared invalid or unconstitutional.

First Reading and Public Hearing AUG 07 2008 65^{Page 1}

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE
TOWN OF PAYSON this _____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

**RESOLUTION NO. 2409 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 8/7/08 COUNCIL MEETING.**

**RESOLUTION NO. 2409 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE 9/4/08 COUNCIL MEETING.**

RESOLUTION NO. 2409

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADDING SECTION 15-03-006 AND AMENDING SECTIONS 15-03-002(E)(1) AND 15-11-002 OF CHAPTER 154 (THE UNIFIED DEVELOPMENT CODE) OF THE CODE OF THE TOWN OF PAYSON, AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD. (REGULATING FENCES)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to add Section 15-03-006 and amend Sections 15-03-002(E)(1) and 15-11-002 of Chapter 154 (the Unified Development Code) of the Code of the Town of Payson relating to Fences; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

- Section 1. Section 15-03-006 of Chapter 154 of the Code of the Town of Payson is hereby added, is declared to be a public record, and as added shall read as set forth in Exhibit A attached hereto.
- Section 2. Section 15-11-002 of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and the definitions set forth in Exhibit B attached hereto are hereby added.
- Section 3. Section 15-03-002(E)(1) of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and shall read as set forth in Exhibit C attached hereto.
- Section 4. If any section, subsection, sentence, clause, phrase or portion of Resolution Number 2409 is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of Resolution Number 2409 The Town Council of Payson declares that it would have adopted Resolution Number 2409 and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

Exhibit A
to
Resolution 2409

Clean Copy

EXHIBIT A TO RESOLUTION 2409

15-03-006 Fences

REVISED 8-7-08

A. Applicability

The provisions of this section shall apply to all zoning districts.

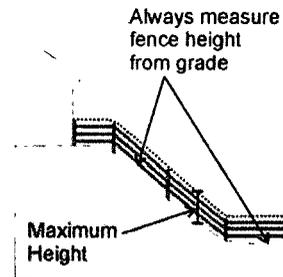
B. Fence Materials

1. No fence in any zoning district, unless otherwise provided for in this section, shall:
 - a. contain or be constructed of barbed, razor, concertina or similar wire, or
 - b. have an electrical current or an electrical charge.
2. In commercial and industrial zoning districts – 12 to 24 inches of barbed wired may be placed atop a six foot fence, if such barbed wire is not adjacent to a residential use.

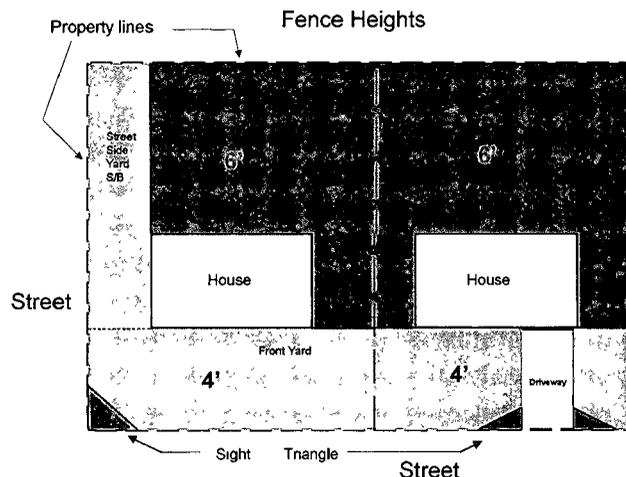
C. Height and Setbacks

1. Residential Uses

- a. Six-foot high fences, measured from grade, are allowed on the side and rear yard property lines up to the required front yard setback.



- b. Fences shall not exceed four (4) feet in height on the front property line or within the required front yard.
- c. Street side yard fences shall not exceed a height of four (4) feet at the property line. A maximum height of six feet is allowed when placed at the street side setback line.
- d. Fences encroaching into any sight triangle shall be of an open fence design.

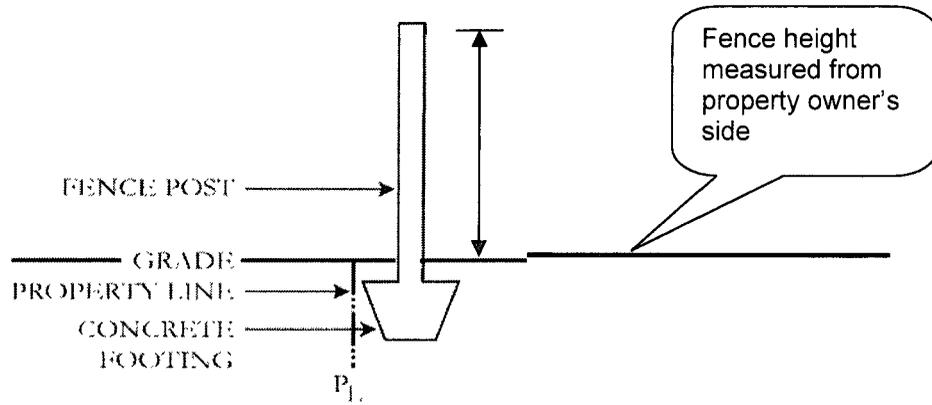


e. Zoning districts allowing livestock are governed by UDC Section 15-02-004.

2. Multi-family/Commercial/Industrial Uses

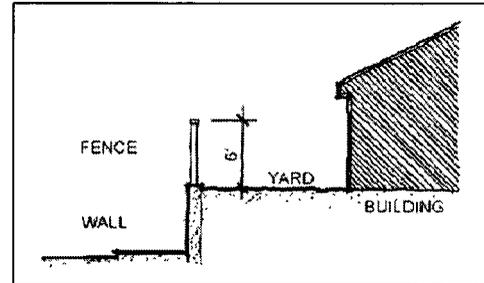
See UDC Sections 15-02-005, 15-02-006, 15-02-013, 15-02-014, 15-03-002.

3. Height of fences shall be measured at finished grade from the property owner's side of the fence.



5. Fences may not be constructed within three feet of the edge of the paved portion of the roadway.

6. Fence height on top of *retaining* walls shall be measured from the property owner's side of the fence.



D. Exceptions

1. A building permit is required for fences over six feet in height.
2. Fences over eight feet in height may be evaluated on a case by case basis and may be allowed subject to written approval of the Town Engineer, Community Development Director, and Building Official.
3. Razor, concertina, barbed, or similar wire as a part or the whole of any height fence will be approved by the Community Development Director for all utility and public safety applications where heightened security requires such materials or where the fence is required by local, state or federal law.
4. Covenants, Conditions, and Restrictions (CC&R's) may be more restrictive than this code.
5. Existing fences at the time of the adoption of this ordinance are legal non-conforming (grandfathered).

Exhibit A
to
Resolution 2409

With Deletions/Insertions
From Prior Council Review

EXHIBIT A TO RESOLUTION 2409

15-03-006 Fences

REVISED 8-7-08

A. Applicability

The provisions of this section shall apply to all zoning districts.

~~B. Permit Required~~

- ~~1. A fence permit shall be required before a property line fence may be constructed, reconstructed or altered within the Town of Payson. A permit is not required for maintenance or repairs that do not alter or change the original fence. The Building Official may waive the permit requirement if the fence is part of a project where plans will include fencing.~~
- ~~2. A fence permit application shall be submitted including a scale drawing site plan showing all fence dimensions, gates, lot lines, setbacks, colors, and any information that may be required by the building and construction codes adopted by the Town.~~
- ~~3. The property owner shall locate affected property corners prior to constructing a fence.~~
- ~~4. Fence permit fees shall be listed on the Town of Payson *Schedule* List of Fees.~~

~~C. Fence Materials~~

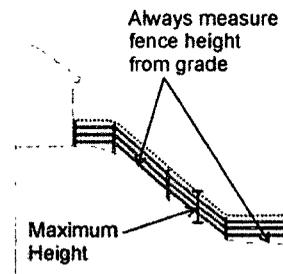
- ~~1. Only the following fence materials may be used.
 - ~~a. In all zoning districts vinyl, plastic, chain link, wood board, wood picket, wood rail, masonry, stone, block, concrete or other materials simulating any allowable material.~~
 - ~~b. In commercial and industrial zoning districts 12 to 24 inches *of barbed wired may be placed atop a six foot fence*, if such barbed wire is not adjacent to a residential use.~~
 - ~~e. In all zoning districts pipe fences may be allowed for the maintaining of livestock.~~~~

~~B. Fence Materials~~

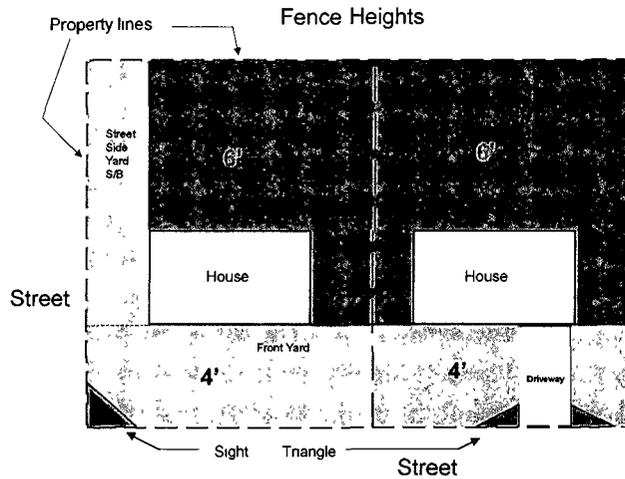
- ~~1. No fence in any zoning district, unless otherwise provided for in this section, shall:
 - a. contain or be constructed of *barbed*, razor, concertina or similar wire, or
 - b. have an electrical current or an electrical charge.~~
- ~~2. In commercial and industrial zoning districts – 12 to 24 inches *of barbed wired may be placed atop a six foot fence*, if such barbed wire is not adjacent to a residential use.~~

~~D C. Height and Setbacks~~

- ~~1. Residential Uses
 - a. Six-foot high fences, measured from grade, are allowed on the side and rear yard property lines up to the required front yard setback.~~



- b. Fences shall not exceed four (4) feet in height on the front property line or within the required front yard. ~~setback.~~
- c. Street side yard fences shall not exceed a height of four (4) feet ~~above finished grade~~ at the property line. A maximum height of six feet ~~above finished grade~~ is allowed when placed at the street side setback line.
- d. ***Fences encroaching into any sight triangle shall be of an open fence design.***

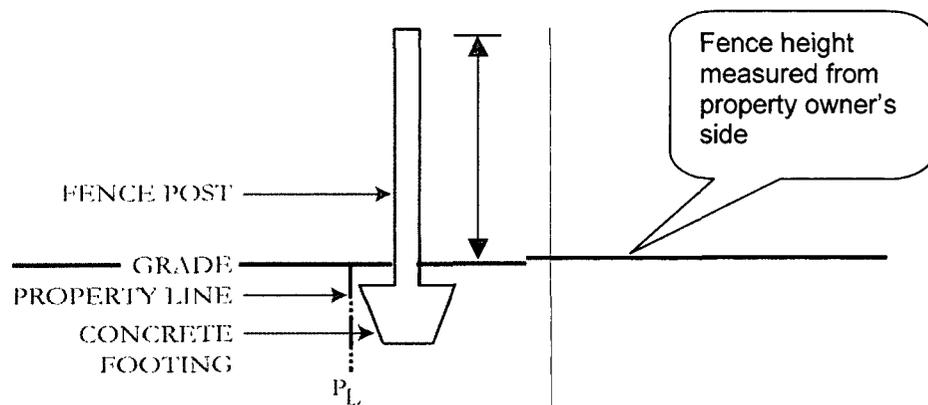


e. ***Zoning districts allowing livestock are governed by UDC Section 15-02-004.***

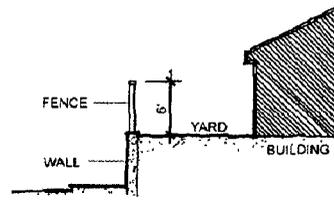
2. ***Multi-family/Commercial/Industrial Uses***

See UDC Sections 15-02-005, 15-02-006, 15-02-013, 15-02-014, 15-03-002.

- 3. Height of fences shall be measured at finished grade from the property owner's side of the fence.



5. Fences may not be constructed within three feet of the edge of the paved portion of the roadway.
6. Fence height on top of *retaining* walls shall be measured from the property owner's side of the fence.



~~E. Fence Design~~

- ~~1. Colors shall conform to the color requirements of the Town of Payson Design Review Overlay District.~~
- ~~2. The finished or decorative side of any front yard or street side yard fence shall face the public right of way.~~

F D. Exceptions

- ~~1. Fences of other than approved material, conventional design or color, including historical fences may be allowed by the Design Review Board so long as such fences compliments the color and architecture of the surrounding neighborhood and any buildings.~~
- 1. A building permit is required for fences over six feet in height.**
- Fences over **six eight** feet in height may be evaluated on a case by case basis and may be allowed subject to written approval of the Town Engineer, Community Development Director, and Building Official.
- ~~3. Interior fences not over the allowed height and of approved materials shall not require a fence permit.~~
- ~~4. Height regulations shall not apply when fences of greater height are required by the Planning & Zoning Commission or Design Review Board in order to provide adequate screening.~~
- ~~5. Construction Fences in compliance with Subsection (E)(1) shall be exempt from all other provisions of this Section.~~
- 6 3. Razor, concertina, barbed, or similar wire as a part or the whole of any height fence may will be approved by the Community Development Director for certain all utility and public safety applications where heightened security requires such materials or where the fence is required by local, state or federal law.**
- 4. Covenants, Conditions, and Restrictions (CC&R's) may be more restrictive than this code.**
- 5. Existing fences at the time of the adoption of this section are legal non-conforming (grandfathered).**

Exhibit B
to
Resolution 2409

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EXHIBIT B TO RESOLUTION 2409

15-11-002 Definitions

Fence(s): Any artificial barrier, not including plants, erected, constructed or placed on a lot, including masonry wall and ornamental construction.

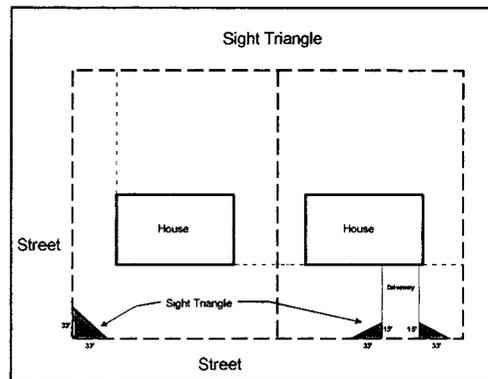
Types of fences include:

- A. Property line fence: A fence constructed parallel to and within 10 feet of a property line.
- B. Interior fence: All fences that are not Property Line Fences.
- C. Construction Fence: Any temporary fence placed on a construction site that has a current building permit and is actively being constructed. Construction Fences shall be of the type, kind, and size typically used during construction for the type project on which the Construction Fence is used.

Closed Fence: Less than 50% of the surface area affords a direct view through the fence.

Open Fence: At least 50% of the surface area affords a direct view through the fence.

Sight Triangle: The triangle bounded by the edge of the intersecting roadways and the diagonal connecting the two farthest points creating an isosceles triangle. The equal legs of the triangle shall be a minimum length of 33 feet. The equal legs of the triangle formed by a driveway shall be a minimum length of 15 feet.



Yard, street side: A side yard abutting a public roadway.

Exhibit B
to
Resolution 2409

With Deletions/Insertions
From Prior Council Review

EXHIBIT B TO RESOLUTION 2409

15-11-002 Definitions

Fence(s): Any artificial barrier, not including plants, erected, constructed or placed on a lot, including masonry wall and ornamental construction.

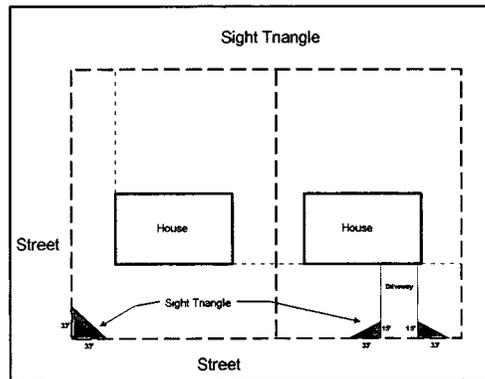
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- C. Construction Fence: Any temporary fence placed on a construction site that has a current building permit and is actively being constructed. Construction Fences shall be of the type, kind, and size typically used during construction for the type project on which the Construction Fence is used.

Closed Fence: *Less than 50% of the surface area affords a direct view through the fence.*

Open Fence: *At least 50% of the surface area affords a direct view through the fence.*

Sight Triangle: The triangle bounded by the edge of the intersecting roadways and the diagonal connecting the two farthest points creating an isosceles triangle. The equal legs of the triangle shall be a minimum length of 33 feet. The equal legs of the triangle formed by a driveway shall be a minimum length of 15 feet.



Yard, street side: A side yard abutting a public roadway.

Exhibit C
to
Resolution 2409

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EXHIBIT C TO RESOLUTION 2409

15-03-002: Landscaping Requirements

E. Site Clearance and Maintenance

1. No walls, shrubs, plant materials, or other obstruction to view shall be placed on any corner lot or at any driveway intersecting a street, within a "sight triangle."

Exhibit C
to
Resolution 2409

With Deletions/Insertions
From Current Code

EXHIBIT C TO RESOLUTION 2409

15-03-002: Landscaping Requirements

E. Site Clearance and Maintenance

1. No walls, shrubs, plant materials, or other obstruction to view ~~in excess of three feet in height~~ shall be placed on any corner lot or at any driveway intersecting a street, within a "sight ~~clearance~~ triangle." ~~formed by two curb, roadway or driveway lines; except, that trees pruned high enough to permit vision to automobile drivers will be allowed.~~