- CITY OF BIGGS -

PLANNING DEPARTMENT STAFF REPORT

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DATE: June 11, 2013 (*Updated and Republished from May 14, 2013*)

TO: Honorable Mayor and Members of the City Council

FROM: Scott Friend, AICP City Planner

SUBJECT: Zoning Code Amendment ZCA2013-01 – Fences

Report Summary:
Staff has prepared a Zoning Ordinance text amendment (ZCA2013-01) to Section 14.60.080, *Fences and landscaping – General height limitations* of the Biggs Municipal Code (BMC) to establish language specifically notating the need for a fence permit in certain instances and to provide enhanced details regarding when a fence permit is required by the City.

With this report, staff is recommending that the City Council receive a report from City staff on this item, open the public hearing and take public testimony, and engage in a dialogue about the draft as presented. Staff has advertised the matter as a Public Hearing thereby allowing for public input on the draft amendment as well as Council discussion and deliberation. If the draft amendment is satisfactory to the City Council, staff recommends that the Council waive the first reading and introduce the Ordinance by reading of title only and direct staff to agendize the matter for a second reading at the June City Council meeting. If additional changes are desired by the Council, the City Council may include the desired changes in its action motion or may refer the item back to staff with additional direction.

Staff is recommending that the City Council approve the request as presented unless additional edits are otherwise identified as being desirable.

UPDATE: Following the presentation of the first-draft of the revised Ordinance to Section 14.60.080 of the Biggs Municipal Code at the May 14th City Council meeting, staff was directed to make additional modifications, re-advertise and re-submit the matter for Council consideration. At the Council's direction, staff has made changes to the draft Code Amendment, has re-advertised the public hearing and is returning this matter to the Council for further consideration. The changes made to the May version of the draft code amendment text are as follows:

1) Additional narrative has been added to item #1 of the draft text to address when and under what circumstances a fence permit is and is not required. These changes include the removal of items previously providing for certain maintenance activities (posts); and,
2) A new item #11 has been added specifically addressing when and how the City will take action to address fence located on public property or where fences obstruct public safety features or present a public safety hazard.

Staff has not identified an approach to the amortization of existing fences that would be reasonable relative to its implementation and not result in the burdening of the City with additional costs associated with the undertaking of a city-wide fence survey. As a result, no amortization mechanisms or approach to the identification of pre-existing conditions has been proposed with the revised Code. Additionally, staff is requesting that the City Council provide more direct input on the changes that are desired in the event the proposed changes are not in-line with the vision of the Council for this effort.

Background - General:
Chapter 14 – Zoning; Section 14.60, *Development Standards – General*, of the Biggs Municipal Code (BMC) establishes the primary authority for the City's regulation of fences. Specifically, Section 14.60.080 provides the details of the City's fence code requirements (see *Attachment A*).

Section 14.60.080 of the Biggs Municipal Code currently establishes basic development standards for fences in the City of Biggs (see *Attachment A* for full details). However, it does not currently explicitly state for what actions a fence permit is and is not be required.

Discussion – General:
Currently, Section 14.60.080 of the Biggs Municipal Code allows for a maximum fence height of four feet (six feet with a use permit) in a front yard area and six feet (eight feet with a use permit) in a side- or rear-yard area. Staff has drafted proposed modifications to the text of Section 14.60.080 of the Biggs Municipal Code that provide additional direction and specifics as to when a fence permit is, and is not, required and, staff has drafted additional narrative concerning the application of the code to routine maintenance activities and fence replacement activities. Additional clarification language is also proposed addressing fence heights on key lots stating that no fence shall be over four feet in height within a front yard area or six feet in height within a side or rear yard area on such lots.

Fiscal Impact:
Staff time for report preparation, preparation of amended text, and amendment processing. No direct fiscal impacts or supplemental funding impacts are anticipated are anticipated to be necessary as a result of this project.

Environmental Review:
This action has been determined to be *exempt* from CEQA review pursuant to Public Resources Code Section 15305, Minor Alterations in Land Use Limitations (Class 5). No new construction would result from the amendment, no new parcels of land would be created and no new uses would be allowed or would occur. (Note: Authority cited: Section 15305, Public Resources Code).

Public Comment:
None Received.

Order of Council Proceedings:
1. Receive a report from City Staff;
2. Open the Public Hearing to consider comments on the proposed amendments to BMC Section 14.60.080.
3. Following public comment, close the public hearing and consider the proposed amendment. Following the Council input and deliberation period, the Council may vote to either introduce the draft Ordinance by reading of title only or may refer the item back to staff with additional direction for further modification.

Sample Motion: Move that the City Council introduce Ordinance No. 398 a Zoning Ordinance text amendment to Section 14,60.080, of the Biggs Municipal Code to clarify the application of the City's fence permit required by waiving the first reading and introducing by title only.

Staff Recommendation:
Staff recommends that the City Council receive a report from City staff; conduct the public hearing and engage in deliberations concerning the draft Ordinance. If the draft Ordinance is determined by the Council to be appropriate for further consideration, staff recommends that the Council introduce the draft Ordinance by waiving the first reading and introducing by title only and direct staff to agendize the matter for adoption at the July meeting of the City Council.

Attachments:

Attachment A - Draft Text: Amended Section 14.60.080 Fences and Landscaping of the Biggs Municipal Code.

Attachment B - Draft Ordinance No. 398 Amending Section 14.60.080 Fences and Landscaping of the Biggs Municipal Code.

Attachment C- Draft Notice of Exemption

ATTACHMENT A

14.60.080 Fences and landscaping – General height limitations.

(1) Any new or substantially modified fence greater than four feet in height in a front-yard or six feet in height in a rear- or side-yard is required to obtain a fence permit from the City of Biggs Planning Department. Substantial modifications include increasing the height of a fence beyond the maximum permitted by-right height; changing the building material of an existing fence; or, making any movement to an existing fence ~~to a new location closer to a public street or public property~~.

A fence permit is not required for normal and customary fence repair and maintenance activities to include in-kind fence board replacements, in-kind replacement of posts or deteriorating cross-supports, painting of fences; or, for the in-kind and in-place replacement of an existing compliant fence previously approved by the City.

In addition to new fences, a fence permit shall be required for any movement of an existing fence; for any work undertaken to existing fence posts; for any structural or aesthetic additions to fences; or for any activity related to a change in fence materials.

(~~1~~2) On all lots except double frontage and key lots, fences, hedges, and similar obstructions, not including ornamental features and design elements of a conforming decorative fence, shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized by a use permit issued pursuant to Chapter 14.90 BMC (Exceptions). No fence authorized under the provisions of Chapter 14.90 BMC (Exceptions) shall exceed six feet in height in any required front yard or eight feet in height in any side or rear yard setback.

(~~2~~3) On double frontage lots, fences, hedges, and similar obstructions, not including ornamental features and design elements of a conforming decorative fence, shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized pursuant to Chapter 14.90 BMC (Exceptions).

(~~3~~4) On key lots, fences and similar obstructions may be constructed within a required front yard setback area to match the height of an adjacent lot's legal existing side or rear yard fence, subject to the requirements of subsections (1) and (2) of this section. In no case shall such a fence be over four feet in height within the front-yard area. Fences located within a side- or rear-yard area shall not exceed six feet in height.

(~~4~~5) Decorative fences no greater than four feet in height, or three feet in height within a sight visibility triangle area, may be allowed within the public right-of-way subject to the approval of a fence permit and upon the issuance of an encroachment permit by the city. Where a decorative fence is permitted within the public right-of-way through the encroachment permit process, applicants shall be required to sign an agreement acknowledging that the fence is located within the public right-of way and acknowledging that the fence may be removed by the city or its authorized agents without compensation or replacement when authorized work within the affected section of the public right-of- way is undertaken, and shall sign an indemnification agreement with the city. All approved encroachment permits for this purpose, along with the

signed acknowledgement statements, shall be recorded against the property with the Butte County recorder. Conditions of approval may be added to both the fence permit and the encroachment permit addressing public safety issues related to obstruction of, and interference with, existing and proposed improvements in the right-of-way area (e.g., fire hydrants, street signs, underground utilities, etc.) as well as sight distance and visibility issues.

(~~5~~ 6) No fence greater than six feet in height may be authorized by use permit where such fence would be located within 10 feet of a residential structure either within the subject parcel or on an adjacent residential property.

(~~6~~ 7) No fence, hedge, wall or other improvement within the sight distance zone, as defined in Chapter 14.10 BMC, shall exceed three feet in height, and no trees or vegetation shall be planted within the sight distance triangle area.

(~~7~~ 8) Fence, hedge, wall, or similar barrier heights may be reduced from standards noted in subsections (1), (2), and (3) of this section to address non-intersection sight visibility concerns where it is determined that the fence, hedge, wall or barrier poses a hazard or safety risk to a public street, right-of-way or driveway.

(~~8~~ 9) In no case shall a fence exceeding four feet in height be located closer than 15 feet from the right-of-way in a front yard area.

(~~9~~ 10) In no case shall a fence, hedge or wall, decorative or otherwise, be located closer than one foot behind the back edge of an existing developed sidewalk, pedestrian path, bike path or recognized public accessway. [Ord. 394, 2012; Ord. 387, 2011; Ord. 383, 2009; Ord. 320 § 1, 1999]

(11) No fence of any kind shall be permitted to be located within the City right-of-way without written approval of the City Administrator; no fence shall be constructed or maintained which interferes with or otherwise impedes access to a public sidewalk, fire hydrant or street sign; and, no fence shall be constructed or modified which presents a public safety hazard. Fences and similar obstructions located within the public right-of-way and not having written permission from the City Administrator or approval of the City Council and/or which obstruct or otherwise prevent access to a public safety feature (hydrant, traffic sign) or public walkway located on public property or within a public easement may be removed by the City upon the issuance of notice to the property owner of the City's intent.

ATTACHMENT B
CC Ordinance No. 398

CITY OF BIGGS
ORDINANCE NO. 398

AN ORDINANCE OF THE BIGGS CITY COUNCIL AMENDING THE BIGGS MUNICIPAL CODE TO MODIFY REGULATIONS IN SECTION 14.60.080 RELATING TO FENCE PERMITS IN THE CITY OF BIGGS

The City Council of the City of Biggs does hereby ordain as follows:

Section 14.60.080 of the City of Biggs Zoning Code shall be amended to read as follows (deletions are ~~overstruck~~, additions are underlined):

14.60.080 Fences and landscaping – General height limitations.

(1) Any new or substantially modified fence greater than four feet in height in a front-yard or six feet in height in a rear- or side-yard is required to obtain a fence permit from the City of Biggs Planning Department. Substantial modifications include increasing the height of a fence beyond the maximum permitted by-right height; changing the building material of an existing fence; or, making any movement to an existing fence ~~to a new location closer to a public street or public property~~.

A fence permit is not required for normal and customary fence repair and maintenance activities to include in-kind fence board replacements, in-kind replacement of posts or deteriorating cross-supports, painting of fences; or, for the in-kind and in-place replacement of an existing compliant fence previously approved by the City.

In addition to new fences, a fence permit shall be required for any movement of an existing fence; for any work undertaken to existing fence posts; for any structural or aesthetic additions to fences; or for any activity related to a change in fence materials.

(~~1~~2) On all lots except double frontage and key lots, fences, hedges, and similar obstructions, not including ornamental features and design elements of a conforming decorative fence, shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized by a use permit issued pursuant to Chapter 14.90 BMC (Exceptions). No fence authorized under the provisions of Chapter 14.90 BMC (Exceptions) shall exceed six feet in height in any required front yard or eight feet in height in any side or rear yard setback.

(~~2~~3) On double frontage lots, fences, hedges, and similar obstructions, not including ornamental features and design elements of a conforming decorative fence, shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized pursuant to Chapter 14.90 BMC (Exceptions).

(~~3~~4) On key lots, fences and similar obstructions may be constructed within a required front yard setback area to match the height of an adjacent lot's legal existing side or rear yard fence, subject to the requirements of subsections (1) and (2) of this section. In no case shall such a fence be over four feet in height within the front-yard area. Fences located within a side- or rear-yard area shall not exceed six feet in height.

(~~4~~5) Decorative fences no greater than four feet in height, or three feet in height within a sight visibility triangle area, may be allowed within the public right-of-way subject to the approval of a fence permit and upon the issuance of an encroachment permit by the city. Where a decorative fence is permitted within the public right-of-way through the encroachment permit process, applicants shall be required to sign an agreement acknowledging that the fence is located within the public right-of way and acknowledging that the fence may be removed by the city or its authorized agents without compensation or replacement when authorized work within the affected section of the public right-of- way is undertaken, and shall sign an indemnification agreement with the city. All approved encroachment permits for this purpose, along with the signed acknowledgement statements, shall be recorded against the property with the Butte County recorder. Conditions of approval may be added to both the fence permit and the encroachment permit addressing public safety issues related to obstruction of, and interference with, existing and proposed improvements in the right-of-way area (e.g., fire hydrants, street signs, underground utilities, etc.) as well as sight distance and visibility issues.

(~~5~~6) No fence greater than six feet in height may be authorized by use permit where such fence would be located within 10 feet of a residential structure either within the subject parcel or on an adjacent residential property.

(~~6~~7) No fence, hedge, wall or other improvement within the sight distance zone, as defined in Chapter 14.10 BMC, shall exceed three feet in height, and no trees or vegetation shall be planted within the sight distance triangle area.

(~~7~~8) Fence, hedge, wall, or similar barrier heights may be reduced from standards noted in subsections (1), (2), and (3) of this section to address non-intersection sight visibility concerns where it is determined that the fence, hedge, wall or barrier poses a hazard or safety risk to a public street, right-of-way or driveway.

(~~8~~9) In no case shall a fence exceeding four feet in height be located closer than 15 feet from the right-of-way in a front yard area.

(~~9~~10) In no case shall a fence, hedge or wall, decorative or otherwise, be located closer than one foot behind the back edge of an existing developed sidewalk, pedestrian path, bike path or recognized public accessway. [Ord. 394, 2012; Ord. 387, 2011; Ord. 383, 2009; Ord. 320 § 1, 1999]

(11) No fence of any kind shall be permitted to be located within the City right-of-way without written approval of the City Administrator; no fence shall be constructed or maintained which interferes with or otherwise impedes access to a public sidewalk, fire hydrant or street sign; and, no fence shall be constructed or modified which presents a public safety hazard. Fences and similar obstructions located within the public right-of-way and not having written permission from the City

Administrator or approval of the City Council and/or which obstruct or otherwise prevent access to a public safety feature (hydrant, traffic sign) or public walkway located on public property or within a public easement may be removed by the City upon the issuance of notice to the property owner of the City's intent.

I HEREBY CERTIFY that the above and foregoing Ordinance was introduced on the 11th day of June, 2013, and was passed and adopted by the City Council of the City of Biggs at a regular meeting thereof duly held on the 9th day of July, 2013, by the following vote, to wit:

AYES: COUNCILMEMBER: _____

NOES: COUNCILMEMBER: _____

ABSENT: COUNCILMEMBER: _____

ABSTAIN: COUNCILMEMBER: _____

ATTEST:

_____
Roben Dewsnup
CITY CLERK

APPROVED:

_____
Roger L. Frith
MAYOR

ATTACHMENT C
Z CA#2013-01
June 12, 2013

NOTICE OF EXEMPTION

To: ☐ Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

From: City of Biggs
Planning Department
P.O. Box 1134 / 3016 Sixth Street
Biggs, CA 95917

☒ County Recorder
Butte County
25 County Center Drive
Oroville, CA 95965

Project Title:	AMENDMENT TO BMC Section 14.60.080 Fences and Landscaping – General Height Limitations.
Project Location:	City of Biggs.
Assessor's Parcel Number(s):	n/a (City-wide)
Project Description:	An amendment to the Biggs Municipal Code Section 14.60.080 [Fences and Landscaping – General Height Limitations] to insert narrative text indicating when a fence permit shall be required and adding narrative text further describing what activities are subject to the issuance of permit.
Lead Agency:	City of Biggs
Project Planner:	Scott Friend, AICP
Exemption Status:	☐ Ministerial [Section 21080(b); 15268];
	☐ General Rule [Section 15061(b)(3)];
	☒ Categorical Exemption [Section 15305];
	☐ Statutory Exemption;

REASONS WHY THIS PROJECT IS EXEMPT OR DOES NOT REQUIRE FURTHER ENVIRONMENTAL DOCUMENTATION:

This action has been determined to be exempt from CEQA review pursuant to Public Resources Code Section 15305, Minor Alterations in Land Use Limitations (a class 5 exemption). The proposed amendment would modify the existing text of Section 14.60.080 to reduce the height of fences allowed without a use permit..

City Planner
City of Biggs

By: _____
Scott Friend, AICP
Date: June 12, 2013