



- CITY OF BIGGS -
PLANNING DEPARTMENT STAFF REPORT

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DATE: July 9, 2013 (Updated and Republished from May 14, and June 11, 2013 staff reports)
TO: Honorable Mayor and Members of the City Council
FROM: Scott Friend, AICP City Planner
SUBJECT: Zoning Code Amendment ZCA2013-01 – Fences

Note: New staff report text noted using the double-underline feature

Report Summary:

Staff has prepared a Zoning Ordinance text amendment (ZCA#2013-01) to Section 14.60.080, *Fences and landscaping – General height limitations* of the Biggs Municipal Code (BMC) to establish language specifically requiring that a fence permit be issued for most all fence-related actions and establishing the standards and conditions to be applied during the review of fence permits. The revised “July draft” of the code has a primary goal of streamlining and simplifying the City’s existing ‘fence code’ to facilitate easier implementation and to promote ease of use and understanding.

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 deliberations on the draft as presented. Staff has advertised this matter as a Public Hearing thereby allowing for public input on the draft amendment as well as Council discussion, deliberation and action. 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 August 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.

REPORT UPDATE #2: Working at the direction of the City Council, and based upon the direction provided at the June meeting, staff has re-written Section 14.60.080, *Fences and Landscaping – General height limitations* focusing on streamlining and simplifying the language of this section. With the goal of simplifying and streamlining the Code, staff has re-worked the text of the draft amendment to incorporate a table showing maximum heights and has significantly reduced the number of conditions and standards of the Section. The revised draft requires that all new fences and any structural modification or movement of an existing fence receive a fence permit. This will allow staff to work with applicants to ensure that fences are located and constructed as directed in the code and desired by the City. The draft text still permits limited activities to occur to existing fences without the

need for a fence permit and still provides flexibility for increased height and the application of flexible standards for location and design through the administrative use permit process.

It is noted that the flexibility incorporated into the draft text, and the ability to simplify the text of this section, is a direct result of the reliance upon the issuance of a fence permit and the flexibility of the application of development standards afforded by Chapter 17.90, *Exceptions*.

The draft text maintains the ability to locate fences in the City right-of-way subject to authorization of the City Administrator and the issuance of an encroachment permit. The draft text also maintains the requirement to setback all new fences a minimum of one (1) foot behind the back-edge of a sidewalk or pedestrian way and limits the height of fences within a sight visibility triangle area.

(Text originally presented as part of the June Planning Staff Report on this topic)

REPORT UPDATE #1: 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.

(Text originally presented as part of the May Planning Staff Report on this topic)

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 to be necessary as a result of this project.

Environmental Review:

This action has been determined to be *Exempt* from further review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 15305, *Minor Alterations in Land Use Limitations*, a Class 5 exemption. 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.

Public Comment:

No comments or input has been received following the June City Council meeting.

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 2013-____, a Zoning Ordinance text amendment to Section 14.60.080, *Fences and Landscaping – General Height Limitations* of the Biggs Municipal Code to establish standards and requirements for the construction or maintenance of fences in the City by waiving the first reading or the full text of the Ordinance and introducing the Ordinance by reading of 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 April meeting of the City Council.

Attachments:

- Attachment A -* Draft Text Amendment (July draft): Amended Section 14.60.080: *Fences and Landscaping – General height limitations* of the Biggs Municipal Code.
- Attachment B -* Existing Text of Chapter 14.60.080: *Fences and Landscaping – General height limitations* of the Biggs Municipal Code.
- Attachment C -* Draft Ordinance No. 398 Amending Section 14.60.080: *Fences and Landscaping – General height limitations* of the Biggs Municipal Code.
- Attachment D-* Draft Notice of Exemption

ATTACHMENT A
Proposed Text –ZCA2013-01
BMC 14.60.080 – Fences and Landscaping

14.60.080 Fences and landscaping – General height limitations.

(1) All actions to construct new fences (complete or partial); structurally alter an existing fence; or move an existing fence shall require the issuance of a fence permit.

(2) A fence permit is not required for repair and maintenance activities to an existing fence where the repair or maintenance activity involves only the in-kind replacement of fence boards or deteriorating cross-supports or the painting or staining of existing fences.

(3) The maximum height of all fencing and landscaping shall be as follows:

Zoning District	Maximum Height (3,4)	
	Without a Use Permit	With a Use Permit
Residential Zone District		
- Front Yard	4'	6'
- Side Yard	6'	8'
- Rear Yard	6'	8'
Non-Residential Zone District	6'	8'

(4) Modifications to the maximum height of a fence or landscaping in a required yard-area may be issued through the fence permit process for key- and double-frontage-lots consistent with the provisions of this Section, the requirements of BMC Chapter 14.90 and the prevailing conditions in the vicinity of the site.

(5) No fence 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. Fences may be permitted to be located within the City right-of-way upon the 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 or which presents a public safety hazard and all fences permitted to be located within the public right-of-way shall require the issuance of an encroachment permit stating that the fence may be removed by the City or a public service provider in the event that work within the right-of-way is required.

(6) 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 zone area.

(7) All fences, walls and landscaping shall be setback a minimum of one-foot behind the back edge of an existing or planned sidewalk, pedestrian path, bike path or recognized public access way. [Ord. 394, 2012; Ord. 387, 2011; Ord. 383, 2009; Ord. 320 § 1, 1999]

ATTACHMENT B
Existing Text – Biggs Municipal Code
BMC 14.60.080 – Fences and Landscaping

14.60.080 Fences and landscaping – General height limitations.

(1) 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) 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) 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.

(4) 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) 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) 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.

ATTACHMENT B
Existing Text – Biggs Municipal Code
BMC 14.60.080 – Fences and Landscaping

(7) 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) 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) 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 access way. [Ord. 394, 2012; Ord. 387, 2011; Ord. 383, 2009; Ord. 320 § 1, 1999]

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 FENCES AND LANDSCAPING – GENERAL HEIGHT LIMITATIONS RELATING TO THE REQUIREMENT FOR FENCE PERMITS AND FENCE AND LANDSCAPING STANDARDS 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 (The full text of Section 14.60.080 shall be replaced in its entirety as follows):

14.60.080 Fences and landscaping – General height limitations.

(1) All actions to construct new fences (complete or partial); structurally alter an existing fence; or move an existing fence shall require the issuance of a fence permit.

(2) A fence permit is not required for repair and maintenance activities to an existing fence where the repair or maintenance activity involves only the in-kind replacement of fence boards or deteriorating cross-supports or the painting or staining of existing fences.

(3) The maximum height of all fencing and landscaping shall be as follows:

Zoning District	Maximum Height (3,4)	
	Without a Use Permit	With a Use Permit
Residential Zone District		
- Front Yard	4'	6'
- Side Yard	6'	8'
- Rear Yard	6'	8'
Non-Residential Zone District	6'	8'

(4) Modifications to the maximum height of a fence or landscaping in a required yard-area may be issued through the fence permit process for key- and double-frontage-lots consistent with the provisions of this Section, the requirements of BMC Chapter 14.90 and the prevailing conditions in the vicinity of the site.

(5) No fence 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. Fences may be permitted to be located within the City right-of-way upon the 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 or which presents a public safety hazard and all fences permitted to be located within the public right-of-way shall require the issuance of an encroachment permit stating that the fence may be removed by the City or a public service provider in the event that work within the right-of-way is required.

(6) 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 zone area.

(7) All fences, walls and landscaping shall be setback a minimum of one-foot behind the back edge of an existing or planned sidewalk, pedestrian path, bike path or recognized public access way. [Ord. 394, 2012; Ord. 387, 2011; Ord. 383, 2009; Ord. 320 § 1, 1999]

I HEREBY CERTIFY that the above and foregoing Ordinance was introduced on the Ninth day of July, 2013 and DULY AND REGULARLY ADOPTED this Thirteenth day of August, 2013 by the following vote:

AYES: COUNCILMEMBER _____

NOES: COUNCILMEMBER _____

ABSENT: COUNCILMEMBER _____

ABSTAIN: COUNCILMEMBER _____

ATTEST:

Roben Dewsnup
CITY CLERK

APPROVED:

Roger L. Frith
MAYOR

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: July 9, 2013