



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

3/31/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Grants Pass Plan Amendment
DLCD File Number 009-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, April 13, 2010

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Lora Glover, City of Grants Pass
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> N

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
 WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

in person electronic mailed

DATE STAMP

DEPT OF

MAR 25 2010

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: CITY OF GRANTS PASS

Local file number: 09-40500008

Date of Adoption: 03/17/10

Date Mailed: 03/22/10

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment Land Use Regulation Amendment Zoning Map Amendment New Land Use Regulation Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

PROPOSED AMENDMENT TO DEVELOPMENT CODE SECTION 13.142 - GRADING PLAN AND SECTION
 23.037 - FENCING PERTAINING TO RETAINING WALL REQUIREMENTS.

Does the Adoption differ from proposal? Please select one Yes No.

Plan Map Changed from: N/A

to:

Zone Map Changed from: N/A

to:

Location: N/A

Acres Involved: N/A

Specify Density: Previous: N/A

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

 Yes No

If no, do the statewide planning goals apply?

 Yes No

If no, did Emergency Circumstances require immediate adoption?

 Yes No

DLCD file No. 009-09 (17997) [16066]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

DLCD
Josephine County

Local Contact: LORA GLOVER, ASSOCIATE PLANNER Phone: (541)474-6355 Extension: 6427
Address: 101 NW A STREET Fax Number: 541-476-9218
City: GRANTS PASS OR Zip: 97526 E-mail Address: lglover@grantspassoregon.gov

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Electronic Submittals: At least one hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST**.

CITY OF GRANTS PASS COMMUNITY DEVELOPMENT DEPARTMENT

**ARTICLES 13 & 23 ~ RETAINING WALLS
DEVELOPMENT CODE TEXT AMENDMENT**

FINDINGS OF FACT ~ CITY COUNCIL

Procedure Type:	Type IV: Planning Commission Recommendation and City Council Decision
Project Number:	09-40500008
Project Type:	Development Code Text Amendment
Applicant:	City of Grants Pass
Planner Assigned:	Lora Glover
Application Received:	December 14, 2009
Application Complete:	December 14, 2009
Date of Planning Commission Hearing:	January 27, 2010
Date of Planning Commission Findings of Fact:	February 10, 2010
Date of City Council Staff Report:	February 22, 2010
Date of City Council Hearing:	March 3, 2010
Date of City Council Findings of Fact:	March 17, 2010

I. PROPOSAL:

The proposal as recommended by the Planning Commission includes the amendment of Articles 13 and 23 regarding the measurement and height allowances for fences constructed on top of retaining walls, and provides for flexibility of height for decorative arbors and gates. The amendments are proposed to Sections 13.142, 23.037, and 23.038 of the Development Code.

II. AUTHORITY AND CRITERIA:

Section 4.102 of the City of Grants Pass Development Code provides the procedures for initiation of a Development Code Text Amendment. The proposed Development Code Text Amendment was initiated by the Community Development Director.

Sections 2.060, 7.040 and 7.050 authorize the Urban Area Planning Commission to make a recommendation to the City Council and authorize the City Council to make a final decision on a land use matter requiring a Type IV procedure, in accordance with procedures of Section 2.060.

The applicable criteria from the Development Code to be met are found in Section 4.103.

III. APPEAL PROCEDURE:

The City Council's final decision may be appealed to the State Land Use Board of Appeals (LUBA) as provided in state statutes. A notice of intent to appeal must be filed with LUBA within twenty-one (21) days of the Council's written decision.

IV. PROCEDURE:

- A. An application for a Development Code Text Amendment was submitted and deemed complete by the Director on December 4, 2009. The application was processed in accordance with Section 2.060 of the Development Code, and Sections III and V of the 1998 Intergovernmental Agreement.
- B. Notice of the proposed amendment was mailed to the Oregon Department of Land Conservation and Development (DLCD) on December 8, 2009, in accordance with ORS 197.610 and OAR Chapter 660-Division 18.
- C. Notice of the proposed amendment was mailed to Josephine County on December 7, 2009, in accordance with the 1998 Intergovernmental Agreement.
- D. Notice of the January 27, 2010 Planning Commission hearing was mailed to affected agencies January 7, 2010, in accordance with Sections 2.053 & 2.063 of the Development Code.
- E. A public hearing was held by the Planning Commission on January 27, 2010, to consider the proposal and make a recommendation to City Council. The Planning Commission recommended that the City Council adopt the proposed text amendment.
- F. Notice of the March 3, 2010 City Council hearing was mailed to affected agencies February 11, 2010, in accordance with Sections 2.053 and 2.065 of the Development Code.
- G. Public notice of the March 3, 2010, City Council hearing was published in the newspaper on February 26, 2010, in accordance with Sections 2.053 and 2.065 of the Development Code.
- H. A public hearing was held by the City Council on March 3, 2010, to consider the matter.

V. SUMMARY OF EVIDENCE:

- A. The basic facts and criteria regarding this application are contained in the March 3, 2010, staff report and its exhibits, which are attached as Exhibit "A" and incorporated herein.

- B. The minutes of the public hearing held by the City Council on March 3, 2010, which are attached as Exhibit "B", summarize the oral testimony presented and are hereby adopted and incorporated herein.
- C. The PowerPoint presentation given by staff at the March 3, 2010, City Council hearing is attached as Exhibit "C" and incorporated herein.

VI. FINDINGS:

The City Council found that the request meets the criteria of Section 4.103 of the Development Code based on the reasons stated in the findings below.

VII. GENERAL FINDINGS OF FACT, BACKGROUND AND DISCUSSION:

Staff began a comprehensive review of its various retaining wall policies in December of 2005. An internal policy was developed to define the responsibilities of various departments (i.e., Engineering reviewed retaining walls in the public right-of-way; Building reviewed retaining walls on private property). In 2008, a second staff work group formed to develop a set of recommended policies and procedures for the installation and permitting of retaining walls. In March of 2009, City Council directed staff to address the issue of allowing a fence to be constructed on top of a retaining wall, to allow more flexibility for fencing between properties with varying grades.

Existing language states that fences (to include retaining walls) would be measured from the lower of the two finished grades. The proposed language would allow for a standard height fence to be located on top of a retaining wall as reflected in Figure 23-10.

The proposal also provides specific language concerning the measurement of a retaining wall containing multiple sections, and requires the use of earth toned surface treatments and/or vegetation for retaining walls exceeding 4 ft. in height.

VIII. FINDINGS IN CONFORMANCE WITH APPLICABLE CRITERIA ~ SECTION 4.103 OF THE DEVELOPMENT CODE

The text of the Development Code may be recommended for amendment and amended provided that all of the following criteria of Section 4.103 of the Development Code are met.

CRITERION 1: The proposed amendment is consistent with the purpose of the subject section and article.

City Council Response: Satisfied. The proposal amends Article 13 ~ Special Purpose Districts and Article 23 ~ Landscape and Buffering Standards of the Development Code; specifically, Section 13.142 ~ Grading Plan, Section 23.037 ~ Fencing, and Section 23.038 ~ Retaining Walls.

The purpose of the "Slope Hazard District" listed in Section 13.110 "... is to designate and provide standards to protect sloped areas that help define the character of the Community. . ."

The purpose of "Landscape and Buffering Standards" listed in Section 23.010 states that: "... landscaping [fencing] is a significant factor in maintaining the livability and economic viability of the community.

The proposed amendments meet the purpose statement for each section by requiring that retaining walls are:

- Constructed in compliance with the applicable standards of Article 13 and Article 23, and in compliance with applicable Building Codes.
- Retaining walls more than four (4) feet in height will be required to incorporate wall/surface treatments in earth tone colors, and/or provide vegetative landscaping.

CRITERION 2: The proposed amendment is consistent with other provisions of this code.

City Council Response: Satisfied. The proposed amendments provide cross-referencing between Articles 13 & 23, providing clarification and coordination between the various sections of the Code. Therefore, the proposed amendments are internally consistent with other provisions of the Development Code.

CRITERION 3: The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, and most effectively carries out those goals and policies of all alternatives considered.

City Council Response: Satisfied. The proposed amendment is consistent with the goals and policies of the Comprehensive Plan. Under the "General Provisions" of Article 1 of the Development Code, the purpose of the Code is to:

"... implement the policies of the Grants Pass Comprehensive Community Development Plan, and to coordinate City regulations governing the development and use of land."

As noted above in Criterion 2, the amendments are consistent with other provisions of the Code, and will provide coordination between various City regulations, to include Building Code requirements.

CRITERION 4: The proposed amendment is consistent with the functions, capacities, and performance standards of transportation facilities identified in the Master Transportation Plan.

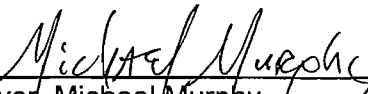
City Council Response: Not Applicable. The proposed amendments do not pertain to the performance standards of the Master Transportation Plan;

however, retaining walls will be subject to vision clearance standards, and any retaining walls proposed to be constructed within public right-of-ways or City Utility Easements are subject to approval from the City Engineer. In addition, the City Council concurred with the Planning Commission who found that the language contained in the "Agreement for Wall and Fence Installation in Public Easement", in which a property owner is required to enter into with the City of Grants Pass prior to the construction of a fence or wall within the public easement or public right-of-way, specifies that any costs related to the repair or replacement of the structure shall be the sole responsibility of the property owner.

IX. DECISION:

The City Council **APPROVED** the proposed text amendment. The vote was 8-0-0, with Councilors Webber, Renfro, Boston, Hitchcock, Cummings, Michelon, Gatlin and Wheatley in favor.

X. APPROVED BY THE CITY COUNCIL this 17th day of March, 2010.



Mayor, Michael Murphy

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GRANTS PASS ADOPTING A DEVELOPMENT CODE TEXT AMENDMENT REGARDING THE MEASUREMENT AND HEIGHT ALLOWANCES FOR FENCES CONSTRUCTED ON TOP OF RETAINING WALLS; AND, PROVIDING FOR FLEXIBILITY OF HEIGHT FOR DECORATIVE ARBORS AND GATES.

WHEREAS:

1. The Grants Pass and Urbanizing Area Comprehensive Community Development Plan was adopted December 15, 1982; and
2. The ordinance amends Sections 13.142, 23.037 and 23.038 of the Development Code); and
3. The proposal is consistent with the goals and policies of the Comprehensive Plan; and
4. The applicable criteria from the Development Code are satisfied, and approval of the proposal is recommended by the Urban Area Planning Commission to the City Council.

NOW, THEREFORE, THE CITY OF GRANTS PASS HEREBY ORDAINS:

Section 1: The amendment to Development Code Sections 13.142, 23.037 and 23.038, as set forth in Exhibit "A", is hereby adopted.

ADOPTED by the Council of the City of Grants Pass, Oregon, in regular session this 3rd day of March, 2010, with the following specific roll call vote:

AYES:

NAYES:

ABSTAIN:

ABSENT:

SUBMITTED to and _____ by the Mayor of the City of Grants Pass, Oregon, this ____ day of March, 2010.

Michael Murphy, Mayor

ATTEST:

Interim Finance Director

Date submitted to Mayor: _____

Approved as to Form, Mark Bartholomew, Interim City Attorney _____

13.142 Grading Plan. The Grading Plan shall minimize excavation and disturbance and shall demonstrate all of the following:

- (1) All excavation and grading of the site for buildings and driveways, is done in accordance with **applicable building codes** ~~Appendix Chapter 33 of the 1994 Uniform Building Code, or the appropriate chapter of any subsequently adopted replacement code,~~ and minimizes disturbance of the natural condition of the site. Where there is a discrepancy among standards, the more restrictive shall always apply.
- (2) All the finished cut and fill slopes are designed and contoured to replicate conditions prior to grading. The areas of excavation, fill and scarification shall be shown on the Grading Plan and limited to the area of the roadways. No cuts **or fills** may include retaining walls greater than 15 feet in height from the finish grade or create any slopes which are greater than 50%. No filling may result in a retaining wall within the required setback greater than 6 feet in height from the finish grade or create any slopes which are greater than 50%. **Retaining walls shall also comply with the applicable standards of Article 23 of this Code.**

23.037 Fencing

- (1) Fences in residential zones shall be subject to the following:
- (a) Maximum height within required front and exterior yards: 3 feet (except decorative arbors, gates and similar features.) However, a fence up to 4.5 feet in height may be placed a minimum of five feet from the front or exterior side/rear property line. (See Figure 23-8)
 - (b) Maximum height within required interior yards: 6 feet (See Figure 23-9)
 - (c) Requirements for fencing in all zones shall also apply. See Section 23.037 (4)

Figure 23-8. Fence Profile

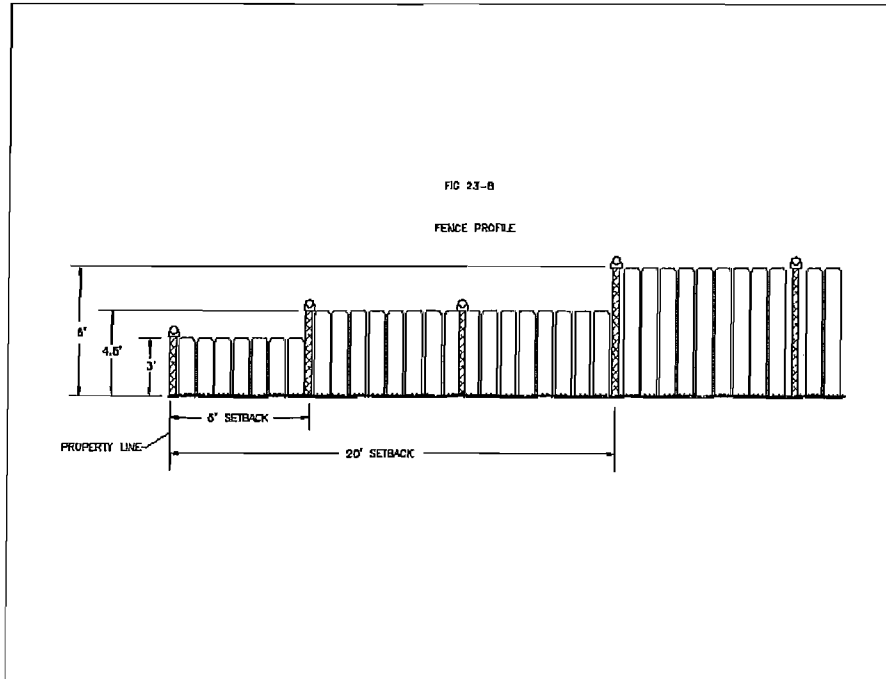
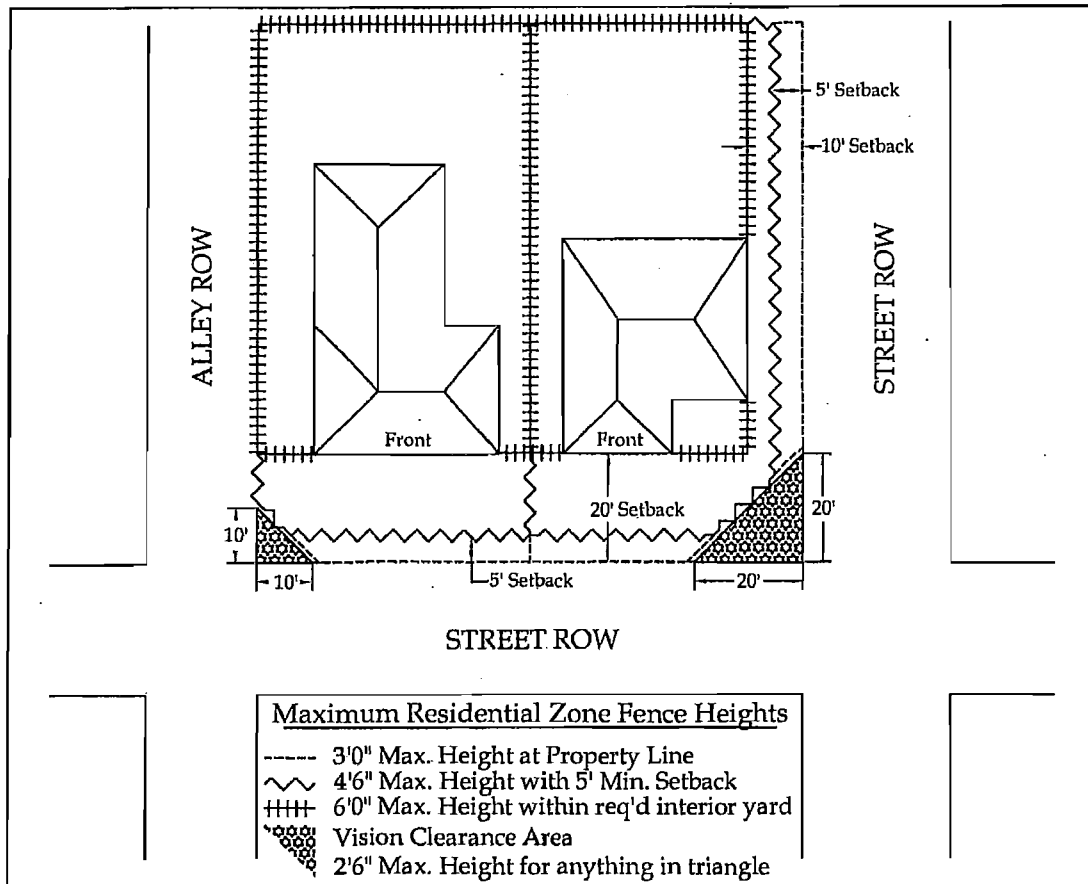


Figure 23-9. Residential Zone Fencing Requirements



NOTE: Property owners are strongly encouraged to hire a licensed surveyor to locate property lines prior to the construction of a fence.

- (2) Fences in commercial zones shall be subject to the following:
- (a) Any fence over 3 feet high shall be located behind any required landscaped front or exterior side/rear yard.
 - (b) Maximum height within required interior yards: 8 feet
 - (c) Razor wire, barbed wire, and chain link fencing shall not be used between a building face and public right-of-way. Treatments such as decorative wrought iron should be used instead. See Section 20.490 (2)
 - (d) Requirements for fencing in all zones shall also apply. See Section 23.037 (4)

- (3) Fences in industrial zones shall be subject to the following:
- (a) Any fence over 3 feet high shall be located behind any required landscaped front or exterior side/rear yard.
 - (b) Maximum height in interior yards: 8 feet.
 - (c) Depending on use and location, razor wire, barbed wire and chain link fencing may not be permitted between a building face and public right-of-way. Refer to Section 20.220 of this Code for applicability of Commercial Design Standards to industrial zones. See Section 20.490 (2)
 - (d) Requirements for fencing in all zones shall also apply. See Section 23.037 (4)

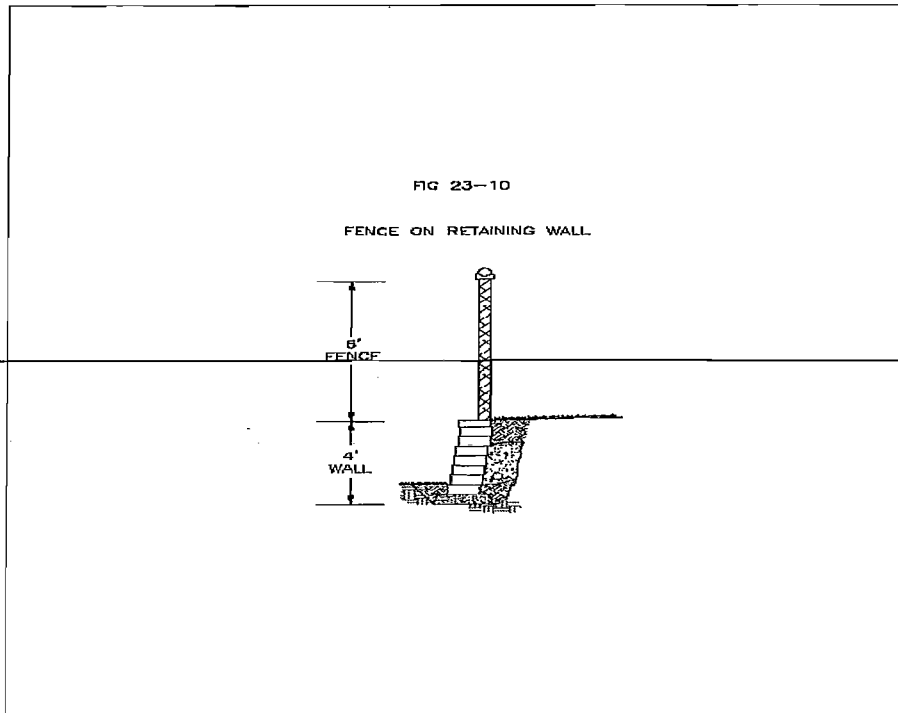
(4) In addition, the following provisions shall apply to fences in all zones:

- (a) A fence meeting required building setbacks shall not exceed the maximum height for structures in that zone.
- (b) Where permitted, a fence over 6 feet high requires a building permit as required by the applicable Building Code.
- (c) A fence with a height of up to 6 feet is permitted along a property line abutting an alley and within the alley setback, unless such a fence creates a visual obstruction.
- (d) No fencing shall conflict with the requirements of the clear vision area for streets and driveways. Fencing within a vision clearance area shall not create a visual obstruction as defined in Article 30 of this Code.
- (e) Fencing within the public right-of-way is not permitted ~~only upon issuance of~~ without a valid Encroachment Permit ~~issued~~ by the City Engineer.

~~(F) Fencing within a City Utility Easement (CUE) or other public easement is permitted only upon approval by the City Engineer.~~

- (g) In cases where Code provisions conflict, structures required as part of a zone buffer shall be subject to the applicable provision within Section 23.034 rather than the conflicting provision within this section.
- (h) Every fence shall be maintained in a condition of reasonable repair and not be allowed to become or remain in a condition of disrepair including noticeable leaning or missing sections, broken supports, non-uniform height, and growing or noxious vegetation.
- (i) Link fencing less than seven feet in height shall be constructed in such a manner that no barbed ends shall be at the top.
- (j) Barbed wire and razor wire fences are prohibited in the following locations: at less than six feet above grade, within required zone buffer setbacks, and within the public right-of-way.
- (k) Electric fences are prohibited.

A fence height ~~may~~ **shall** be measured from ~~the top of the fence to the lowest grade at the base of the fence. When a fence is located on top of a retaining wall, the height of the retaining wall shall not be included in the height measurement of the fence. See Figure 23-10~~ of either side of the fence, at the applicant's option, unless the fence is a retaining wall. A retaining wall for an area filled with soil, rocks or any other material used to raise the property is considered a fence. Its height shall be measured from the lower of the two finish grades.



(1)
23.038 Retaining Walls

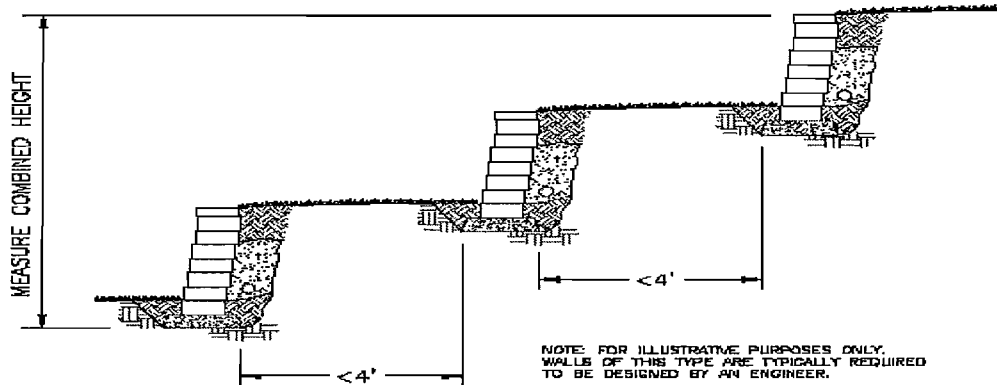
- (1) When the exposed portion of a retaining wall (measured from the top of the wall to the lowest finish grade at the base of the wall) exceeds 4 feet in height, the wall shall incorporate earth tone colors, wall surface treatments, and/or vegetative landscaping. ~~to minimize its visual impact.~~
- (2) A retaining wall(s) separated from another retaining wall(s) by less than 4 feet horizontally (measured from outside face to outside face) shall be considered one wall for the purpose of measuring height. See Figure 23-11
- (3) No retaining wall shall conflict with the requirements of the clear vision area for streets and driveways. A retaining wall within a vision clearance area shall not create a visual obstruction as defined in Article 30 of this Code.
- (4) Retaining walls within the Slope Hazard District shall meet the applicable standards of Article 13 of this Code.
- (5) Retaining walls shall meet applicable Building Codes.

(6) Retaining walls within the public right-of-way are permitted only upon issuance of a valid Encroachment Permit by the City Engineer.

(7) Retaining walls located within a City Utility Easement (CUE) or other public easement are permitted only upon approval of the City Engineer.

FIG 23-11

MULTIPLE RETAINING WALLS
LESS THAN 4' APART



City of Grants Pass

DEPT OF

MAR 25 2010

LAND CONSERVATION
AND DEVELOPMENT



March 22, 2010

Attn: Plan Amendment Specialist
DLCD
635 Capitol Street NE, Ste 150
Salem OR 97301-2540

Re: Land Use Regulation Amendment
Retaining Walls Text Amendment
Local File No.: 09-40500008

Dear Sir/Madam,

Please find enclosed two (2) copies of the Findings of Fact and adopting ordinance for the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lora Glover
Associate Planner
Ext. #6427

pc: C/F, tax lot file



City of Grants Pass

101 Northwest A Street
Grants Pass, OR 97526

TO:

ATTN: PLAN AMENDMENT SPEC.
DEPARTMENT OF LAND CONSV & DEV
635 CAPITOL STREET NE SUITE 150
SALEM OR 97301-2540



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