



## NOTICE OF PUBLIC HEARING

CITY OF ALBANY  
PLANNING COMMISSION  
City Council Chambers, 333 Broadalbin Street SW  
Monday, February 7, 2011  
5:15 p.m.

### AGENDA

1. CALL TO ORDER (Chair Faller)
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. ROLL CALL
4. LEGISLATIVE PUBLIC HEARING
  - **DC-06-10** - Legislative amendments to Articles 3, 4, 5 and 9 of the Albany Development Code related to fence regulations  
The applicants are Forslund Construction and the City of Albany Community Development Department.
5. LEGISLATIVE PUBLIC HEARING
  - **DC-01-11** – Amendment to the Albany Development Code to permit alternate plans for non-residential site landscaping.  
The applicant is the City of Albany Community Development Department.
6. ACTIVITY UPDATE
7. NEXT PLANNING COMMISSION MEETING DATE: Monday, March 7, 2011
8. ADJOURN

#### Rules of Conduct for Public Hearing

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

U:\Community Development\Planning\Agendas\PlanCom2011\PC Agenda 11.0207.docx

---

*The location of the meeting/hearing is accessible to the disabled. If you need special accommodations to attend or participate, please notify the Human Resources Department in advance by calling 541-917-7500.*

City of Albany Web site: [www.cityofalbany.net](http://www.cityofalbany.net)

---



# Community Development Department

333 Broadalbin Street SW, P.O. Box 490  
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598  
[www.cityofalbany.net](http://www.cityofalbany.net)

## STAFF REPORT Development Code Amendments

<b><u>HEARING BODY</u></b>	PLANNING COMMISSION	CITY COUNCIL
<b><u>HEARING DATE</u></b>	Monday, February 7, 2011	Wednesday, March 9, 2011
<b><u>HEARING TIME</u></b>	5:15 p.m.	7:15 p.m.
<b><u>HEARING LOCATION</u></b>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

### **EXECUTIVE SUMMARY**

The Albany Development Code (ADC) currently prohibits electric fences within the City. The Code also limits the height of all fences within the City to 8 feet.

Forslund Construction requested that the Planning Commission review a Development Code amendment to allow electric security fences within the City, and allow them to be 10 feet tall. (See the attached letter as Attachment A to the staff report). After trying concertina wire and security cameras to control theft and vandalism, the applicants decided to install an electric security fence. They have had no security issues since the fence was installed. The City denied the electrical permit, due to the current Code standards which prohibit both electrical fences and fences taller than 8 feet.

Staff received a complaint from a resident that lives adjacent to the Forslund site with concerns about the safety of the electric fence for children due to its proximity to their property.

At their June 21, 2010, meeting, the Planning Commission agreed to review the following Development Code amendments related to fences with the next round of Code amendments:

- To allow some form of electric security fencing under certain circumstances; and
- Allow livestock fencing to have barbed wire, where livestock is permitted.

This package of amendments also includes administrative “clean up” related to fences that will clarify and codify where fences over 6 feet may be located and moves and consolidates the fencing standards from Articles 3, 4, and 5 to Article 9, On-Site Development Standards.

The two main issues to address in amending the Code to allow electric security fencing are:

- Safety, and
- Compatibility with adjacent uses.

**Safety.** *Are electric security fences a product approved by a national testing laboratory?* The City would require that electric fences be a product that is listed by a State of Oregon approved testing laboratory. (Note: the laboratories test the product for safety. The testing laboratory report included with the application does not address where it is appropriate to install these fences.) The code would also require that the fence be installed in accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer’s installation instructions; electrical and building permits will be required; and the product must be installed by a licensed Oregon electrician.

**Where to allow electric security fences.** *Where are electric security fences needed and can they be installed*



APPLICANTS: Wayne Forslund, Forslund Construction, 3001 Ferry Street SW  
(Electric Security Fence Request)  
City of Albany, Community Development Department (Other fence  
amendments)

APPLICANT REPS: Michael Pate, Sentry Security Systems (Electric Fence Request)  
City of Albany, Anne Catlin, Planner II (Other fence amendments)

ADDRESS/LOCATION: Not applicable for legislative amendments

### **EXHIBITS**

Amendments to the Code are shown as Exhibits A and B to the staff report.

Exhibit A: Article 9, On-Site Development Standards, Relocated fence standards and the proposed amendments to allow electric security fences up to 10 feet tall, and barbed wire on top of livestock fencing.

Exhibit B: Shows the current fencing standards in Articles 3, 4 and 5 proposed to be removed and consolidated in Article 9.

### **NOTICE INFORMATION**

A notice of public hearing was mailed January 26, 2011, to persons believed to have a particular interest in this package of amendments. A notice of public hearing was published in the *Albany Democrat Herald* January 31, 2011. The Development Code amendments were posted on the City's Web site.

At the time this staff report was completed, no written testimony had been received.

### **STAFF RECOMMENDATION**

RECOMMEND that the City Council APPROVE the proposed Development Code amendments.

### **APPEALS**

If the Planning Commission decision is to recommend that the City Council approve the proposed Development Code amendments, the City Council will hold a public hearing on the amendments. A City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

### **STAFF ANALYSIS**

#### **Development Code Amendment File DC-06-10**

The Albany Development Code (ADC) contains the following review criteria that must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by the Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

Relevant Comprehensive Plan goals and policies are written in *italic* type and considered as separate review criteria following the description of the major revisions.

## FINDINGS OF FACT

### Electric Fence Request

- 1.1 An Albany business owner is requesting that the ADC be amended to allow electric security fences, and secondly to allow them to be 10 feet tall, when the current height limit for fences is 8 feet. The installation instructions require a non-electric fence or wall at least 6 feet tall to be installed around the perimeter of the fence. The spacing of the perimeter fence must be either very close (within 18 inches) of the electrically charged fence so there is no “zone of entrapment,” or at least one meter away.
- 1.2 The Code currently prohibits fences and walls “constructed of or containing any material that will do bodily harm, such as electric, barbed wire, broken glass, spikes, or any other hazardous and dangerous materials,” with limited exceptions (ADC 3.400, 4.315, 5.380, and 5.400).
- Barbed wire is permitted on top of a 6-foot-tall fence in commercial and industrial zones and most of the mixed use zones. The total height of the fence with barbed wire may not exceed 8 feet [ADC 4.315(1) and 5.400(1)]. Concertina wire is permitted on top of fences in high security areas provided warning signs are posted at intervals not less than 15 feet.
- 1.3 Staff researched fencing regulations in other Oregon cities and found that electric fences are prohibited in all cities that were evaluated, except Tangent and Portland. Portland allows electrical fencing in industrial use categories if it is a product listed by a State of Oregon approved testing laboratory and the fence is installed and used in accordance with the testing laboratory listing. Tangent allows protective fencing that complies with state law. One City allowed the electric fence through the variance process and other cities are either not aware of the fences, or they have chosen not to enforce their Code. A few states have adopted legislation to allow certain types of electric fences.
- 1.4 Staff has evaluated the application, the Comprehensive Plan goals and policies, and has looked at fencing in the industrial and commercial areas. In order to maintain a healthy and livable community, the primary issues to evaluate and balance are the increased security needs of some industries and businesses, safety of Albany’s residents and employers, and community aesthetics and design.
- 1.5 The Comprehensive Plan does not directly address business security and resident security and safety, but the Plan acknowledges the special needs of the business community.

*Goal 9: Economy, Land Use, Industrial/Employment, Policy 1: Recognize the special needs of the area’s existing industry, and ensure the provision of adequate industrial land for expansion and future development of the forest-products, rare-metals, and agriculture-related industries.*

- 1.6 Business security is important to a healthy business environment – in retaining existing businesses, helping them prosper, and in attracting new businesses. There are numerous options for security – from barbed wire fencing to security alarms and guards, to enclosing merchandise within a building. The request to amend the Code to allow electric security fences would provide another option for security. (Note: The general welfare of Albany’s residents and businesses is addressed generally in the Development Code principles under criterion 2.)
- 1.7 The Albany Comprehensive Plan addresses urban design and community aesthetics in Chapter 7 and also under state planning Goal 9, Economic Development. It states that “commercial areas have a vital stake in

their own aesthetic quality,” and, “a positive community image can help in recruiting new businesses.” “With good design, the overall business climate may be enhanced by reducing residential and industrial conflicts.” The most important areas in which to emphasize good aesthetics are along visible corridors, Albany’s major streets and highways, and within Albany’s major commercial centers.

*Chapter 7, Aesthetics and Urban Design, Goal: Improve Albany’s image, livability, appearance, and design quality through aesthetic enhancement.*

*Policy 1: Expansion and new development projects shall be designed and landscaped to complement and enhance the appearance of the development site and surrounding area.*

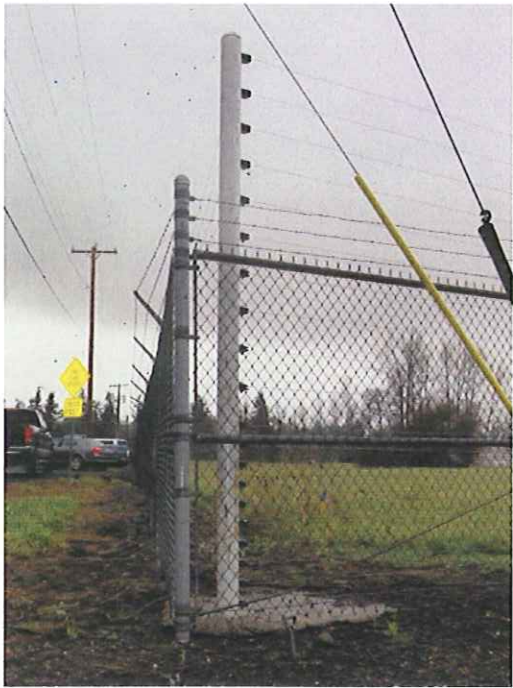
*Policy 3, Develop enforcement procedures to abate dangerous and nuisance-creating situations to promote compatibility and reduce conflict within neighborhoods and between different land uses.*

- *Implementation Method 3. Maintain development standards that assure compatibility of commercial and industrial areas with surrounding land uses, including residential neighborhoods. Pay particular attention to areas adjacent to residential streets, Pacific Boulevard, Santiam Highway, and those adjacent to or visible from Interstate 5.*
- *Implementation Method 4. Periodically review and, if necessary, update Development Code requirements and other policies and ordinances that address issues of public nuisance and community appearance.*

*Goal 9, Economy, Land Use, Community Image, Policy 1: Evaluate and revise existing commercial and industrial landscaping standards as needed to achieve a positive community image and a pleasant pedestrian environment.*

- *Implementation Method 1: Require industrial and commercial developments along major transportation corridors to meet special development standards relating to setbacks, landscaping, architecture, signs, and outside storage to present a pleasing visual image.*

- 1.8 The Plan goals and policies promote commercial and industrial development that is compatible in appearance with surrounding uses and residential neighborhoods through development standards. The City’s policies to improve both Albany’s livability and image in highly visible areas, also suggests that electric fences, if permitted, should be located away from residential uses and out of commercial corridors.
- 1.9 While the need for security is warranted, the 10 foot height, the additional perimeter fencing, is purposefully imposing to deter intruders. Staff finds that the proposal to allow 10-foot-tall electric fences does not meet the goals and policies related to a positive community image in our highly visible areas and residential neighborhoods and should be restricted to the industrial areas. Here are some photos of the electric security fences installed.



Electric fence installed at Wah Chang in Millersburg, and 3001 Ferry Street



- 1.10 Staff recommends that electrically charged fences be required to meet the front setback, which is the current requirement for fences over 6 feet tall. See the proposed standards in Exhibit A, 9.370 (4).
- 1.11 Due to old development patterns, industrial zones abut residentially zoned land in several areas of the City. Regarding compatibility with adjacent uses, one Plan policy says, “to abate dangerous and nuisance-creating situations to promote compatibility and reduce conflict within neighborhoods and between different land uses.”
- Websters Dictionary defines nuisance as, “a use of property or course of conduct that interferes with the legal rights of others by causing damage, annoyance, or inconvenience.” One City Code includes electric fencing as a nuisance that may be abated.
- 1.12 *Compatibility.* The electric security fences require a perimeter fence to reduce chances of being shocked accidentally. The common perimeter fence as seen in the photos provided earlier and the following is a chain link fence with slats. The slats can be broken and small hands can penetrate through.



- 1.13 How far away from a residential property line is compatible? The Code currently requires new industrial buildings to be located between 30 and 50 feet from residential properties in order to reduce conflicts between the two uses. A 30-foot landscaped buffer yard and screen are also required. Fences over 6 feet tall currently require a building permit, but the Code permits fences up to 8 feet tall within required setbacks.
- 1.14 Staff concludes that the intent of the Comprehensive Plan and the current Development Code standards is to provide separation between residential and industrial uses. Staff presents two options for the Planning Commission to consider permitting electric fences when adjacent to residential zones. Staff recommends that electric fences not be permitted along property lines shared with residential zoning districts, but allow them when they are setback the same distance as required for buildings [40 feet in the LI (Light Industrial) zone and 50 feet in the HI (Heavy Industrial) zone]. Proposed language from Section 9.370(4)(d):

**Electrically charged fences are not permitted along property lines shared with residential zoning districts unless they meet the setbacks for buildings in the underlying zoning district.**

*Alternative:* An alternative option would be to require the electric fence to be located at least 5 feet from a the shared property line(s); far enough away so that it is out of reach. If Option 2 is selected, staff recommends that the fence on the shared property line be solid to limit penetration and visibility through the fence. Alternative Code language for 9.370(4)(d):

**When property lines are shared with a residential zoning district, the following additional standard shall be met:**

- **The electrically charged fence shall be located at least 5 feet from property lines shared with residential zones; and**
- **A solid fence or wall between 6 and 8 feet tall shall be constructed at the shared property line(s).**

#### Barbed Wire on Top of Fences for Animal Containment

- 1.15 The Code does not allow barbed wire on top of fences in residential zoning districts. (Note, fences containing electric or barbed wire for animal containment that existed when the property was annexed to the City are grandfathered and considered legal non-conforming.) Large animals will lean on, and eventually push over fences that do not have something on top to keep them off the fence.
- 1.16 There are not many Albany sites containing livestock or other large animals, but where permitted, undeveloped sites are often used for agricultural purposes until they are developed more fully. The proposed amendments would permit barbed wire on top of fences used for containing large animals in residential areas. See the proposed language in Exhibit B, Section 9.370(3).

#### Clarifying Standards for Fences Between 6 and 8 Feet tall

- 1.17 In the commercial, industrial and mixed use zones, the ADC does not address the location of fences between 6 and 8 feet tall directly. 4.320 (1) and 5.410(1)(a) say, "Fences may be up to 8 feet tall provided that the fence is located behind the required front setbacks or planting areas and outside of any vision clearance area as defined in 12.180."

Staff has interpreted the current Code language to mean that fences up to 6 feet tall are allowed in the front setbacks and on front property lines. Fences taller than 6 feet must be located outside of the required front setback. In zones with a zero minimum setback, staff proposes fences taller than 6 feet be located a minimum of 3 feet from the property line. This would allow for a small separation between the sidewalk and the fence.

1.18 The Code allows barbed wire on top of a 6-foot-tall fence in 4.315(1) and 5.400 (1), making these fences taller than 6 feet. The Code is unclear as to whether the barbed wire is included when measuring the height of the fence, and consequently, where barbed wire fences can be located. There are numerous old 6 foot fences with barbed wire on top located on property lines. However, when reviewed with a development application, staff has required fences taller than 6 feet to be located outside the front setback. The proposed amendments would clarify that fences are measured to the top of the wire. The following pictures show new and older developments in Albany’s industrial areas and central Albany.



1.19 The proposed clarifying amendments support the comprehensive plan policies referenced earlier in the staff report related to aesthetics and a positive community image. In addition, the standards support the following policy that balances functional design with the community in mind.

*Goal 14, Urbanization, Development Review, Policy 4: Encourage flexibility in design review and interpretation of policies and regulations by ensuring that functional design and community benefit remain as the principal review criteria.*

1.20 Albany’s fencing standards are currently located in three different Articles of the ADC, at the end of the zoning district chapters that explain what uses are allowed. Fences are on-site development and in most communities, the fence standards are centralized in the “on-site development standards” chapter. The proposed amendments would remove the fence standards from Articles 3, 4 and 5, and consolidate them at the end of Article 9, On-Site Development Standards. This will make the Code easier to use and will remove some inconsistencies within the fencing standards.

*Goal 14, Urbanization, Development Review, Policy 5: Ensure the City’s land use planning process and policy framework is workable and understandable for local officials, staff, and the public.*

## CONCLUSIONS

- 1.1 There is demand for security fencing in zones that allow for large equipment and material storage. Permitting electric security fences in the LI and HI zones would support existing industries.
  - 1.2 Requiring the electric fence to be located away from property lines shared with residential zones would reduce conflicts between the residences and the fence, making them compatible with the Comprehensive Plan goals and policies. Likewise, the requirement to locate these fences out of the front setback will provide a buffer between the public right-of-way and sidewalks and the fence.
  - 1.3 The amendment to allow barbed wire on top of a fence used to contain large animals will help to contain the animals and reduce damage and loss to the owners. The location of the barbed wire would be out of reach for small children.
  - 1.4 The proposal to codify the current interpretation of where to allow fences over 6 feet tall will make the Code easier to understand.
- (2) *The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.*

The applicable Development Code policies and purposes are identified in *italic* type and considered as a separate review criterion.

## FINDINGS OF FACT

- 2.1 Staff reviewed the zone purpose statements to determine where it would be appropriate to allow for electric security fences up to 10 feet tall. Due to the wide range of uses allowed in Albany's commercial and mixed use zones, their visible location, and the desire to maintain a positive community image, the electric fences are not appropriate in these zones.
  - 2.2 The Industrial Park (IP) zone is intended to allow light manufacturing, high-tech, research and development, institutions and other low-impact business in a quality development. The IP zone is also located along highly visible corridors. The electric security fence does not meet the intent of the IP zone.
  - 2.3 The electric security fence is consistent with the purposes of the LI and HI zones. They are intended for a wide range of manufacturing, warehousing, shipping, outside storage or stockpiling of materials.
- (1) *Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.*
- (10) *Protect constitutional property rights, provide due process of law, and give consideration in all matters to affected property owner interests and in making land use decisions.*
- 2.4 Businesses need ways to secure their property and protect their inventory and investments. Residents also need safety and security.
  - 2.5 To ensure the electric fence is a safe product and is installed correctly, the proposed ADC amendments would require the following standards be met:
    - **No electric fence shall be installed or used unless it is completely surrounded by a non-electrical fence or wall that is not less than 6 feet tall; and**
    - **Warning signs stating "Warning, Electric Fence" shall be posted at intervals not less than**

**50 feet; and**

- **The fence shall be listed by a State of Oregon approved testing laboratory; and**
- **The fence shall be installed and used accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer's installation instructions; and**
- **Electrical permits and inspections shall be required for the installation. Work must be performed by a licensed Oregon electrician.**

- 2.6 The Police Chief did not have an issue locating electric security fencing on industrial or highly vulnerable sites. He thought the fences would be helpful in preventing crime. He expressed concern with them being located directly adjacent to residential neighborhoods without ample safeguards to ensure inadvertent contact with the fence system.
- 2.7 The Fire Chief's main concern with allowing electric fences is easy access in the event of an emergency. They want to ensure that the gates be controlled by a device that allows them to be opened easily.
- 2.8 The proposed amendments attempt to balance the safety and security needs of the businesses and industries of the residences by requiring electrically charged security fences to be located away from property lines shared with residential zones. Two options are proposed that would require the electric fence be setback, one would be at least 5 feet from property lines shared with residentially zoned property or uses, the other would be at least 40 feet.

*(3) Facilitate prompt review of development proposals and the application of clear and specific standards.*

- 2.9 The proposed amendments to the fence standards, excluding the new proposal to allow electric security fences, will codify interpretation of standards that are currently not explicit.

## CONCLUSIONS

- 2.1 The proposed Development Code amendments related to electric fences can ensure the safety and welfare of Albany's residents with specific safety and location standards.
- 2.2 The other amendments to the fence standards will clarify the existing standards.
- 2.3 This criterion is satisfied.

*U:\Community Development\Planning\Current\2010\dc.06\10dc06.pc staff.docx*

March 19, 2010

Re: Electric Guard Dog Security Fencing

To Whom It May Concern:

Forslund Construction, Inc. has been located at 3001 Ferry Street SW, in Albany, OR since 1975. At this location we have a couple of buildings, a lot of equipment, fuel and vehicles. For security purposes we installed a 6' cyclone fence with 6 strands of barbwire on top of the fence, but this proved to be ineffective. Thieves began cutting through the cyclone part of the fence to gain access. We were vandalized many times which was costly to the company. In the 1980's we tried installing a surveillance system that was linked to a service that would notify us and the police if there was any activity. After multiple false alarms and the police complaining of responding to false alarms the system was removed. We continued to see a high frequency of criminal incidents. Thieves were not only getting into our yard, but breaking into office buildings stealing computers and other valuable tools and supplies. They also began cutting fuel lines in our vehicles and stealing the fuel. We decided to look into other forms of security. We had seen security fencing at Fisher Implement in Tangent, OR and that's how we found out about the Electric Guard Dog Security fencing. Fishers reported to us that they had had zero incidents since installing the system. We then contacted Electric Guard dog and found that we thought it was the best way to protect our property from criminals. We felt we had the right to protect ourselves and our property.

Although the fence has been physically installed on our property, the City of Albany has prohibited us from turning it on.

Sincerely,



Wayne Forslund

## FENCES

9.360 **Purpose.** Fences can create a sense of privacy, protect children and pets, provide separation from busy streets, and enhance the appearance of property by providing attractive landscape materials. The negative effects of fences can include the creation of street walls that inhibit police and community surveillance, decrease the sense of community, hinder emergency access, lessen solar access, hinder the safe movement of pedestrians and vehicles, and create an unattractive appearance. These standards are intended to promote the positive aspects of fences and to limit the negative ones.

9.370 **Materials.** Fences and walls shall not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:

- (1) Barbed wire is permitted atop on top of a 6-foot-tall fence in commercial, industrial, and mixed-use zones except MUC and MUR. The total height of the fence and barbed wire is limited to 8 feet. Barbed-wire-only fences are prohibited except as allowed in subsection (2).
- (2) **Correctional Institutions and High Security Areas.** Concertina wire or barbed-wire only fences may be used around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.
- (3) **Large Animal Containment.** Where cattle, sheep, horses or other livestock are permitted or existed when the property was annexed to the City, barbed wire is permitted within 6 inches from the top of a fence at least 4 feet tall that is used to contain or restrict large animals. Fences for this purpose must meet the standards in AMC 6.10.
- (4) **Electrically charged fences** are permitted in the LI and HI zones when the following standards can be met:
  - (a) The fence is located outside the front setback and required landscaping, buffering or screening; and
  - (b) The electrically charged fence shall not exceed 10 feet in height; and
  - (c) No electric fence shall be installed or used unless it is completely surrounded by a perimeter non-electrical fence or wall that is not less than 6 feet tall; and
  - (d) Electrically charged fences are not permitted along property lines shared with residential zoning districts unless they meet the setbacks for buildings in the underlying zoning district.

*Staff Comments: Staff presents an alternative to consider based on testimony presented at the public hearing:*

*Alternative Language: When property lines are shared with a residential zoning district, the following additional standard shall be met:*

- The electrically charged fence shall be located at least 5 feet from property lines shared with residential zones; and
  - A solid fence or wall between 6 and 8 feet tall shall be placed at the shared property line(s).
- (e) Warning signs stating, "Warning, Electric Fence" shall be posted at intervals not less than 50 feet; and
  - (f) The fence shall be listed by a State of Oregon approved testing laboratory; and
  - (g) The fence shall be installed and used accordance with the Oregon Electrical Specialty Code, the listing, and the manufacturer's installation instructions; and
  - (h) Electrical permits and inspections shall be required for the installation. Work must be

**performed by a licensed Oregon electrician; and**  
**(i) The fence shall be installed in accordance with the Fire Department**

9.380 Standards. Fences **and walls** shall meet the following standards. If a fence **or wall** is used to meet required screening, the fence shall meet the provisions in Section 9.385.

Standards in Residential, MUR and MUC zones:

- (1) Fences in front setbacks. Fences shall be no taller than 4 feet in required front setbacks unless allowed below.
  - (a) Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and is approved by the Landmarks Advisory Commission. [Ord. 5689, 3/12/08]
- (2) Corner properties, which by definition have two front yards, may have a fence no taller than 6 feet in the front yard adjacent to the street that does not contain the main door entrance when the fence does not extend in front of the building and one of the following conditions is met:
  - (a) If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.
  - (b) If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.
  - (c) If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.
  - (d) If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.
- (3) Interior Setbacks.
  - (a) Fences in a residential zone in Article 3 or in the MUR or MUC zone may have fences up to 6 feet tall in the interior setbacks except that a single-family use or zone that shares an interior property line with a multiple-family, commercial or industrial use or zone may have a fence up to 8 feet tall along the property line.

Standards Commercial, Industrial, HD, CB, ES, LE, MS, PB, WF, and TD zones:

- (4) Fences in front setbacks. Fences shall be no taller than 6 feet in required front setbacks. 6-foot fences containing barbed wire on top or fences taller than 6 feet are not permitted in the front setback.

Standards for All fences:

- (5) In no instance or zone shall a fence exceed 8 feet except when permitted in 9.370.
- (6) Fences over 6 feet tall require a building permit prior to construction. Fences over 6 feet tall shall meet building setbacks, except when permitted along property lines in Sections 9.370(4)(d) or permitted in required setbacks in 9.380(3)(a).
- (7) In no instance shall a fence extend beyond the property line.
- (8) All fences shall meet the Clear Vision Area standards in Section 12.180.
- (9) **Measuring Fence Height.** Fence height shall be measured from the average height of the grade

adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm. Fence height includes the height of the fence, wall, or picket and does not include the posts, or arbors and trellises at entrance gates.

- (10) **Maintenance.** Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.

9.385 **Screening.** Whenever a sight-obscuring fence, wall or hedge is required under the provisions of this Code, it must meet the following provisions and the vision clearance standards in Section 12.180:

- (1) **Opacity.** In order to be “sight-obscuring,” fences and walls must be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet the standards year-round within 2 years of planting.
- (2) **Height.** Fences and walls will be a minimum of 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.
- (3) **Maintenance.** Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.

*Staff Comments: This is the remnants of Sections 3.400, 4.315(2), and 5.400(2), which allowed barbed wire or concertina wire fences in existence upon annexation to be considered legal nonconforming.*

9.390 **Non-conforming Fences.** Existing fences that were constructed legally and/or that were in place at the time the property was annexed to the City that do not meet the current fencing standards shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.

[Ord. 5446, 5/10/00; Ord. 5555, 2/7/03; Ord. 5556, 2/21/03; Ord. 5673, 6/27/07; Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]

### ARTICLE 3 RESIDENTIAL ZONING DISTRICTS

#### FENCES

~~3.400 — Materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as barbed wire, broken glass, spikes, or any other hazardous or dangerous materials. Electric and barbed wire fences are not permitted except those intended to contain or restrict cattle, sheep, horses or other livestock, and existing prior to annexation to the City may remain. [Ord. 5446, 5/10/00]~~

~~3.410 — Standards. Every fence shall be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair including noticeable leaning toward an adjoining property or sidewalk, missing sections or slats, broken supports, non-uniform height, and overgrowth of weeds or vines.~~

~~(1) Fences shall be no taller than 6 feet in interior setbacks, 4 feet in front setbacks if they meet the clear vision area standards in Section 12.180. [Ord. 5742, 7/14/10]~~

~~Exceptions to Height:~~

~~(a) A single family use or zone that shares an interior property line with a multiple-family use or zone may have a fence up to 8 feet tall along the property line.~~

~~(b) Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and is approved by the Landmarks Advisory Commission. [Ord. 5689, 3/12/08]~~

~~(2) Corner properties, which by definition have two front yards, may have a fence no taller than 6 feet in the front yard adjacent to the street that does not contain the dwelling's main door entrance when the fence does not extend in front of the dwelling and one of the following conditions is met: —~~

~~(a) If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.~~

~~(b) If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.~~

~~(c) If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.~~

~~(d) If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.~~

~~—[Ord. 5673, 6/27/07; Ord. 5689, 3/12/08]~~

~~(3) Fences more than 6 feet tall require a building permit prior to construction. Except when a taller fence is permitted at the lot line [see subsection (1) (a)], fences more than 6 feet tall shall meet building setback requirements. In no instance shall a fence be taller than 8 feet.~~

~~—[Ord. 5742, 7/14/10]~~

~~(4) In no instance shall a fence extend beyond the property line.~~

~~(5) All fencing shall comply with the requirements of the clear vision area (Section 12.180) for streets and driveways.~~

~~(6) Fence height shall be measured from the average height of the grade adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm.~~

~~Fence height includes the height of the fence wall or picket and does not include the posts, decorative finials or similar elements, and arbors and trellises at entrance gates.~~

~~—[Ord. 5446, 5/10/00; Ord. 5689, 3/12/08]~~

## **ARTICLE 4 COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS**

### **~~FENCES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS~~**

~~4.310 In commercial and industrial zones, a fence shall meet the following standards. If a fence is used to meet required screening, the fence shall meet the provisions of 4.320 (4) below and Section 9.250. All fences shall meet the Clear Vision Area standards in Section 12.180. — [Ord. 5555, 2/7/03; Ord. 5742, 7/14/10]~~

~~4.315 Materials. Fences and walls shall not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:~~

~~(1) Barbed wire is permitted atop a 6-foot tall fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed wire only fences and concertina wire are prohibited except as allowed in subsection (2).~~

~~Concertina wire may be used around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.~~

~~(a) Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed selvage existing at the time of the passage of this ordinance that is between six and seven feet above grade in the commercial districts shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right of way, it is located not less than one foot from said right of way.~~

~~4.320 Standards.~~

~~(1) Fences may be up to 8 feet tall if the fence is located behind the required front setback and outside of any vision clearance area as defined in Section 12.180. In no instance shall a fence be taller than 8 feet. —~~

~~— [Ord. 5742, 7/14/10]~~

~~(2) Fences more than 6 feet tall require building permits.~~

~~(3) Whenever a sight-obscuring fence, wall or hedge is required under the provisions of this~~

Code, it must meet the following provisions and the vision clearance standards in Section 12.180:

~~(a) Opacity. In order to be "sight-obscuring," fences and walls must be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet the standards year-round within 2 years of planting.~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_ [Ord. 5742, 7/14/10]~~

~~Height. Fences and walls will be a minimum of 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.~~  
~~\_\_\_\_\_~~  
~~[Ord. 5742, 7/14/10]~~

~~Maintenance. Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.~~

~~(4) Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.~~  
~~\_\_\_\_\_~~  
~~[Ord. 5742, 7/14/10]~~

## ARTICLE 5 MIXED USE VILLAGE CENTER ZONING DISTRICTS

### FENCES

#### MUC AND MUR DISTRICTS [Ord. 5556, 2/21/03]

~~5.380 Materials. Fences and walls must not be constructed of or contain any material that will do bodily harm, such as barbed wire, broken glass, spikes, or any other hazardous or dangerous materials. Electric and barbed wire fences are not permitted except those intended to contain or restrict cattle, sheep, horses or other livestock, and existing prior to annexation to the City may remain.~~ [Ord. 5446, 5/10/2000]

~~5.390 Standards. Every fence must be maintained in a condition of reasonable repair and shall not be allowed to become and remain in a condition of disrepair including noticeable leaning toward an adjoining property or sidewalk, missing sections or slats, broken supports, non-uniform height, and overgrowth of weeds or vines.~~

~~(1) Fences may be no taller than 6 feet in interior setbacks, 4 feet in front setbacks and shall meet the clear vision area standards in Section 12.180.~~  
~~\_\_\_\_\_~~  
~~[Ord. 5742, 7/14/10]~~

#### Exceptions to Height:

~~(a) A single family use that shared an interior property line with a multiple family use or zone may have a fence up to 8 feet tall along that property line without having to meet building setbacks.~~

~~(b) Properties listed on the National Register of Historic Places may have front yard fences taller than 4 feet if the fence is appropriate to the building style and scale, and~~

is approved by the Landmarks Advisory Commission.

~~[Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]~~

- (2) ~~Corner properties, which by definition have two front yards, may have a fence of up to 6 feet tall in the front yard adjacent to the street that does not contain the dwelling's main door entrance when one of the following conditions is met:~~
- ~~(a) If the adjoining street is improved with sidewalks and a planter strip, the fence may be on or behind the property line.~~
  - ~~(b) If the adjoining street is improved with sidewalks but no planter strip, the fence is located a minimum of 3 feet from the sidewalk.~~
  - ~~(c) If the adjoining street is improved with curbs and gutters but no sidewalks, the fence is located 10 feet from the face of the curb.~~
  - ~~(d) If the adjoining street is unimproved, the fence is no closer than 3 feet from the property line.~~

~~[Ord. 5689, 3/12/08]~~

- (3) ~~Fences more than 6 feet tall require a building permit prior to construction. Except where a taller fence is permitted at the lot line [see subsection (1) above], fences more than 6 feet tall must meet building setback requirements. In no instance shall a fence be taller than 8 feet.~~

~~[Ord. 5742, 7/14/10]~~

- (4) ~~In no instance shall a fence extend beyond the property line.~~

- (5) ~~All fencing must comply with the requirements of the clear vision area standards in Section 12.180 for streets and driveways.~~

- (6) ~~Fence height shall be measured from the average height of the grade adjacent to where the fence is to be located. If a fence is to be constructed on top of a berm, the height shall be measured from the bottom of the berm.~~

~~— Fence height includes the height of the fence wall or pickets and does not include the posts, decorative finials or similar elements, and arbors and trellises at entrance gates.~~

~~[Ord. 5446, 5/10/00; Ord. 5689, 3/12/08]~~

~~HD, CB, MS, LE, TD, PB, ES, WF DISTRICTS~~ ~~[Ord. 5555, 2/7/03; Ord. 5689, 3/12/08]~~

~~Fences for residential uses or National Register properties in these zones see Sections 5.380 and 5.390.~~

~~5.400 — Materials. Fences and walls must not be constructed of or contain any material that will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows:~~

- ~~(1) Barbed wire is permitted atop a 6-foot fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed wire only fences and concertina wire are prohibited except as allowed in subsection (2).~~
- ~~(2) Concertina wire may be used atop a 6-foot chain-link fence around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.~~

- (a) ~~Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed salvage existing at the time of the passage of this ordinance that is between 6 and 7 feet above grade is considered a legal non-conforming use, provided that the barbed wire or upturned barbed salvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.~~

5.410 ~~Standards.~~

- (1) ~~Fences are limited to the height and locational standards listed below:~~

- ~~(a) Fences may be up to 8 feet tall provided that the fence is located behind the required front setbacks or planting areas and outside of any vision clearance area as defined in Section 12.180. In no instance may a fence exceed 8 feet in height.~~
- ~~(b) Fences more than 6 feet tall require building permits.~~

~~[Ord. 5742, 7/14/10]~~

- (2) ~~Whenever a sight obscuring fence, wall or hedge is required under the provisions of this Code, it must meet the following provisions:~~

- ~~(a) Opacity. In order to be "sight obscuring," fences and walls must be at least 75 percent solid when viewed from any angle at a point 25 feet away from the fence or wall. Hedges must be an evergreen species that will meet this standard year-round within 2 years of planting.~~

~~[Ord. 5742, 7/14/10]~~

- ~~(b) Height. Fences and walls will be at least 6 feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 2 years of planting, given their age, height and health when planted.~~

~~[Ord. 5742, 7/14/10]~~

- ~~(c) Maintenance. Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within 6 months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.~~

- (3) ~~Every fence, whether required or not, will be maintained. No fence is allowed to become or remain in a condition of disrepair including, but not limited to noticeable leaning, missing slats, broken supports, and overgrowth of weeds or vines.~~

~~[Ord. 5673, 6/27/07; Ord. 5689, 3/12/08; Ord. 5742, 7/14/10]~~



# Community Development Department

333 Broadalbin Street SW, P.O. Box 490  
Albany, OR 97321

Phone: 541-917-7550 Facsimile: 541-917-7598  
[www.cityofalbany.net](http://www.cityofalbany.net)

## STAFF REPORT Development Code Amendment

**HEARING BODY**

**HEARING DATE**

**HEARING TIME**

**HEARING LOCATION**

PLANNING COMMISSION

Monday, February 7, 2011

5:15 p.m.

Council Chambers, Albany City Hall, 333 Broadalbin Street SW

CITY COUNCIL

Wednesday, March 9, 2011

7:15 p.m.

**EXECUTIVE SUMMARY**

Staff is proposing an amendment to the Code to permit the Director to approve alternate perimeter landscaping plans on commercial property under limited circumstances.

The amendment would permit the Director to approve an alternate landscape plan, making use of the public right-of-way, when certain conditions are met. Briefly, the applicant would have to:

- secure written permission of the agency owning the right-of-way;
- augment the landscaping and irrigation if necessary to bring them to standard; and
- promise to provide the required landscaping on-site if permission to use the right-of-way is rescinded.

We have recently had two properties in various stages of development review with similar difficulties in meeting the City's commercial perimeter landscaping requirements.

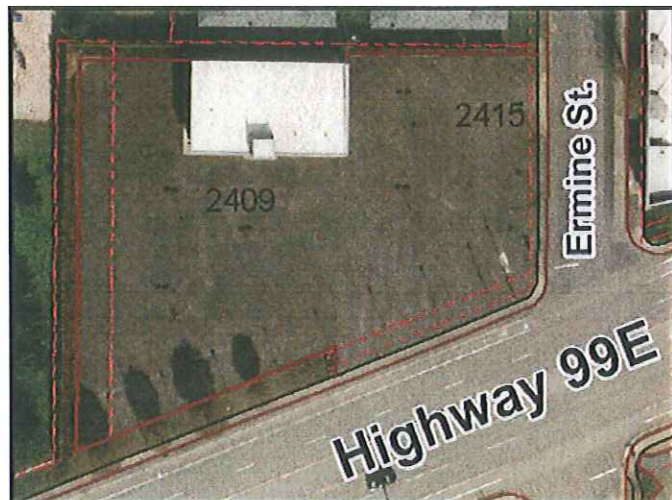
Both sites were developed under previous standards, and have been vacant for more than a year. Under these circumstances, the Code requires the property to be brought up to current Code when there is redevelopment or change of use. This is a standard requirement in Codes around the nation. It assures that development in the community reflects the changing conditions and standards over time.

With the two current properties, we see situations where the intent of the Code -- quality development with landscaping -- may be met without strict adherence to the requirements. The aerial photos below illustrate the conditions.

The building (1260) sits on a small lot, with a wide area of landscaping between the property line and Santiam Hwy to the south. Current Code requires that additional ten-foot-wide perimeter landscape strips be added on-site along both street frontages. Under our proposal, the applicant would not have to add an additional ten-foot strip of landscaping along the south property line, but would still be required to extend the landscaping along the Price Road frontage.



In the second example, there is partial landscaping along the Hwy 99 frontage that will be extended along the remainder of the south property line, providing a wider landscape strip than would be required on-site. Again, the perimeter landscape along the side street would be required.



In the staff's judgment, this change would provide flexibility in reviewing redevelopment and change of use proposals, while still meeting the purpose and intent of the On-Site Development Standards.

#### **GENERAL INFORMATION**

DATE OF REPORT: January 28, 2011  
FILE: DC-01-11  
TYPE OF APPLICATION: Amendment to the Albany Development Code to permit alternate plans for non-residential site landscaping.  
REVIEW BODY: Planning Commission and City Council  
STAFF REPORT PREPARED BY: Greg Byrne, Director  
APPLICANT: City of Albany, Community Development Department  
APPLICANT REP: Greg Byrne, Community Development Director  
ADDRESS/LOCATION: Not Applicable

#### **STAFF RECOMMENDATION**

**APPROVAL** of the proposed Development Code amendment.

#### **NOTICE INFORMATION**

A notice of public hearing was published in the *Albany Democrat-Herald* on January 31, 2011. At the time this staff report was completed, no written testimony had been received.

#### **APPEALS**

If the Planning Commission decision is to recommend that the City Council approve the proposed Development Code amendments, the City Council will hold a public hearing on the amendments. A City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

## STAFF ANALYSIS

### Development Code Amendment File DC-01-11

The Albany Development Code (ADC) contains the following review criteria which must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

#### FINDING OF FACT

- 1.1 *Albany Comprehensive Plan, Chapter 7, Social Amenities, Aesthetics and Urban Design.*

*Goal: Improve Albany's image, livability, appearance, and design through aesthetic enhancement.*

The proposal would provide an alternative method for achieving the Comprehensive Plan goal, while preserving flexibility in site design and value for previously-developed properties.

#### CONCLUSION

- 1.1 The proposed amendments are consistent with the Comprehensive Plan goal.
- (2) *The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.*

#### FINDING OF FACT

- 2.1 *ADC 9.010, On-Site Development and Environment Standards, Overview.*

The ADC Overview sections calls for standards that “foster high quality development throughout the City and to minimize adverse effects on surrounding property owners or the general public”. Landscaping that provides this quality may be balanced against the constraints encountered when sites have been previously developed under different codes. In such cases, unused rights-of-way adjacent to these sites can supply the necessary area for fulfilling the landscape requirement.

#### CONCLUSION

- 2.1 The proposed amendments are consistent with the Albany Development Code.

**LANDSCAPING**

9.140 General Requirements. Landscaping requirements by type of use are listed below:

- (1) Landscaping Required – Residential. All front setbacks yards (exclusive of accessways and other permitted intrusions) are required to be landscaped before an occupancy permit will be issued or final building permit approved. In all residential districts except Rural Residential (RR), the minimum landscaping acceptable for every 50 lineal feet of street frontage (or portion thereof, deducting the width of the driveway) is:
  - (a) One tree at least 6 feet tall.
  - (b) Four 1-gallon shrubs or accent plants.
  - (c) The remaining area treated with attractive ground cover (e.g., lawn, bark, rock, ivy, and evergreen shrubs).
  
- (2) Landscaping Required – Non-Residential. All required front and interior setbacks yards, exclusive of accessways and other permitted intrusions, must be landscaped before an occupancy permit will be issued. Minimum landscaping acceptable for every 1,000 square feet of required setbacks yards in all commercial industrial districts is as follows:
  - (a) One tree at least 6 feet tall for every 30 feet of street frontage.
  - (b) Five 5-gallon or eight 1-gallon shrubs, trees or accent plants.
  - (c) The remaining area treated with suitable living ground cover, lawn, or decorative treatment of bark, rock, or other attractive ground cover.
  - (d) When the yard adjacent to a street of an industrially zoned property is across a right-of-way from other industrially or commercially zoned property, only 30 percent of such yard **setback** area must be landscaped.
  
- (3) Alternate Plan – Non-Residential. The Director may approve placement of the required setback landscaping in the public rights-of-way when the following conditions are met:
  - (a) The site contains existing development that includes substantial building(s), and is subject to ADC improvement requirements due to a change of use or vacancy; and
  - (b) The appropriate government agency grants written permission for use of the right-of-way; and
  - (c) The applicant provides written assurance that on-site setback landscaping will be installed within 90 days in the event permission to use the right-of-way is revoked; and
  - (d) The Director finds that the required setback landscaping can feasibly be installed on the property without creating other violations of this Code; and
  - (e) The Director finds that providing the landscaping in the public right-of-way in the interim fulfills the intent this Code for high quality development (9.010) and the minimum landscaping requirements in Section 9.140(2)(a) through (c).