



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

7/27/2009

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Tualatin Plan Amendment
DLCD File Number 005-09

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.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, August 07, 2009

This amendment was submitted to DLCD for review prior to adoption. 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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Cindy Hahn, City of Tualatin
Gloria Gardiner, DLCD Urban Planning Specialist

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DLCD

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

	<input type="checkbox"/> In person	<input type="checkbox"/> electronic	<input type="checkbox"/> mailed
D	DEPT OF		
A	JUL 20 2009		
T	LAND CONSERVATION		
E	AND DEVELOPMENT		
S	For DLCD Use Only		
T			
A			
M			
P			

Jurisdiction: **City of Tualatin**

Local file number: **PTA-09-01**

Date of Adoption: **July 13, 2009**

Date Mailed: **July 17, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: May 27, 2009

- | | |
|---|---|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

PTA-09-01 (Ordinance #1285-09) is a Plan Text Amendment to the Tualatin Development Code (TDC) that extends the standards for fences in TDC 34.320-340 (adopted by Ordinance 1244-07 on July 23, 2007) to apply to properties in the Low Density Residential (RL) and Medium Low Density Residential (RML) Planning Districts with access-restricted rear yards or side yards adjacent to an interstate highway (I-5 or I-205) when the property is the subject of a partition or subdivision application of the property is developed with a single-family dwelling. Prior to adoption of PTA-09-01 the fence standards only applied to properties adjacent to minor and major arterial and collector streets and expressways.

Does the Adoption differ from proposal? Yes, Please explain below:

In response to comments received from City Departments and Tualatin Valley Fire & Rescue, the language of the adoption differs from the proposal in three parts of TDC 34.330(3) Exceptions to Fence Location or Configuration, as follows: under subsection (b) Tualatin Valley Fire & Rescue or the City Engineer also may require an opening or passage through the fence; under subsection (d) "other requirements" has been expanded to include such improvements and activities as bicycle paths, multi-use paths, and maintenance activities; and under subsection (e) the language was corrected to state that no fence is required when the area of vegetation separating the interstate highway from private property is at least 200 linear feet wide.

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **n/a**

to: **n/a**

Location: **n/a**

Acres Involved: **n/a**

Specify Density: Previous: **n/a**

New: **n/a**

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

005-09 (17598) [15625]

DLCD file No.

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

Metro, Tualatin Valley Fire & Rescue, Home Builders Association of Metropolitan Portland, Oregon
Department of Transportation

Local Contact: **Cindy Hahn, AICP, Assistant Planner** Phone: (503) 691-3029 Extension:

Address: **18880 SW Martinazzi Avenue**

Fax Number: **503-692-3512**

City: **Tualatin, OR**

Zip: **97062**

E-mail Address: **chahn@ci.tualatin.or.us**

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, or by emailing **larry.french@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 larry.french@state.or.us - **Attention: Plan Amendment Specialist**.

Updated March 17, 2009

ORDINANCE NO. 1285-09

AN ORDINANCE RELATING TO FENCES; REQUIRING FENCES ALONG INTERSTATE HIGHWAYS IN THE RL AND RML PLANNING DISTRICTS; AND AMENDING TDC 34.320, 34.330, 34.340, 73.221, 73.222, AND FIGURES 34-1 AND 34-2 (PTA-09-01).

WHEREAS upon the application of the Community Development Department, a public hearing was held before the City Council of the City of Tualatin on July 13, 2009, related to fences; requiring fences along interstate highways in the RL and RML planning districts; and amending TDC 34.320, 34.330, 34.340, 73.221, 73.222, and figures 34-1 and 34-2; and

WHEREAS notice of public hearing was given as required under the Tualatin Community Plan by publication on June 25, 2009, in The Times, a newspaper of general circulation within the City, which is evidenced by the Affidavit of Publication marked "Exhibit A," attached and incorporated by this reference; and by posting a copy of the notice in two public and conspicuous places on June 16, 2009 within the City, which is evidenced by the Affidavit of Posting marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council conducted a public hearing on July 13, 2009, and heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing, the Council vote resulted in approval of the application by a vote of [6-0]; with Councilor Maddux absent.

WHEREAS based upon the evidence and testimony heard and considered by the Council and especially the City staff report dated July 13, 2009, the Council makes and adopts as its Findings of Fact the findings and analysis in the staff report attached as "Exhibit C," which are incorporated by this reference; and

WHEREAS based upon the foregoing Findings of Fact, the City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended. Therefore,

THE CITY OF TUALATIN, OREGON ORDAINS AS FOLLOWS:

Section 1. TDC 34.320 is amended to read as follows:

The purpose of fence standards in the RL and RML Planning Districts for access-restricted lot lines and property lines that abut collector, arterial, and expressway streets, and interstate highways (I-5 or I-205) is to implement the community design objectives of TDC 10.020.

Section 2. TDC 34.330 is amended to read as follows:

The following standards are minimum requirements for fences in a RL (Low Density Residential) or a RML (Medium Low Density Residential) Planning District, where an access-restricted lot line or property line abuts a public street classified as a major arterial, minor arterial, major collector, minor collector, or expressway by the Tualatin Functional Classification Plan, or abuts a state-owned interstate highway (I-5 or I-205).

(1) Subdivision or Partition of Property in a RL or RML Planning District.

Where property is the subject of a subdivision or partition application, and has an access-restricted property line(s) or lot line(s) that abuts a major arterial, minor arterial, major collector, minor collector, or expressway right-of-way or an interstate highway property line for a distance greater than 60 feet, a masonry fence shall be installed along the arterial/ collector/expressway/interstate highway frontage, in conformance with design standards set forth in TDC 34.340 and the fence standards set forth below:

(a) Required fencing shall be installed along the entire length of the access-restricted property line(s) or lot line(s) abutting the arterial/collector/expressway right-of-way or interstate highway property line, except as provided in TDC 34.330(3), prior to issuance of any building permit on any parcel or lot created by the partition or subdivision.

(b) Except as provided in TDC 34.330(3), required fencing shall be located entirely outside of the public right-of-way or state-owned interstate highway property, and as close as physically possible to, approximately parallel with, either the property line or lot line abutting the arterial/collector/expressway right-of-way or interstate highway property line, or in the case of an arterial/collector/expressway street the ultimate right-of-way line, whichever is located furthest from the centerline of the street right-of-way.

(i) For public streets classified as an arterial/collector/expressway, As approved by the City Engineer, the location of the ultimate right-of-way line shall be one-half of the right-of-way width specified in Chapter 11 and Chapter 75 of the Tualatin Development Code for the appropriate classification of street, measured at right angles from the centerline of the actual street improvement, or measured at right angles from the centerline of the right-of-way, whichever method is determined most appropriate by the City Engineer.

(ii) For public streets classified as an arterial/collector/expressway, if an owner is granted a variance from TDC 34.330(1)(b) standards, which results in a fence being located within the ultimate right-of-way area, the property owner shall execute a removal agreement, subject to City Council approval. The removal agreement shall provide that, after notice by the City, the property owner shall remove any structure, or portion thereof, that extends into the ultimate right-

of-way, at no expense to the City. In case of default in that obligation, the City may cause such removal at the expense of the owner with all costs incurred to become a lien against such land or premises. The agreement shall also provide that the owner of the affected premises shall not be entitled to any damages or compensation in consequence of the City's exercise of its rights under the agreement. This provision shall not be construed as denying the owner of such property the right to just compensation for the unimproved value of any land taken for the widening of any street.

(c) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(2) Replacement of Existing Fence, or Construction of New Fence in a RL or RML Planning District.

Where property is not the subject of a subdivision or partition application, and is developed with a single-family dwelling, and has an access-restricted property line or lot line that abuts a major arterial, minor arterial, major collector, minor collector, or expressway right-of-way, or interstate highway property line, the following fence standards apply:

(a) Replacement of An Existing Fence That Does Not Meet the Masonry Fence Standard.

Where an existing fence that does not meet the masonry fence standard set forth in TDC 34.340 is located approximately parallel with, and within ten feet of, an access-restricted property line or lot line that abuts an arterial/collector/expressway right-of-way or interstate highway property line, AND more than 50 percent of fences that are constructed approximately parallel with, and within ten feet of, access-restricted property lines or lot lines that abut the same arterial/collector/expressway right-of-way line or interstate highway property line, in the interval between the nearest intersecting streets, or hypothetical extensions thereof in the case of interstate highways, located on both sides of the subject property (See Figure 34-1 for illustration), meet the masonry fence standard, then at the time that 60 percent or more of the length of the fence is removed, the entire length of the fence located along the arterial/collector/expressway/interstate highway frontage shall be removed and replaced with a fence that meets the masonry fence design standards set forth in TDC 34.340.

(i) Installation of required replacement fencing shall be complete within six months from the date that 60 percent or more of the length of the fence is removed;

(ii) Required fencing shall be located entirely outside of the public right-of-way or state-owned interstate highway property, and as close as physically possible to, approximately parallel with, the property line or lot line abutting the arterial/collector/expressway right-of-way or interstate highway property line, except as provided in TDC 34.330(3);

(iii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(b) Replacement or Repair of An Existing Fence That Meets the Masonry Fence Standard.

Where an existing fence that meets the masonry fence standard set forth in TDC 34.340 is located approximately parallel with, and within ten feet of, an arterial/collector/expressway right-of-way or interstate highway property line, then at the time that any portion of the access-restricted property line or lot line that abuts an fence is removed, the fence shall be repaired or replaced in conformance with the masonry design standards set forth in TDC 34.340.

(i) Repair or replacement shall be complete within six months from the date that any portion of the fence is removed;

(ii) Required fencing shall be located entirely outside of the public right-of-way or state-owned interstate highway property, and as close as physically possible to, approximately parallel with, the property line or lot line abutting the arterial/collector/expressway right-of-way or interstate highway property line, except as provided in TDC 34.330(3);

(iii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(c) Construction of New Fence.

Where no existing fence is located approximately parallel with, and within ten feet of, an access-restricted property line or lot line that abuts an arterial/collector/expressway right-of-way or interstate highway property line, AND more than 50 percent of fences that are constructed approximately parallel with, and within ten feet of, access-restricted property lines or lot lines that abut the same arterial/collector/expressway right-of-way line or interstate highway property line, in the interval between the nearest intersecting streets, or hypothetical extensions thereof in the case of interstate highways, located on both sides of the subject property (See Figure 34-1 for illustration), meet the masonry fence standard, then any new fence that is constructed approximately parallel with, and within ten feet of, the access-restricted property line or lot line abutting the arterial/collector/expressway right-of-way or interstate highway property line shall be in conformance with the required design standards set forth in TDC 34.340.

(i) Required fencing shall be located entirely outside of the public right-of-way or state-owned interstate highway property, and as close as physically possible to, approximately parallel with, the property line abutting the arterial/collector/expressway right-of-way or interstate highway property line, except as provided in TDC 34.330(3);

(ii) Required fencing shall be installed such that stormwater drainage patterns and flow rates are not altered in a manner detrimental to property or persons.

(3) Exceptions to Fence Location or Configuration:

(a) For public streets classified as an arterial/collector/expressway, ~~where~~ where the City Engineer determines that vehicular access is to be provided from the arterial/collector/expressway to a parcel or lot abutting the

arterial/collector/expressway, the fence shall not be required along the arterial/collector/expressway frontage of that particular parcel or lot.

(b) For public streets classified as an arterial/collector/expressway, where the City Engineer determines that an opening or passage through the fence must be provided, the fence shall include such required opening. The same shall be provided in fences along state-owned interstate highways when required by the state or Tualatin Valley Fire & Rescue or the City Engineer.

(c) All vision clearance requirements set forth in TDC 73.400(16) shall be met.

(d) The City Engineer in the case of public streets classified as an arterial/collector/expressway, or the state in the case of state-owned interstate highways, may require an alternate location or configuration of the fence alignment to accommodate stormwater facilities, easements, or other requirements such as, but not limited to, bicycle paths, multi-use paths, or for maintenance purposes.

(e) For state-owned interstate highways, where an area of vegetation at least 200 linear feet in width runs parallel to the interstate highway and forms a visual, aesthetic or acoustic barrier, or land in a Natural Resource Protection Overlay (NRPO) district or other protected area as defined in TDC Chapter 72 runs parallel to the interstate highway, AND such land is located between the interstate highway property line and the developable area of a property being developed in the RL or RML Planning District, no fence shall be required. Where the area of vegetation is less than 200 linear feet in width, the required fence shall be located entirely outside the vegetated, NRPO or other protected area and as close as physically possible to, approximately parallel with, the edge of said vegetated, NRPO or other protected area on the developable portion of the property being developed.

Section 3. TDC 34.340 is amended to read as follows:

(1) Masonry Fence Design. (See Figure 34-2 for illustration)

(a) Material and Color. All components of fence visible from the public vantage point shall be constructed of stone, brick, stone-look or brick-look cast masonry or stone-look or brick-look cast vinyl or composite material. The color of the fence shall be that of natural stones, red clay brick, neutral brown-tones, or gray earth-tones.

(b) Finished Face. Fence shall be constructed such that the finished side of the fence faces the public right-of-way or state-owned interstate highway, and any structural components (metal brackets, etc.) are not visible from the public or highway vantage point.

(c) Slopes. Fences constructed on slopes shall be installed using a stair-step method, whereby each fence panel steps up or down the slope and remains level (zero-slope) rather than parallel to the grade of the underlying terrain.

(d) Height. For public streets classified as an arterial/collector/expressway, height of fence panels shall be six feet, and for interstate highways (I-5 or I-205) height of fence panels shall be a minimum of eight feet, measured from the

underlying ground surface directly beneath the fence panels to the top edge of the cornice cap. (Any fence over six feet in height requires a building permit and engineered drawings.)

(i) For fences constructed on slopes, the height of fence measured at the up-slope end of each fence panel shall be six feet for public streets classified as an arterial/collector/expressway and a minimum of eight feet for interstate highways. (Any fence over six feet in height requires a building permit and engineered drawings.)

(ii) Pilasters, excluding pilaster caps, shall be no shorter than the shorter of the attached fence panels, including the cornice cap, and shall not extend more than six inches higher than the highest attached fence panel, including the cornice cap.

(iii) Height of pilaster caps shall be no greater than six inches, measured from the top of the underlying pilaster to the highest point on the cap.

(e) Ground Clearance. There shall be no ground clearance or gap visible between the bottom of the fence panels and the underlying ground surface. Where a pre-cast panel system is used, any gaps that result beneath panels shall be filled in with earth, rock, evergreen vegetation, or similar material. This provision does not prohibit the use of stormwater drainage holes.

(f) Pilasters. The horizontal run of fence must be broken up by pilasters, which shall be set at approximately regular intervals, no more than twenty feet apart on center. Pilasters shall be installed perpendicular to a zero-slope plane.

(g) Panels. Panels shall be 100 percent solid and opaque. The finished face shall have the appearance of a stacked or mortared stone wall or brick wall.

(h) Cornice. A cornice cap shall be installed on top of each of the fence panels. Cornice caps shall be masonry or brick in appearance, and shall match or closely compliment the colors and materials used to construct the fence panels and pilasters.

(i) Pilaster Caps. Decorative caps shall be installed on top of all pilasters such that the cap completely covers the surface area of the pilaster end. Caps shall be masonry or brick in appearance, and shall match or closely compliment the colors and materials used to construct the fence panels and pilasters. Illuminated pilaster caps are allowed, provided the lighting element is an integral internal component of the cap (i.e., no exposed light bulb) and the light is low-voltage or solar powered. Caps shall be no taller than six inches, measured from the surface of the pilaster end to the highest point on the pilaster cap.

(2) Variance Prohibited.

(a) Development unable to meet one or more of the design standards set forth in TDC 34.340(1) may alternatively submit application for Architectural Review.

(b) Application for Architectural Review shall be made pursuant to application procedures set forth in TDC 31.071. Approval or denial shall be based upon the criteria set forth in TDC 73.050, including objectives and standards set forth in TDC 73.221240 and 73.222220.

Section 4. TDC 73.221 is amended to read as follows:

(1) Purpose. The purpose of fence design standards in the RL and RML Planning Districts for access-restricted lot lines and property lines abutting major and minor collector and arterial and expressway streets and interstate highways (I-5 or I-205) is to implement the community design objectives of TDC 10.020.

(2) Objectives. Fences shall be designed to the maximum extent practicable, to achieve the following:

(a) Rear yards and side yards adjacent collector, arterial and expressway streets and interstate highways shall be screened from public view.

(b) Fences shall be constructed of highly durable materials that are low-maintenance and weather-resistant.

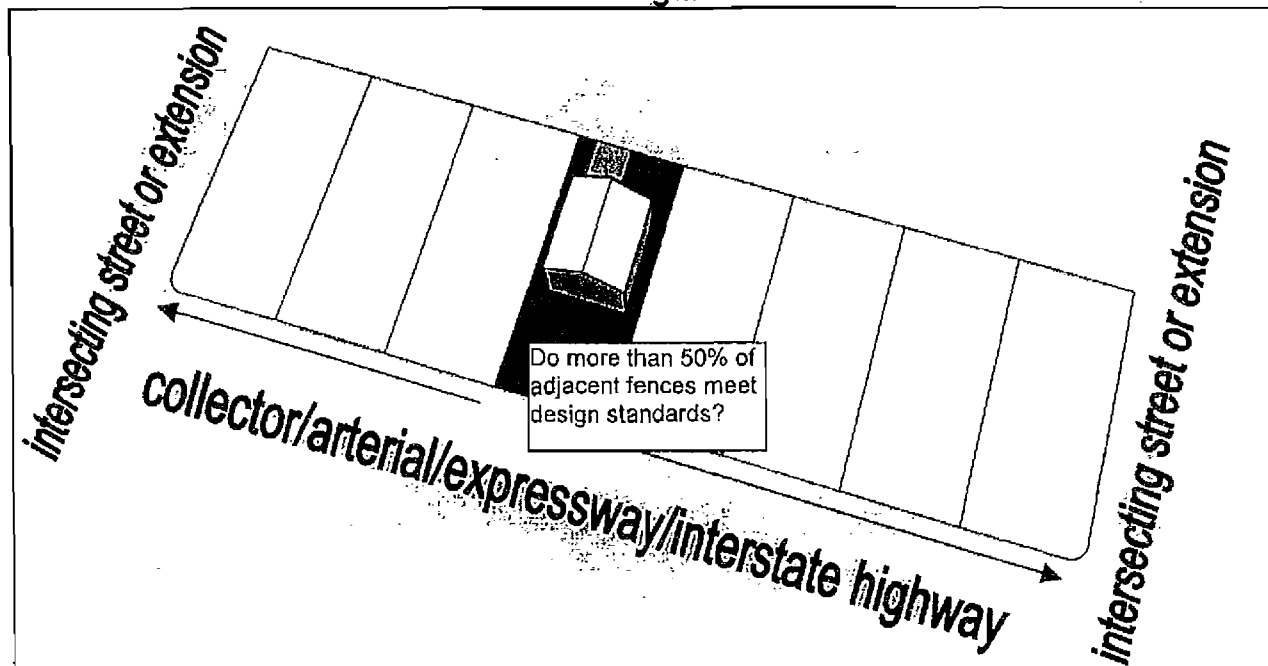
(c) Fence materials and design shall be compatible and harmonious with the required fence design type detailed in TDC 34.330 and 34.340. The design shall incorporate stone-look or brick-look elements. Colors shall be subdued and natural earth-tones, brown-tones, or grey-tones.

Section 5. TDC 73.222 is amended to read as follows:

Minimum requirements for construction of fences in a RL or a RML Planning District, where an access-restricted lot line or property line abuts a public street right-of-way classified as a major or minor collector or arterial or expressway street, or a property line of a state-owned interstate highway are set forth in TDC 34.330 and 34.340.

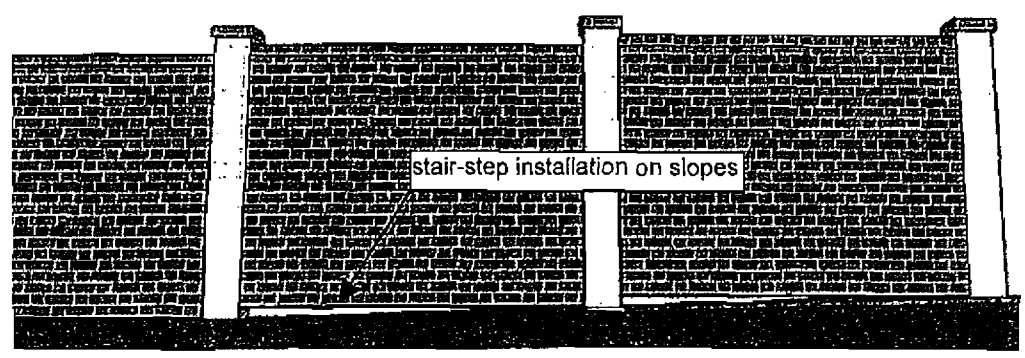
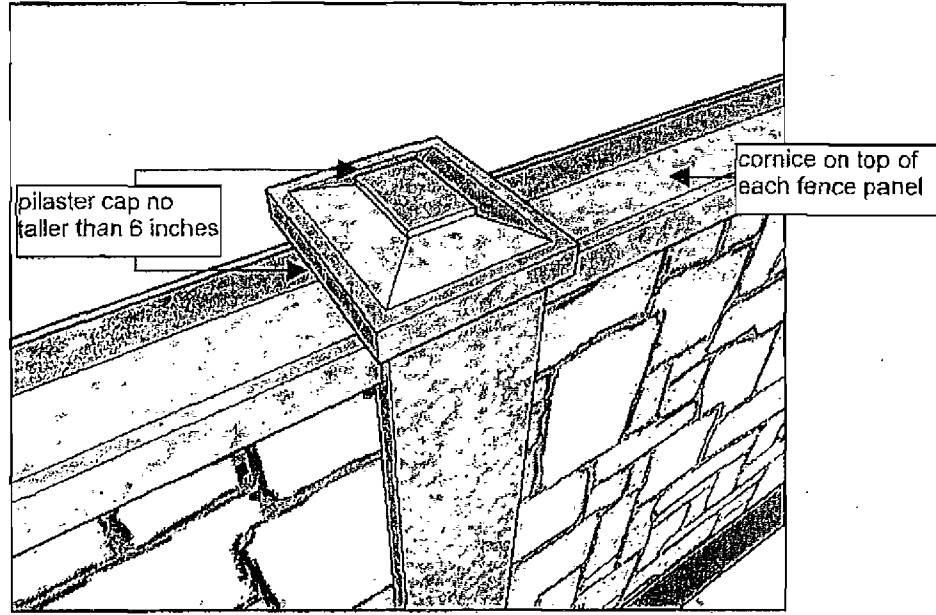
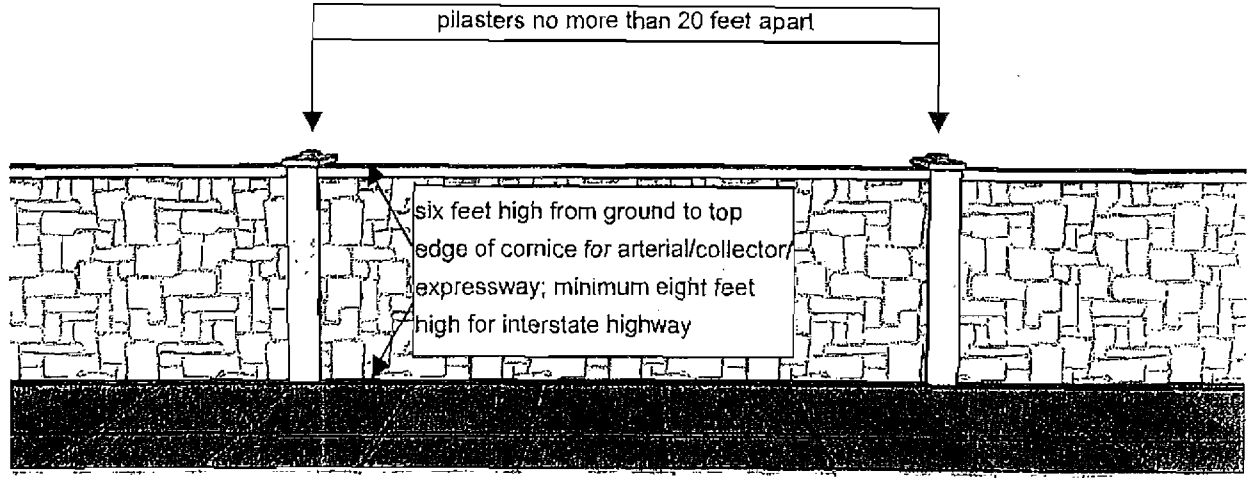
Section 6. Figure 34-1 and 34-2 are amended to read as follows:

Section 34.330 Figure 34-1



Section 34.340 Figure 34-2

Masonry Fence Design Type



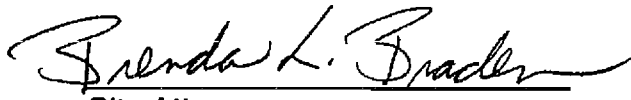
INTRODUCED AND ADOPTED this 13th day of July, 2009

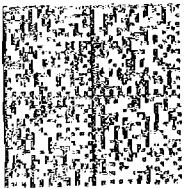
CITY OF TUALATIN, Oregon

BY 
Mayor

ATTEST:

BY 
City Recorder


City Attorney



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Mailed From: 97052
US POSTAGE



City of Tualatin
18880 SW Martinazzi Avenue
Tualatin, Oregon 97062-7092

Attn: Plan Amendment Specialist
Dept. of Land Conservation & Development
635 Capitol Street NE, Ste. 150
Salem, OR 97301-2540

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