

SHORT SUMMARY

At our last board meeting several options to reduce dues for 2021 were considered. After serious discussion and many points of view being shared it was decided to keep dues level. The primary reason for this relates to fence encroachment. Within the next year, we as an HOA are facing city fines and likely legal expenses related to encroachment that could be significant. As a board, we felt it most responsible to be financially proactive rather than be in the situation where we drastically deplete the reserve fund or are forced into a special assessment to cover the costs. In light of this developing situation, if you have a fence that is encroaching, you may want to move your fence proactively to avoid potential fines from the city to you as a homeowner and the HOA as a whole. A longer and more detailed explanation is available on the website to clear up any questions you might have in regards to this situation. Please don't hesitate to reach out to me if you need further clarification or have insight that may be helpful.

EXPANDED EXPLANATION

If you're reading this, it's likely you want further understanding of the financial impact the fence encroachment may have on the HOA in 2021. I have done my best to summarize the events related to this situation and the most current information related to our options.

Approximately 4 years ago the HOA reached an agreement with the city that all of the encroachments into the common area would be moved when replaced or within 20 years (whichever occurs first). It is the HOA's responsibility to make sure that the agreement with the city is followed. In July of 2019, a homeowner rebuilt their fence in violation of that agreement with full knowledge by the homeowner that it was being rebuilt encroaching on the common area. The HOA has been unsuccessful in requesting the homeowner move the fence, putting the HOA in violation for not upholding the agreement with the city. The homeowner has also been personally cited by the city for violating the agreement and city code.

In September after months of delay due Covid 19, the HOA was served a fine notification of \$1,100 for this situation. The city attorney also sent a letter to the HOA and the judge stating that they are not wanting the fine to be final disposition, but that they wish to have a hearing no matter our plea on the matter to discuss an appropriate fine as allowed by Lake Oswego City Code. The letter continues to explain that "The request will provide greater time for the Defendant to complete actions to comply with City codes and to provide an opportunity for the City to request enhanced fines of \$1,000/count if the Defendant does not comply."

Our legal counsel consulted on the last portion of the city attorney's letter. It was confirmed that the "for each count" reference of the penalty could very well mean every case of encroachment currently documented by the HOA. We currently have 28 incidents of encroachment to the common area from Bryant Woods HOA homes. Most are fences, but there are also other encroaching infractions (sheds, yards, decks, retaining walls, play structure, pond, etc.)

It is our concern and belief that if we do not take action to enforce the agreement with the city that we could be facing a significant fine. Based on our number of existing encroachments and the fine discussed, the HOA could be subject to a fine of over \$28,000.

This leaves us in a difficult situation as a community. Pay a significant fine, and then be subject to future penalties until we resolve the encroachments. Or initiate the fine process based upon the CC&Rs, Article III, Section 4 (see below), which may lead to legal action being taken by the homeowner to maintain possession of the land that has been encroached. As you can see, the options before us are not simple or desired. Our goal is to work with the city to partner against violations of the original agreement and resolve this matter. Rest assured, we are working to find the most effective method possible.

In light of this evolving situation, if you have a fence (or other item) that is encroaching, you may want to resolve your encroachment proactively to avoid unexpected potential fines directly from the city and from the HOA (which is evaluating the legality of passing through city fines to the BWHOA directly to encroaching members). We're always willing to help facilitate the resolution of any encroachment. If you have questions or need assistance please let us know.

BWHOA CC&R's, ARTICLE III, Section 4:

No building, fence, wall or other structure shall be commenced, erected or maintained upon any of the properties, nor shall any exterior addition to or change or alteration therein or exterior painting thereon be made until the plans and specifications showing the nature, kind, shape, type, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article shall be deemed to have been fully complied with.