

## ***FENCES – Relevant BWA CC&Rs, City of LO Codes & Oregon Law***

**NOTE:** This information is current as of January 2015. Please confirm with governing authorities prior to any fence construction.  
**SEE:** HOA Governing Document Hierarchy on the last page

### **BRYANT WOODS CC&Rs - ARTICLE III:**

#### **RESTRICTIONS ON USE AND REQUIREMENTS FOR MAINTENANCE**

Section 1. No building site on said property shall be used for any purpose other than residential purposes, except that to the extent permitted by the zoning and other regulations of the City of Lake Oswego occupants of any home may, with the written approval of the Board of Directors, give instruction in the arts and such similar activities as the Board of Directors reasonably may deem appropriate to a residential area and consistent with the character of the Bryant Woods development, provided such activities are conducted in accordance with such terms and conditions as may reasonably be imposed by the Board of Directors and further provided that such approval may be revoked if the Board of Directors finds such activity is conducted in a manner which violates such terms and conditions or which violate any other provision of these Declarations.

Section 2. No animals or fowls shall be raised, kept or permitted upon said property or any part thereof, excepting only domestic dogs or cats and excepting caged pets kept within the dwelling house; provided said dogs, cats and pets are not kept, bred or raised for commercial purposes or in unreasonable numbers so as to constitute a nuisance to the immediate neighbors.

Section 3. No noxious or offensive activity shall be carried on upon said property or upon the public streets or rights of way or Common Areas within or adjacent to property subject to the restrictions enforced by the Association nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood, to the immediate neighbors or detract from the value of the neighborhood and subdivision as a high-class residential district.

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.

Section 5. No building shall be any manner occupied while in the course of original construction or until it complies with all requirements as to area and with all other conditions and restrictions applicable thereto and all other codes and regulations of governmental bodies applicable thereto. The construction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until fully completed. Every building, fence, wall or other structure placed on any part of said property shall be constructed of new materials, unless the use of other than new materials shall have received the written approval of the Board of Directors or the architectural committee. No buildings constructed elsewhere shall be moved to or placed on said property except with the written approval of the Board of Directors or the architectural committee.

Section 6. No trailer, boat, tent, camper, whether mounted or unmounted, unmounted canopies, motorhomes, recreational vehicles or similar equipment nor any structure shall be placed, maintained or constructed on any lot or on any street or Common Area adjacent thereto for any purpose, either temporarily or permanently, except that any of the above items which can be and are stored out of sight from the street on said lots and are not used for living purposes will not be in violation of these restrictions. The temporary use of tents in back yards for recreational purposes shall not be precluded by this restriction.

Section 7. Basic landscaping for each home erected on the premises shall be completed by the property owner within one (1) year of initial occupancy, whether such occupancy is by the Owner, Tenant or other party. "Basic landscaping" shall consist of finished treatment of the ground surrounding any structure which gives it a finished appearance and which in nature, kind, materials and topography is consistent with the quality generally maintained in the neighborhood and throughout the Bryant Woods Subdivision and which is consistent with reasonable rules and regulations from time to time adopted by the Board of Directors.

Section 8. No person shall use any Common Area as a dumping ground for rubbish, trash, garbage, grass clippings, leaves or other waste or other materials, nor shall any person use any Common Area to park or store any personal property, including but not limited to boats, cars, motor-homes, bicycles, etc.

Section 9. Each Lot Owner shall maintain the exterior of the premises and the improvements situated thereon, including not limited to roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements, in a neat and orderly manner and in good order and repair. Premises surrounding buildings after they are landscaped shall be maintained; weeds shall be removed with reasonable frequency, grass shall be cut during growing seasons at least once every two weeks and generally the outside appearances of the homes and the land surrounding them shall be maintained in a manner and to a standard consistent with that generally maintained by the neighboring properties and throughout the subdivision.

Section 10. It shall be the duty of the Owner or occupant of any Lot to maintain in proper condition the area between the property line of the Lot and the nearest curb or improved street, including public sidewalks within said area.

Section 11. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five square feet and which complies with the Lake Oswego sign code, advertising the property for sale or rent, which sign shall be removed immediately upon the sale or rental advertised. This prohibition shall not apply to political "lawn signs" during election campaigns which are neatly erected and maintained on the Owner's Lot.

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## CITY OF LAKE OSWEGO FENCE ORDINANCES:

### 50.06.004 SITE DESIGN

#### 2. FENCES

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##### a. Applicability

No person shall construct a fence, wall, or retaining wall in violation of this section.

##### b. Location and Height

FMU Standards Note: If the below provisions address the same subject as provided in the Foothills Building and Site Design Standards, LOC [50.11.007](#), Appendix G, those standards shall supersede the below provisions.

i. Fences and walls in residential zones shall not exceed six ft. in height unless otherwise provided below:

(1) Four ft. in height when located within ten ft. of a property line abutting a public or private street or an access easement which serves more than two lots. This restriction shall not apply to properties which abut an access easement but which do not have a legal right to use the easement. For purposes of determining fence height under this subsection, alleys are not considered as public streets.

(2) Four ft. in height when located within the front yard setback of the Old Town Neighborhood.

ii. Gates in a fence or wall located within ten ft. of a property line abutting a public or private street or an access easement shall not exceed six ft. in height.

iii. Portals located within ten ft. of a property line abutting a public or private street or an access easement shall not exceed eight ft. in height.

iv. Fences, walls, and retaining walls in nonresidential zones shall not exceed eight ft. in height. Mixed use commercial/residential zones shall be considered a residential zone for purposes of this section. A fence, wall, or retaining wall over six ft. in height shall be screened by an evergreen hedge which shall be of a size and spacing so as to provide a six-ft. high, dense screen within three years of the date of planting. Any fence over six ft. in height requires a building permit.

v. Fences, walls, retaining walls, gates, and portals shall comply with the provisions of LOC [42.03.130](#), Vision Clearance at Intersections, Including Private Streets and Driveways.

vi. Every body of water, as defined in LOC [50.10.003.2](#), shall have a barrier as required by the State of Oregon One and Two Family Dwelling Specialty Code.

**vii. Retaining Walls within Residential Zones**

(1) A retaining wall four ft. or less in height may be located in the required setback; provided, that if there are multiple retaining walls within the setback, each retaining wall shall be located no closer than five ft. to another retaining wall, as measured from the back of one retaining wall to the front of the other retaining wall.

**Exception:** Retaining walls greater than four ft. in height are permitted if the retaining wall forms a window well that complies with the depth and length requirements for an exception to "Height of a Building," in LOC 50.10.003.3.

(2) Retaining walls greater than four ft. in height shall be required to meet all setback requirements, except as otherwise exempted.

(3) Retaining walls shall not be permitted in any rights-of-way, except with prior approval of an encroachment permit.

**viii. Fence Located on Top of or Near Retaining Walls**

(1) The combined height of a retaining wall and fence, where the fence is located either on top of or within five ft. of the face of the retaining wall on the upslope side, shall be less than eight ft., as measured from the lower side of the retaining wall.

(2) No fence shall be located either on top of or within five ft. of the face of the retaining wall on the upslope side when either the retaining wall or the fence is located within ten ft. of a public or private street or an access easement which serves more than two lots.

(3) When a fence is located on the top of a retaining wall, the fence shall be of a different class of material than the retaining wall, i.e., if the retaining wall is masonry, the fence must be wood or metal.

ix. Berms, when used in conjunction with fences or walls, shall be included in height determinations.

**x. Exceptions from Height Limitations**

The height limitations of this section do not apply to:

(1) Fences which either provide security or are accessory or incidental to the use of a major public facility, minor public facility, or public transportation facilities; or

- (2) An open (80% open) fence which is not located in the front yard (forward of the primary structure to the front lot line) and which encloses part or all of a tennis court, swimming pool, playing field, park, recreation facility, public or semi-public utility structure; or
- (3) A noise fence permitted by the Oregon Department of Transportation abutting the right-of-way of Highway 43, but only to such height limits approved by ODOT; or
- (4) Retaining walls used to directly support a driveway or car parking area for a single-family residence; or
- (5) Retaining walls used to support right-of-way embankments subject to approval by the City Manager or designee.

Such fence height exempted under the above subsections shall not exceed ten ft. except a noise fence under subsection 2.c.x(3) of this section.

**c. Materials – Standards for Construction**

- i. The unfinished or structural side of a fence or retaining wall shall face the owner's property unless written consent has been obtained from the respective abutting property owners to face the unfinished or structural side of the fence towards the abutting property. For purposes of abutting public right-of-way, consent must be obtained from the City Manager.
- ii. Fences shall not be constructed of, or contain, any material which will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

- (1) Barbed wire or electrified fences enclosing permitted livestock are permitted provided the barbed wire and electrified fences shall be posted and flagged at not less than 15-ft. intervals with clearly visible warnings of hazard.
- (2) Barbed wire or upturned barbed salvage is permitted more than six ft. above grade in GC and Industrial zones; provided, that barbed wire shall not extend over a public or private street, alley, fire lane, or the property boundary of a property zoned residential. When used along a public or private street, the fence shall be screened from the street by an evergreen hedge which shall be of a size and spacing so as to provide a six-ft. high, dense screen within three years of the planting date.

**50.06.010 MAINTENANCE AND OPERATION**

***3. FENCES AND WALLS STANDARDS FOR MAINTENANCE***

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Fences, exterior side of walls, and retaining walls shall be maintained in sound condition and good repair at all times.

## **6. COMPLAINT PROCEDURES AND CORRECTIVE ACTION – FENCES**

### *a. Complaint Procedures*

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If a complaint is received by the City that the structural side of a fence or retaining wall faces the public, the City shall require the property owner to provide evidence to City staff of the written consent of all abutting property owners to construct the fence or retaining wall in such a manner and shall provide design plans showing both sides of the fence or retaining wall in elevation and plan. Based upon the evidence provided, staff shall determine compliance with this Section. If the property owner is unable to provide such evidence, the City shall notify the property owner(s) in writing regarding corrective action requirements. Within 30 days of the date of mailing of the notice, the property owner(s) shall provide a corrective action plan subject to the approval of the City.

### **b. Corrective Action**

Corrective action shall require the structural side of the fence or retaining wall to face the owner's property or the written consent of all abutting property owners as described in subsection (a) of this section.

## **50.10.003 DEFINITIONS**

### **Fence**

A freestanding structure, not including a hedge or other natural growth, resting on or partially buried in the ground and rising above ground level, used for confinement, screening, enclosure, security, or partition purposes. A railing provided for public safety purposes does not constitute a fence.

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## **50.04.003 EXCEPTIONS, PROJECTIONS, AND ENCROACHMENTS**

### **8. GENERAL EXCEPTIONS FOR BUILDING PROJECTIONS, DECKS, AND WALKWAYS AND PATHWAYS TO SETBACKS**

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#### **a. Projections from Buildings**

Cornices, eaves, gutters, bay windows located on the ground floor (but not more than six ft. wide, with a maximum of two bay windows per building elevation), decorative metal balconies (but not more than six ft. in length), flower boxes, belt courses, leaders, sills, pilasters, lintels, ornamental features, and other similar architectural features may project not more than two ft. into a required yard (as adjusted by

LOC[50.04.003.3.a](#)) or into required open space as established by lot coverage standards. Canopies, sunshades, chimneys, and flues may project not more than two ft. into a required yard or into required open space as established by coverage standards, but in no event may the projection be within five ft. of a side lot line.

**b. Patios and Decks**

Patios and decks on or above grade, but no more than 30 in. above grade, may project into a required yard, but may not be closer than three ft. to any property line. Patios and decks above 30 in. shall be subject to the zone setback. Such intrusion into the required yard is to be undertaken solely at the risk and expense of the owner. Any structure which is placed in a required yard, and is required to be moved for any reason, shall be moved without expense to the City and the person who bears such cost shall have no recourse against the City to recover such cost.

**c. Access Walkways and Pathways, Driveway Bridges, Trams and Staircase**

i. Walkways and pathways, regardless whether on grade or elevated, that provide principal access from the adjacent public right-of-way to a dwelling or as a public entrance(s) to a commercial, industrial, or public facility building are permitted in the required yard, so long as the elevation of the walkway or pathway is at or below the elevation of the driveway or parking area for the dwelling or building. If the walkway or pathway is elevated, it shall be the most direct route practicable.

ii. Bridges that form the driveway from the abutting street to the garage are permitted in the required yard, provided the driveway bridge is used for the most direct route practicable.

iii. Trams and staircases that provide access to Oswego Lake, and its bays and canals, and to the Willamette River are exempt from the Oswego Lake setback, if applicable, and rear yard setback.

d. Equipment for public service, e.g., utility meters, transformers, telephone switching equipment (but excluding such structures as pump houses) are permitted in a required yard provided the service provider can show that another location or undergrounding of equipment is not possible.

**Article 42.18**  
**Public Rights-of-Way and Easements. [Revised 8/14](#)**

Sections:

- [42.18.1010](#) Encroachments Within Public Rights-of-Way/Easements.
- [42.18.1015](#) Exemptions. [Revised 8/14](#)
- [42.18.1020](#) Permit Issuance.
- [42.18.1025](#) Appeals.
- [42.18.1030](#) Standards and Conditions.

- [42.18.1035](#) Recording of Permits.
- [42.18.1040](#) Revocation of Permits.
- [42.18.1045](#) Removal of Encroachment.
- [42.18.1050](#) Liability.
- [42.18.1055](#) Enforcement.

#### **42.18.1010 Encroachments Within Public Rights-of-Way/Easements.**

1. Permit Required for Encroachment in Public Rights-of-Way/Easements; Exceptions.
  - a. Except as provided in subsection (1)(b) of this section, it shall be unlawful for any person to erect or cause to be erected any structure or to place or maintain any vegetation or landscaping materials in, over or upon any dedicated public right-of-way or easement without having first obtained a revocable permit from the City Manager or designee authorizing such action.
  - b. A revocable permit shall not be required to establish encroachments on unimproved public rights-of-way/easements or to maintain encroachments that are in existence as of the effective date of this ordinance, unless:
    - i. The encroachment impedes, impairs, or otherwise negatively impacts the use of an existing public facility, or creates a public safety hazard, as determined by the City Manager;
    - ii. The encroachment is the subject of a valid citizen complaint that the encroachment negatively impacts the public interest, as determined by the City Manager; or
    - iii. The encroachment would impede, impair or otherwise negatively impact the construction or use of a planned public facility or planned expansion of an existing public facility, as determined by the City Manager.
  - c. Nothing in subsection (1)(b) shall be construed as conveying a right to maintain encroachments in a public right-of-way or easement, to shift liability for such encroachment from the encroaching party to the City, or to require the City to compensate the encroaching party for the removal of the encroachment at such time as the City determines the encroachment should be removed. Such encroachments exist at the sufferance of the City, and shall be removed at such time as the City deems removal is required. Failure to remove such encroachments upon written direction from the City Manager or the Manager's designee shall be unlawful and a public nuisance and may be enforced as provided in LOC [42.18.1055](#).
2. Application and Fee Required.
  - a. Any person desiring to locate an encroachment within the public right-of-way/easement as declared in Subsection (1) of this Section shall submit an application to the City manager or designee. The application shall include a description of the proposed encroachment; a scale drawing illustrating the nature and extent of the proposed encroachment and its relationship to



adjoining properties. The City Manager or designee may require an actual survey to determine the exact location of any public or private improvements or significant vegetation.

b. The application shall be accompanied by a petition indicating the extent of support for the proposed encroachment by owners/occupants of property within 200 linear feet in each direction along the right-of-way/easement.

c. A fee in the amount established by resolution of the City Council shall be paid at the time of the application.

### 3. Review of Application.

The City Manager or designee shall conduct a review of the application for a right-of-way/easement encroachment permit to determine its compliance with the standards contained in LOC [42.18.1030](#) and shall request comments from affected City agencies regarding the impact of the proposed encroachment.

(Ord. No. 2081, Enacted, 12/07/93)

#### **42.18.1015 Exemptions. Revised 8/14**

1. Certain encroachments are exempt from the requirements of LOC [42.18.1010](#). Exempt encroachments are those which would have a minor impact on the present or planned use of the public right-of-way/easement and those which are expressly permitted by Code. Except as provided by subsection (2) of this section, exempt encroachments are:

- a. Mailboxes and their enclosing structures subject to Post Office regulations.
- b. Irrigation and low voltage illumination.
- c. Temporary signs and banners with an approved permit per LOC [47.08.305](#).
- d. Newspaper vending machines provided they do not obstruct pedestrian movement.
- e. Guard/handrails along edges of driveway approaches, walks, stairs, etc.
- f. Lawns, plants and approved street trees that do not obstruct visibility for pedestrians, bicyclists and motorists.
- g. Awnings and building projections in commercial areas in conformance with LOC Chapter [45](#).

2. The encroachments described in subsection (1) of this section shall not be exempt if they create a line of sight traffic hazard or conflict with federal Americans with Disabilities requirements.

(Ord. 2649, Amended, 07/29/2014; Ord. 2225, Amended, 02/01/2000; Ord. No. 2081, Enacted, 12/07/93))

**42.18.1020 Permit Issuance.**

The City Manager or designee may approve, modify or deny the application for an encroachment permit. Notice of the decision shall be sent to the applicant and owners/occupants of property within 200 linear feet in either direction of the encroachment.

(Ord. No. 2081, Enacted, 12/07/93)

**42.18.1025 Appeals.**

1. An applicant or affected owner/occupant of property within 200 linear feet of the proposed encroachment may appeal the decision of the City Manager or designee.
2. An appeal must be filed with the City Recorder within 15 days of the date of the decision stating the basis for the appeal and shall be accompanied by a fee in an amount established by resolution of the City Council.
3. The Transportation Advisory Board shall conduct a public hearing on the appeal providing the appellant and any other affected party a reasonable opportunity to be heard in order to show cause why the decision of the City Manager or designee should be reversed or modified. Notice of the public hearing shall be sent to the applicant, appellant, and owners/occupants of property within 200 linear feet of the proposed encroachment. At the conclusion of the public hearing the Transportation Advisory Board shall make a final determination in the matter pursuant to the standards contained in LOC [42.18.1030](#).

(Ord. No. 2081, Enacted, 12/07/93. Ord. No. 2207, Amended, 07/20/99.)

**42.18.1030 Standards and Conditions.**

The City Manager or designee may approve the issuance of a permit for encroachment within the right-of-way/easement where compliance with the following standards can be demonstrated or specific findings are made that the standard is not applicable. The City Manager or designee may attach any conditions to the issuance of the permit that are reasonably related to ensuring compliance with this Section, other applicable City codes and ordinances, and to protect the public interest.

1. Standards for Approval.
  - a. A minimum of 3 feet of clearance shall be maintained on all sides of fire hydrants.
  - b. Clearances to water meters shall be 1 foot behind and 2 feet from the sides measured from the outside edges of the box. The applicant shall pay for meter relocation if this standard cannot be met.

- c. Clearance to manholes and underground pipelines such as City sewers, water mains, and storm drains shall be 7 1/2 feet.
- d. Clearances to underground utilities such as power, telephone, cable TV, and natural gas as well as any required limitations on fill, landscape materials, or structures placed over those facilities shall be provided in writing by the affected utilities. Conditions requested by the utility providers shall be incorporated into the permit.
- e. Proposed encroachments shall not prevent access to, cover, or block the flow of water to or into catch basins, ditches, or swales, and shall not otherwise alter the natural drainage pattern or adversely affect adjacent property. Where drainage is involved, the City Manager or his designee may set specific requirements.
- f. Where the adjacent street has been fully improved to its planned dimension with associated curbs, sidewalks, utilities and street trees, an encroachment may be permitted between the property line and the back edge of sidewalk provided there is a 1 foot minimum clearance between the proposed encroachment and the back edge of the sidewalk and all other clearance standards have been met.
- g. Sufficient room for off-street parking and pedestrian travel shall be maintained and the encroachment shall not result in a loss of area needed for parking, vehicular maneuvering, or pedestrian travel.

2. Conditions.

- a. When the City Manager or designee determines that permitting the requested encroachment may subject the City to potential liability, a condition of permit issuance shall be the filing with the City Recorder of a policy of insurance and form of policy issued by an insurance company licensed to do business in the State of Oregon. The policy shall protect the City, its officers, agents, and employees, and the abutting property owners, lessees and tenants from any and all claims for injury or damage to persons or property that might result from the placing and/or maintenance of the permitted encroachment. The amount of the insurance policy shall be at least the limits of public body liability under the Oregon Tort Claims Act. The policy shall also contain a provision that the City recorder shall be notified at least 10 days prior to any cancellation of such insurance. The permittee shall maintain the insurance for the term of the permit issued. Failure to maintain the insurance shall result in automatic revocation of the permit.
- b. The City Manager or designee may place a time limit on the proposed encroachment as a condition of permit approval.
- c. To ensure that right-of-way/easement encroachments do not contribute to visual blight or create a safety hazard, conditions of permit approval may include a requirement that the encroachment be appropriately maintained.

(Ord. No. 2081, Enacted, 12/07/93)

**42.18.1035 Recording of Permits.**

Approved encroachment permits shall be recorded against the title of the benefiting property and the costs of such recording shall be paid by the applicant.

(Ord. No. 2081, Enacted, 12/07/93)

**42.18.1040 Revocation of Permits.**

All right-of-way/easement encroachment permits shall be revocable by the City at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.

Any permit issued under this section shall be automatically revoked if the permittee fails to begin installation of the allowed encroachment within 60 days after issuance of the permit unless an extension is requested prior to the expiration of the 60 day period.

(Ord. No. 2081, Enacted, 12/07/93)

**42.18.1045 Removal of Encroachment.**

Upon revocation, the permittee or any successor permittee, shall at the permittee's own cost remove the permitted encroachment within 30 days after written notice has been provided by the City unless a shorter period is specified in the notice of revocation.

If the permittee does not remove the encroachment and return the right-of-way/easement area to a condition satisfactory to the City Manager or designee, the City shall do so and the permittee shall be personally liable to the City for any and all costs of returning the right-of-way to a satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways which cost shall be imposed as a lien upon the property on the City Lien Docket.

(Ord. No. 2081, Enacted, 12/07/93)

**42.18.1050 Liability.**

The permittee shall be liable to any person who is injured or otherwise suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the City of Lake Oswego, its officers, agents and employees, for any judgment or expense incurred or paid by the City, its officers, agents or employees, by reason of the existence of an approved right-of-way/easement encroachment.

(Ord. No. 2081, Enacted, 12/07/93)

## **42.18.1055 Enforcement.**

1. Installation or maintenance of an encroachment in violation of LOC [42.18.1010](#) to [42.18.1050](#) or failure to obtain an encroachment permit as required by LOC [42.18.1010](#) to [42.18.1050](#) or to comply with the terms and conditions of an encroachment permit issued thereunder is hereby declared a civil violation subject to enforcement pursuant to LOC [34.04.101](#) to [34.04.145](#).
2. Installation or maintenance of an encroachment in violation of LOC [42.18.1010](#) to [42.18.1050](#) or an encroachment permit issued pursuant to LOC [42.18.1010](#) to [42.18.1055](#) is hereby declared to be a public nuisance as defined by LOC [34.08.400](#), which may be abated pursuant to LOC [34.08.400](#) to [34.08.435](#).

## **OREGON FENCE LAW**

### **§ 96.010<sup>1</sup> Sharing expenses of partition fence**

Whenever there is a fence that is in all respects such as a good husbandman ought to keep on the line of any land, and the person owning or holding a lease for one or more years of the land adjoining thereto makes or has an enclosure on the opposite side of such fence, so that such fence answers the purpose of enclosing the latter's field, meadow, lot or other enclosure, the latter shall pay the owner of such fence already erected, one-half of the value of so much thereof as serves as a partition fence, such value to be determined by the parties. If they cannot agree, the party aggrieved and entitled to compensation for constructing or repairing the partition fence shall be entitled to recover from the other in a civil action the value of one-half of such fence or half of the value of repairing it before any court having competent jurisdiction in the name of and for the use of the owner or lessee of such fence, together with disbursements and costs of action. The prevailing party shall also recover attorney fees at trial and on appeal, to be adjudged by the court. [Amended by 1981 c.897 §30]

### **§ 96.020<sup>1</sup> Failure to repair partition fence**

If any party neglects to repair or rebuild such partition fence as is mentioned in ORS [96.010 \(Sharing expenses of partition fence\)](#) or the portion thereof which the party ought to maintain, the aggrieved party may complain to a justice of the peace, who, after due notice to each party, shall examine the fence and if the justice of the peace determines it to be insufficient the justice of the peace shall so signify in writing to the delinquent party and direct the latter to repair or rebuild it within such time as the justice of the peace adjudges to be reasonable.

### **§ 96.030<sup>1</sup> Repairs by complainant**

If a partition fence is not repaired or rebuilt according to the directive mentioned in ORS [96.020 \(Failure to repair partition fence\)](#), the complainant may repair or rebuild it and recover the value thereof from the delinquent party before any court of competent jurisdiction. The court may award reasonable attorney fees to the prevailing party in an action under this section. [Amended by 1981 c.897 §31; 1995 c.618 §54]

## **§ 96.040<sup>1</sup> Removal of partition fence**

(1) In all cases where the enclosures of two or more persons are divided by a partition fence of any kind and either of the parties thinks it proper to vacate the part of the enclosure of that party or to make a lane or passage between the adjoining enclosures, that party is at liberty to remove the share of that party or part of the partition fence on giving six months notice in writing of such intention to the party owning or occupying the adjoining enclosure, or to the agent of the party, if such party is not a resident of the county.

(2) When one party ceases to improve the land of the party or opens the enclosure, the party shall not take away any part of the partition fence belonging to the party and adjoining the next enclosure if the owner or occupant of the adjoining enclosure, within two months after it is ascertained, pays therefor such sum as is agreed upon by the parties or, if they fail to agree, such sum as is adjudged by two disinterested persons, selected by the parties, which two persons, if they fail to agree, may select a third person, and the three persons shall determine such sum. Such partition fence shall not be removed when by so doing it will expose to destruction any crops in such enclosures.

## **§ 96.050<sup>1</sup> Gate in partition fence**

In all cases where a partition fence exists between the land of two or more persons and a gate is established for passage through their lands, any other person may pass through the gate free, doing no unnecessary damage, and if any such person leaves any such gate open or does other damage to the premises, the person is liable to the aggrieved party in double damages.

## **§ 96.060<sup>1</sup> Removal of fence built on another's land**

(1) When any person has built or builds, by mistake and in good faith, a fence on the land of another, such person or the successor in interest of the person may, within one year from the time of discovering the mistake, go upon the land of the other person and remove the fence, doing no unnecessary damage thereby.

(2) The occupant or owner of land whereon a fence has been built by mistake shall not throw down or in any manner disturb such fence during the period which the person who built it is authorized by subsection (1) of this section to remove it.

## **OREGON HOA EASEMENT LAW**

### **§ 94.733<sup>1</sup> Easements held by owner of lot and by declarant**

- • homeowners association access to lots

(1) Subject to ORS [94.665 \(Authority of association to sell, transfer, convey or encumber common property\)](#), each owner of a lot has an easement through the common property:

**(a)**For access to the owners lot; **and**

**(b)**For use of the common property consistent with the declaration and the bylaws.

**(2)**Except as provided in the declaration, a declarant has an easement through the common property as may be necessary for discharging the declarants obligations or exercising any special declarant right.

**(3)**If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the planned community, an easement for the encroachment exists to the extent that any lot or common property encroaches on any other lot or common property. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this section relieves an owner of liability in case of the owners willful misconduct or relieves a declarant or any other person of liability for failure to adhere to the plat of the planned community.

#### **HOA GOVERNING DOCUMENT HIERARCHY:**

**1) U.S. Constitution**

**2) Federal Law**

**3) State Constitution**

**4) State Law**

**5) Plat**

**6) County & City Ordinances**

**7) CC&Rs (Covenants, Conditions & Restrictions)**

**8) Deed**

**9) Articles of Incorporation**

**10) Bylaws**

**11) Adopted HOA Resolutions, Policies, Rules & Regulations**