



Policies of the Common Property Committee

*Adopted by the Board of Directors on October 24, 2017
Revised by the Common Property Committee on October 19, 2017*

Objective

The objective of this document is to collect those policies that have been adopted by the Board of Directors for Mountain Park Home Owners Association and that relate to management and regulation of the Common Property. Some other Policies that may apply to the use of Common Property are presented in the Policy on Enforcement Control of the CC&Rs and other Issues.

Authority

Each of these policies has been formally approved by a resolution and affirmative vote of the Board of Directors. The MPHOA Bylaws gives the Mountain Park Board of Directors the authority to implement policies governing use of the Common Property and to put in place an enforcement program where appropriate.

I. Encroachment on Common Property

The Policy on Enforcement Control of the CC&Rs and other Issues states that: Encroachment by owners into any common area is prohibited unless specific approval has been granted in writing by the Association and the encroachment is in full compliance with such written approval. The boundaries of the common areas are clearly designated by plot plans and surveyors stakes/pins. In the event any owner is unable to determine the boundaries of the common area with regard to that owner's property, the owner should contact the Association staff for assistance.

Any new encroachment onto Common Property will be limited to landscaping (i.e. bulbs, annuals, perennials, shrubs – not trees). No modification or landscape improvements on adjacent Common Property will be permitted unless there has been specific written approval following the process below:

- a. A Homeowner who desires to modify adjacent Common Property must submit to the Common Property Committee a written request to do so describing the area impacted and the proposed modification. A Common Property Work Request (CPWR) form should be included.
- b. The Common Property Committee will review and may approve the proposal. A written approval will be required before any modification of Common Property is permitted. Since this is a request for exception to established policies and applies to MPHOA property, there will be no process for appeal of the Common Property Committee's decision.
- c. In general, any modification will be limited to a strip of 5 feet or less beyond the property line. Exceptions to this rule will be considered.
- d. The Landscape Stewardship Department will require a commitment to maintenance of any modification such as watering, weeding, etc.

- e. Permission to continue the modification of Common Property may be rescinded at any time.
- f. In no case will the granting of permission for modification of Common Property constitute a waiver of MPHOA ownership of the Common Property. Homeowners will be required to acknowledge this as part of the documentation of permission to modify Common Property.

In an effort to have clear and consistent application of this policy and to maintain an appropriate standard of maintenance for all Common Property, certain situations relating to 1) Legacy Landscaping of the Common Property and 2) Historical Encroachment of Infrastructure need to be defined and clarified.

Legacy Landscaping

Under Article X, Section 2 of the CC&Rs, some Mountain Park homeowners have landscaped and maintained certain parts of Common Property adjacent to their property. The current Policy on Encroachment onto Adjacent Common Property shall acknowledge prior use of Common Property and shall “grandfather” this prior use without any restriction so long as the encroachment only involves landscaping and the homeowner: 1) acknowledges Mountain Park Homeowner Association ownership of the Common Property (item “f.” above) and 2) follows the Maintenance Obligation described in Article X of the CC&Rs and item “d.” above.

Historical Encroachment of Infrastructure

If there has been an encroachment of any infrastructure except landscaping (such as fences, structurally contained flower beds, porches, decks or buildings) these must be removed from the Common Property upon notice by the Association unless a formal agreement is established consistent with the following process.

- a. A Homeowner must apply in writing describing the encroachment (a diagram is preferred) and formally requesting that the Association grant a waiver of the encroachment policy.
- b. The Common Property Committee will review the request for waiver and may grant the request if all of the following conditions are met:
 - Approval for a waiver will only be granted for a specified period of time. The Homeowner must remove the Historical Encroachment prior to the end of the specified time and restore the Common Property to a condition acceptable to the Landscape Stewardship Department.
 - 1. Neighbors will be contacted to determine that the requested waiver is acceptable to them. The Common Property Committee will consider all such input from neighbors but will not be bound by this input.
 - 2. In no case will the granting of waiver constitute a waiver of MPHOA ownership of the Common Property. Homeowners will be required to acknowledge this as part of the documentation of the agreement on Historical Encroachment.
- c. If a structural encroachment could pose a potential hazard to users (all playground equipment would be such an encroachment) then these encroachments will be permitted only if an indemnification of MPHOA is provided by the Homeowner. The indemnification will normally require third-party insurance and must be specifically approved by the MPHOA Board.

- d. Decisions of the Common Property Committee regarding historical encroachment of infrastructure may be appealed to the MPHOA Board.

II. Policy on Invasive Plants on Private Property

The Mountain Park Homeowners Association Common Area Master Plan has defined a priority task to manage invasive plants on the common property and throughout the community. This plan is a complement to Local, State and Federal regulations and plans to control invasive plant species. While Mountain Park has no intent to control plantings on private property, it is important that no plantings of invasive species on private property encroach on to common property and that they be planted in accordance with regulatory requirements. The following Policy defines specifically the requirements to prevent and control the spread of invasive plants on common property.

1. Mountain Park Homeowners Association does not restrict the planting of any species on private property, but does adhere to Local State and federal regulations and plans to prevent and control the spread of invasive plant species.
2. Private property owners in Mountain Park will be responsible to assure that no invasive species currently on their property move on to common property.
3. In the event that an invasive plant species, as defined in the Common Area Master Plan or other action of the Association, moves from a private property on to common property, the private property owner will be responsible for removal and restoration of the common property. Mountain Park staff will notify the homeowner of an invasive plant issue and may advise the homeowner about corrective measures.
4. If the private property owner does not remove the invasive plant species as described above, Mountain Park staff may take corrective measures to remove the invasive plant species from the common property and may charge the homeowner all associated costs.
5. Corrective actions employed by Mt. Park staff and their decision to implement such actions are under the jurisdiction of the Common Property Committee and are not subject to further review if such actions are in compliance with the adopted Common Area Master Plan.

III. Common Property Work Request (CPWR) Procedures

The Landscape Stewardship Department manages 185 acres of Common Property throughout Mountain Park, including forests, parks, 13 miles of walking trails, monuments, street-side beds and islands, and refined landscapes. As stewards, the Department strives to maintain and protect Mt. Park's natural resources, as well as cultivate functional and aesthetically pleasing landscapes throughout "Nature's Neighborhood."

Periodically, a Homeowner may wish to request that the Landscape Stewardship Department consider additional landscape-related care on Mt. Park Common Property. The Common Property Work Request (CPWR) is the way for the Homeowner to submit a request to the Landscape Stewardship Department for consideration:

Common Examples of CPWRs:

- a. Homeowner desires pruning or removal of trees less than 5 inches DBH (Trunk Diameter at Breast Height, which is 4 ½ feet off the ground) or other vegetation on adjacent Common Property.
- b. Homeowner desires pruning or removal of trees more than 5 inches DBH on adjacent Common, please refer to the guidelines in Section IV/D: Large Scale Tree work on Common Property.
- c. Homeowner wants to request permission from the Landscape Stewardship Department to do their own landscape-related activities on Common Property (within the limit of 5 feet).
- d. Homeowner notices repair work needed for MPHOA infrastructure on Common Property, such as a tunnel light not working or a bench in need of repair.

The CPWR is a request, and the Landscape Stewardship Department may accept or decline the request depending on a number of factors including cost, compliance with MPHOA, City of Lake Oswego or other codes, input from neighbors, and the discretion of the Landscape Stewardship Department. If the request is for an action that primarily benefits the Homeowner, such as a request for vista pruning, the Homeowner will be responsible for all of the costs involved. If the vista pruning benefits multiple properties, the cost may be split among those Homeowners. If the CPWR is denied, the Homeowner may appeal to the Common Property Committee.

The normal procedure and time frame for acting on a Common Property Work Request will be:

1. CPWR forms can be found on the MPHOA website or picked up at the Clubhouse. The CPWR can be submitted electronically or in hard copy addressed to the Landscape Stewardship Director.
2. The Landscape Stewardship Director will evaluate the request and will normally respond in no more than 30 days. The decision will be based on consideration of the appropriateness of the request, cost, schedule, compliance with codes and policies and other factors.
3. If a CPWR request involves tree removal, notification of at least two properties in each direction will take place.
4. If the Landscape Stewardship Director concludes that the requested work must be paid for, in whole or in part, by the Homeowner, an estimate of the cost will be sent to the Homeowner for their consideration and agreement before work will begin.
5. The scheduling of approved work will be done as soon as possible depending on the available resources of the Landscape Stewardship Department at the discretion of the Landscape Stewardship Director.

If a Homeowner has a request, concern, or emergency that involves a street, sidewalk, or right-of way, please call the City of Lake Oswego at 503-635-0280; this includes fallen trees, blocked storm grates, and snow or ice related emergencies on streets, sidewalks, or right-of-ways.

IV. MPHOA COMMON PROPERTY TREES VISTA PRUNING, SOLAR ACCESS, BUILDING CLEARANCE, PLANTING and REMOVAL POLICY

On the slopes of Mt. Sylvania, Mountain Park uniquely offers views of Portland and the Cascade Mountain Range to the north and east and the Willamette and Tualatin River valleys to the south

and west. Within Mountain Park are 185 acres of Common Properties owned by the Mountain Park Home Owner's Association. While individual property owners are members of the Association, they do not have any direct ownership rights to the Common Properties. The Common Properties have a rich ecosystem of vital landscapes ranging from natural areas including wetlands, to mini-parks and other cultivated areas. Trees are a vital asset of the Common Properties of Mountain Park estimated at the cumulative value of over 23 million dollars. Homeowners desiring any tree modifications to the Common Properties must obtain approval via the submission of a Common Property Work Request, and subsequent determinations by the Landscape Stewardship Director (and, when necessary, the Common Property Committee). MPHOA accepts financial responsibility for pruning, removing, and mitigating trees that pose an unacceptable level of risk (as determined by an ISA Qualified Tree Risk Assessor). All other approved tree pruning or removing activities are the financial responsibility of the Requestor including permitting and mitigation tree planting.

A. VISTA PRUNING

Vista Pruning is the only acceptable pruning practice where limited limbs are selectively removed, with great consideration for the tree's health. Vista pruning creates a pleasing view from a specific vantage point.

Vista pruning is not topping. Topping is the destructive and obsolete pruning practice of cutting back branches to stubs, which leaves wounds that invite decay and disease into the tree. Topping damages a tree's natural shape, beauty, and overall health. A tree that has been topped cannot produce enough food to maintain healthy functioning. Topped trees respond with a vigorous growth of weakly attached limbs that are more susceptible to breakage and storm damage. They also require more frequent and expensive maintenance. *Topping is the worst thing one can do for the health of a tree; it leads to immediate death in some species and reduced lifespan in others.* Topping is difficult to manage, dangerous for climbing arborists, administratively demanding, creates potential hazards, and is *very* difficult, if not impossible, to correct. Trees that have been previously topped will be evaluated on a case-by-case basis. All approved vista pruning requests will include the cost of planting a mitigation tree to ensure the long term viability of our canopy and its renewal. Requestor will be responsible for any tree replacements.

City of Lake Oswego Tree Code:

Topping means the severe cutting back of a tree's limbs to stubs three inches or larger in diameter within the tree's crown or to such a degree so as to remove the natural canopy and disfigure the tree...Removal means to...remove all or 50% more of the crown...or to damage a tree so as to cause the tree to decline and/or die... Removal" includes but is not limited to topping...

No person shall top a tree without first obtaining a topping permit [which is not issued for the purpose of establishing or maintaining a view].

B. SOLAR ACCESS

Mountain Park supports the installation of solar panels. Appropriate pruning for solar access is permitted at the discretion of the Landscape Stewardship Department. Solar panel installation must also receive approval from the Architectural Committee. If solar access is achieved by the approved removal of a tree, the removal follow guidelines stipulated in Section IV/4 supported by a City Permit, and a mitigation tree be planted regardless of City requirements.

ALL ACTIVITIES DESCRIBED HEREIN ARE SUBJECT TO THE FOLLOWING:

1. Consistent with the City of Lake Oswego, MPHOA does not guarantee the preservation of an existing or previous view.
2. MPHOA does not permit the establishment of a view where none existed at the time of house purchase by the Requestor.
3. Pruning shall be consistent with ANSI A300 Standards for Pruning and not remove more than 15% of the live crown.
4. For removals, the preferable action is to leave the tree for wildlife habitat unless it poses an unacceptable risk as determined by the Landscape Stewardship Director. If such risk is present, the preferred action is to remove the portion of the tree involved in the risk (leaving large wood to decay) and leave the remainder as a wildlife snag.
5. Building clearance pruning may be permitted within the following guidelines:
 - a. Vertical roof clearance of no more than ten (10) feet, as long as pruning does not remove more than the stated 15% live crown.
 - b. Lateral building clearance of no more than ten (10) feet, utilizing directional pruning where possible.
6. Boulevard trees in common property easements such as those in the first 25' of Tanglewood Drive are under the ownership of the HOA. If a homeowner wishes to have the trees pruned or removed, a request for the work can be submitted as a Common Property Work Request. All pruning and removal is at the discretion and under the management of the Landscape Stewardship Director, and is subject to City code. Costs for pruning or removal of boulevard trees are born by the homeowner, as they are responsible for the maintenance of these strips. Although efforts are made to communicate tree activities in these easements, the HOA does not need the homeowner's permission to perform pruning or removal on an HOA-owned tree.
7. Requestor must pay for the work up front.
8. All bids and work are from a tree company of MPHOA's choosing.
9. If the access of private property is necessary for the efficient and safe operation of tree work, the Requestor grants the Tree Company unobstructed access to tree workers and equipment. MPHOA is not responsible for damage to private property during the course of work as described. However, the Tree Company chosen to do the work must carry appropriate insurance.
10. At no time is the homeowner to guide, direct, or influence the work of the arborists on site. Such actions are disruptive, dangerous and violate the contract held between MPHOA and the Tree Company. Such actions permit the arborists to cease their work; offering no refund on unfinished work.
11. No governing ordinances or laws will be violated in the course of tree work on Common Property.

C. TREE PLANTING

Revitalization and renewal of our tree canopy is a promise to future generations. As such, it is important that tree planting activities occur on a regular basis, and the HOA is dedicated to such practices on Common Property. Selecting the right tree for the right place is

important to not place an undue burden on the HOA or its neighbors. If you wish to plant a tree adjacent to Common Property, feel free to contact the Landscape Stewardship Director for a consultation and keep in mind the following key points:

1. Fast growing trees often grow at the expense of root stability.
2. If the tree trunk grows to a diameter that spans the property line, that tree is now under the shared ownership of the HOA and the homeowner.
3. The HOA has the right to cut back any branches hanging over the property line, to the property line.
4. If a tree planted on private property causes excessive litter such as rotting fruit, the HOA may require the owner to remove the tree at the owner's expense, subject to City code.
5. If a tree planted on private property causes infrastructure damage on Common Property such as pathways, the HOA may require the owner to remove the tree at the owner's expense, subject to City code and cover the cost of the infrastructure repair.

D. LARGE SCALE TREE WORK

1. Requestor completes CPWR form and submits to MPHOA, or submits online. The following need to be included in the CPWR:
 - a. Requestor identifies the specific trees where vista pruning, solar access pruning, or building clearance pruning (hereafter referred to as pruning) is requested. Trees must be identified on Common Property by the Requestor with pink flagging tape wrapped around the tree without damaging the tree (i.e. the use of nails or other items to secure flagging tape), at the time of CPWR submission.
 - b. Requestor identifies *one* specific component of their view (vista) they wish to have maintained by pruning identified tree(s) and the vantage point from which the view is obtained; an entire view horizon may not be identified. Examples of vistas are: Mt Hood and Mount St. Helens.
 - c. Photos must be included with vista component, building clearance concerns and/or solar access concerns identified.
 - d. For solar access requests, the CPWR shall be accompanied by a report from a solar power professional identifying the tree(s) involved and the recommended actions.
2. Landscape Stewardship Director receives CPWR.
3. Landscape Stewardship Director visits site and assesses the requested actions in consultation with the Requestor where possible.

Landscape Stewardship Director determines the following:

 - Have the tree(s) in question been previously topped?
 - Does the tree play a critical role in local soil stability, storm water mitigation, or habitat?
 - Overall tree health.
 - Is removal and replacement appropriate and feasible?
 - Have the tree(s) been identified in the 2014 Tree Inventory & Management Plan? If so, what was the recommended action?
 - Will the proposed action adversely affect the 'reverse' view of neighbors below and/or other neighbors?

- Do the tree(s) play a vital role in upholding the “Nature’s Neighborhood” intent and aesthetic?
 - Is the tree an invasive or nuisance species?
 - The extent to which the vista is diminished by factors other than the tree(s) involved in the claim.
4. Landscape Stewardship Director obtains a bid(s) for the proposed tree work from an ISA Certified Arborist Company of his or her choosing. The Arborist proposal must follow the City of Lake Oswego tree permitting requirements. The Requestor will attach the proposal to an addendum to the original CPRW and submits it to the Landscape Stewardship Department who will then bring the CPWR with the Arborist report/proposal to the Common Property Committee for review.
 5. Landscape Stewardship Department will notify the Requestor of the Common Property Committee’s decision. The Common Property Committee’s decision is final.
 6. After final approval from the Common Property Committee, Mt. Park HOA will need to receive payment from the homeowner and Mt. Park HOA will pay the Arborist.

V. Easements on Common Property Benefitting Adjacent Property Owners

The Developers of Mountain Park and, subsequently, the Mountain Park Homeowners Association have granted easements over Common Property for the benefit of adjacent homeowner properties. These easements address driveways, flag lots and the strip of land between most property lines and the adjacent street or curb line. These easements describe the following three rights and obligations:

1. The abutting property owner shall have an irrevocable easement of ingress and egress over such Common Property.
2. The easements are not dedicated to the public as public ways.
3. It shall be the duty of the property owner to improve and maintain in proper condition the area between the property line and the nearest curb or improved street.

The specific notation of policy governing these easements on Common Property for adjacent property owners appear in a number of documents including:

- A. The Declaration of Restrictions of Mountain Park Corporation (March 29, 1968).
- B. Applicable Mountain Park Plats that describe the plans and layouts of certain neighborhoods in Mountain Park.
- C. Individual lot plans and descriptions.

Any and all of these sources are the basis for the applicable Policy of Mountain Park Homeowners Associations as described in 1, 2, and 3 above.