



Policies & Practices of the Common Property Committee: Encroachment

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1. ENCROACHMENT ON COMMON PROPERTY

1.1 OVERVIEW

This policy is intended to clarify the Association's approach to limiting harmful encroachments onto Common Property. It does not create a right for any owner to maintain any type of encroachment, nor does it constitute a waiver of the Association's right to require the removal of any encroachment at any time and to exercise all legally available remedies for encroachments. This policy is further intended to affirm each owner's duty to be familiar with the property lines of their lot and confirms the unavailability of adverse possession of Common Property by an owner. Accordingly, by this policy any encroachment by an owner onto Common Property shall be deemed permissive, and such permission shall be revocable by the Board of Directors at any time unless otherwise agreed in writing.

An encroachment is an action that violates the property ownership rights of the Mountain Park Home Owners Association (Association). Encroachments deny all Mountain Park members equal access to Common Property, in violation of the CC&Rs. Accordingly, the placement of any structure or other hardscape on Common Property is prohibited.

See Section 10 regarding boulevard tree care and Section 15 for information on easements.

No modification of or landscaping on Common Property will be permitted unless there has been specific written approval by the Association. Modifications include the removal, addition, or alteration (e.g. trimming) of any vegetation on Common Property.

The Association treats encroachments on Common Property that are hardscape encroachments differently than encroachments that are plantings on Common Property within five feet of an adjacent owner's property line. The provisions applicable to these types of encroachments are found in Sections 1 and 2.

This policy is intended to replace the previous waiver program. The Association will grant extensions for removal of the encroachment for the period of time remaining on the previously granted waiver unless the waiver is revoked by the Association pursuant to the terms of the waiver. No new waivers shall be issued. Please see Section 2.2 for more information. Upon adoption of these provisions and in accordance with the Mountain Park CC&Rs, all encroachments, including encroachments that are subject to existing waivers, are subject to a Notice to Remove the Encroachment (NRE). The notice will require the removal of the encroaching structure(s) and any other hardscape and restoration of the Common Property to a condition acceptable to the Association at the homeowner's sole expense. The timeline for removal and restoration will be determined by the Association.

1.2 PROPERTY LINES

If there is uncertainty over boundaries of private property adjacent to Common Property, it is the homeowner's responsibility to provide evidence of his/her legal property boundaries. Please see Appendix I for City and County resources and records regarding property lines. **If there are questions or disputes, homeowners are responsible for obtaining a legal survey of their private property at the homeowners' sole expense.**

1.3 LANDSCAPING THAT ENCROACHES ON COMMON PROPERTY

Any landscaping encroachment by an adjacent property owner onto Common Property is limited to bulbs, annuals, perennials, and shrubs beyond the adjacent private property owner's property line. No trees may be planted, altered, or removed. Hardscape of any type is not permitted; this includes but is not limited to fences and other structures.

Landscaping encroachments may be permitted on Common Property located between the homeowner's property and the street adjacent to the Common Property and are subject to the same requirements and limitations on plantings and hardscape as provided in these rules.

Any modification of Common Property without prior approval is a violation subject to the penalties provided in the penalty schedule.

A homeowner who desires to landscape Common Property must submit a written request to the Landscape Stewardship Department (LSD) describing the area affected and the proposed modification. A Common Property Work Request (CPWR) must be submitted as part of the request. <http://mtparkhoa.com/wp-content/uploads/2019/08/CPWR.pdf>

The Common Property Committee will review all LSD-referred CPWR requests for landscape modifications and may approve or deny the request based on the information provided.

If the request is allowed, the Landscape Stewardship Department will require a written agreement from the homeowner to maintain the property as specified by the LSD and any other Association requirements.

Approval to modify or maintain Common Property may be rescinded at any time. The approval is not transferable upon sale or title transfer of the homeowner's property. New homeowners may apply with a written request to the Landscape Stewardship Department.

In no case will the granting of permission for the limited modification of Common Property constitute in any way the relinquishment of Association ownership of the Common Property. Homeowners will be required to acknowledge the Association's ownership of the affected Common Property in order to obtain permission to modify the Common Property.

Notice: Homeowners cannot claim ownership of Common Property through adverse possession.

1.4 PREVIOUSLY APPROVED LANDSCAPING ON COMMON PROPERTY

Homeowners who have previously received approval from the Association to maintain landscaping on Common Property are required to follow the requirements provided in these provisions and maintain the Common Property in accordance with and under the supervision and guidelines established by the Landscape Stewardship Department and the Common Property Committee.

The approval by the Association to maintain Common Property is not transferable upon the homeowner's property sale or title transfer.

Previously approved permission for modification of Common Property does not constitute relinquishment of Association ownership of the subject Common Property. Homeowners will be required to acknowledge Association ownership in writing.

1.5 RELINQUISHING MAINTENANCE OF COMMON PROPERTY

Except for the area between the property and the curb line, homeowners may elect to discontinue maintenance of Common Property adjacent to their property. Upon notice of this election by the homeowner, the previously approved landscaping will be restored to an acceptable condition as determined by the Landscape Stewardship Department and the Common Property Committee at the homeowners' sole expense. The Landscape Stewardship Department will resume maintenance of the affected Common Property. Future maintenance will adhere to updated Common Property maintenance standards and may include removal and replacement of existing landscaping. See Section X.2 of the MPHOA CC&Rs.

2. ENCROACHMENT OF HARDSCAPE ON COMMON PROPERTY

Encroachment of any structure or other hardscape, such as fences, walls, structurally contained flower beds, porches, decks, buildings, pools, stairs, or water features, must be removed from the Common Property. Such hardscape encroachments, except as provided in these rules, are violations subject to the penalties provided in the penalty schedule.

Upon the determination of the Common Property Committee that there is an encroachment, the Compliance Manager will issue a Notice to Remove the Encroachment (NRE) that identifies the encroachment and the requirements for its removal.

The owner may request a hearing to dispute the determination that there is an encroachment and the requirements for its removal. The hearing will be held by the Common Property Committee according to the procedures provided for hearings and appeals regarding notices of violations.

2.1 REMOVAL OF ENCROACHMENTS

An encroachment must be removed within 60 calendar days of the Notice to Remove Encroachment (NRE), but the time to remove the encroachment may be extended by the Association pursuant to section 2.2, if the property owner

agrees to the following requirements and the terms of any time extension allowed by the Association.

- A) The owner acknowledges Association ownership of the subject Common Property.
- B) The owner signs documentation of insurance indemnification confirming that the Association is released from any legal liability regarding the property until the encroachment is removed. Such indemnification will require third-party insurance and must be specifically approved by the Association's Board of Directors.

Extensions of time to remove encroachments will not be granted if the encroachment impedes Association staff's access to Common Property unless an agreement acceptable to the Association is reached to accommodate access by staff.

Notice: Hazardous encroachments must be removed immediately at the homeowner's sole expense.

2.2 TIME EXTENSION FOR REMOVAL OF AN ENCROACHMENT

If requested by the owner, the time for removal of an encroachment may be extended for the following reasons:

- A) There is an existing waiver previously granted by the Association that has yet to expire.

The Association will extend the time for removal of the encroachment for the period of time remaining on the previously granted waiver unless the waiver is revoked by the Association pursuant to the terms of the waiver.

Upon the expiration or revocation of an existing waiver, no new waiver will be issued and the encroachment must be removed upon the termination of the waiver, unless the owner provides good cause for necessitating an extension of time to remove the encroachment as defined in section 2.2 B.

- B) If there is not a currently existing waiver regarding the encroachment, the Association may allow a time extension because of hardship, if the owner shows good cause for an extension of time to remove the encroachment.

Good cause means that the owner has failed to remove the encroachment because of unavoidable or excusable circumstances that were reasonably beyond the owner's control. Examples of good cause include 1) Delays that were not caused by the owner and were due to requirements of government entities and other Association committees. 2) Existing integral parts of the primary residence structure.

2.3 COSTS FOR REMOVAL OF HARDSCAPE ENCROACHMENTS

The owner of property adjacent to the encroachment must bear all liability and costs for the maintenance of the encroachment until it is removed, as well as all costs for the removal of the encroachment and restoration of the Common Property to standards approved by the LSD under the direction of the CPC.

APPENDIX I

Lake Oswego GIS Map: <https://www.ci.oswego.or.us/maps/interactive>

The Lake Oswego Interactive GIS Map is the electronic map provided by the City of Lake Oswego (LO) to help determine private and public property boundaries throughout the city. The Interactive Map provides all LO citizens with an initial reference for determining public and private property boundaries based on global geographic data at no cost to citizens. Go to the link listed above and then to New LO Map.

Disclaimer: The maps available on the City of Lake Oswego's web site are for information purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review, or consult, the primary data and information sources to ascertain the usability of the information. This map represents the best data available at the time of publication. While reasonable effort has been made to ensure the accuracy of the information shown on this page, the City of Lake Oswego assumes no responsibility, or liability, for any errors, omissions, or use of this information.

Clackamas County Surveyor: <https://www.clackamas.us/surveyor>

Responds to survey and property questions; maintains filed surveys, plats, road records; reviews, approves new land division plats; recovers, restores and protects Public Land Corners.

Clackamas County's GIS Map Disclaimer: "The information and maps accessed through this web site provide a visual display for your convenience using data from Clackamas County's Geographic Information System. Every reasonable effort has been made to assure the accuracy of the maps and associated data from several sources. Clackamas County makes no warranty, representation or guarantee as to the content, sequence, accuracy, timeliness or completeness of any of the data provided herein. Clackamas County explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. Clackamas County shall assume no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused. Clackamas County assumes no liability for any decisions made or actions taken or not taken by the user of this information or data furnished hereunder. Users are strongly advised to verify from authoritative sources any information displayed in this application before making decisions.

Multnomah County Surveyor: <https://multco.us/surveyor>

The state of Oregon requires each county to have a County Surveyor. We provide a number of services required by the state, as well as support for county programs and the public.

These services include:

- Providing access to public survey records
- Reviewing surveys submitted by land surveyors
- Filing and indexing surveys in the public survey records
- Review and approval of land division plats, including subdivisions, partitions and condominiums
- Maintaining and restoring public land survey corner monuments
- Survey support for county roads and bridges, as well as other county and local agencies
- Helping the public, county and local agencies with surveying expertise