

**KIMBERLY WOODS HOMEOWNERS ASSOCIATION
RESOLUTION OF THE BOARD OF DIRECTORS**

COMMON PROPERTY ENCROACHMENT POLICY

- A. **Background** - The purpose of this policy is to maintain the livability of the Kimberly Woods neighborhood while mitigating potential liability, adverse possession and other harm to the Association as it relates to common property encroachment. Article XV of the Kimberly Woods Declaration of Covenants and Restrictions ("Declaration") states in part that "Private open space tracts have been established within the plat, known at A, B, C, D and E. These tracts shall remain in their natural condition and shall provide passive recreational uses in maintaining natural vegetation. The Association shall have ownership of these tracts and shall be responsible for the liability and maintenance of such tracts." The open space tracts also include F on the plat.
- B. **Policy** - 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.
- C. **Definition of Encroachment** –
1. The following is considered encroachment - planting lawn, planting non-native plants and trees, or installing walkways, decks, structures or otherwise altered the common space into usable space for the homeowner.
 2. The following is NOT considered encroachment - clearing of non-native plants and vines, and/or spreading bark dust a reasonable distance (approximately 10 feet) from the property line. Planting of native plants and trees as defined by Westlake Homeowners association is permitted. Attached
- D. **Enforcement Procedure** - If a homeowner is suspected of encroachment into common space the following procedure will be used:
1. The Board of Directors will contact the homeowner to inform them of the potential encroachment, and to explain the remedy and waiver options.
 2. After 30 days, the Association will write a certified letter to the homeowner requesting the encroachment be remedied or the waiver processes be completed. See enclosed "Sample Encroachment Notification Letter."
 3. The homeowner will be given 60 days from the date of the letter to remedy the encroachment or complete the waiver process. After 60 days, the Board of Directors may retain legal counsel to file an injunction against the homeowner and begin legal proceedings. If injunctive relief is granted, the Association will

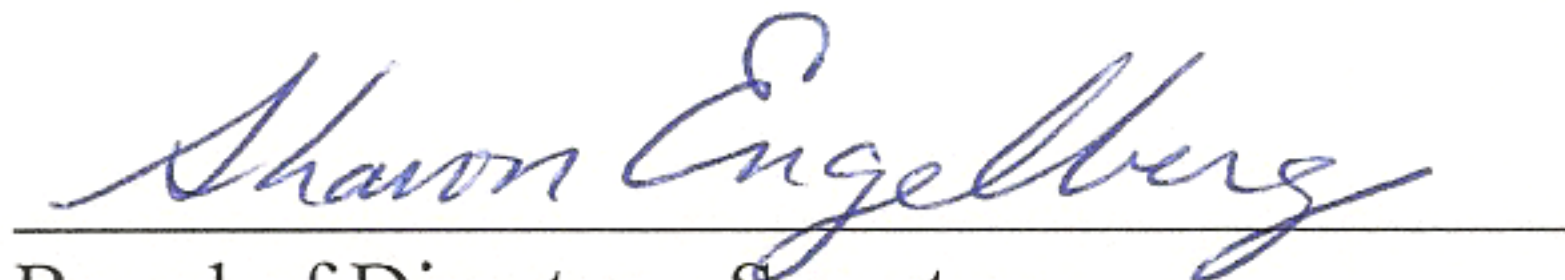
seek recovery of all legal fees and costs, survey costs and other encroachment mitigation expenses. These expenses will be assessed and will be subject to collections based on the KWHOA Collections Resolution dated 6-10-2014 or any subsequent Collections Resolution adopted by the Board of Directors.

E. **Waiver Process –**

1. The homeowner must complete the “Waiver Agreement and License to Use form” found on the Association’s website.
2. The Board of Directors will review the request for waiver and grant the request only if all of the following conditions are met:
 - i. The encroachment area is well kept, visually pleasing, does not pose a potential risk to users, is not a nuisance to neighboring lots, and is not part of a Sensitive Lands Resource Protection (RP) Area as defined by the City of Lake Oswego.
 - ii. The waiver may only be granted for a specific period of time and not more than two years. At the end of that time, or if the property is sold, the encroachment either must be remedied, or a new waiver process completed.
 - iii. In no case will the granting of waiver constitute a waiver of the Association’s ownership of the Common Property.
 - iv. If a structural encroachment exists, the Association may require the homeowner to purchase additional liability insurance through a third-party agent or agency approved by the Board of Directors.
 - v. The Board of Directors has the sole authority to grant or deny any request for waiver.

F. The undersigned, Secretary of the Association, hereby certifies that this resolution is a true record of the resolution adopted by the Board of Directors at the meeting held in accordance with the Bylaws of the Association on June 17, 2019.

Dated: 6/17/2019


Board of Directors, Secretary
Kimberly Woods Homeowners Association

----- Sample Encroachment Notification Letter -----

Date

Name and Address of Homeowners

Name of Homeowners,

The Kimberly Woods Homeowners Association is officially notifying you that you may have encroached onto Association Common Property.

Attaches is a copy of your legal plot description and we have sketched the area that is known to be, or suspected to be, in encroachment.

We request you complete one of the following in the next 60 days:

1. Remedy the encroachment by returning the area not within your legal lot lines to a condition consistent with the native Woodland Common Property and planted with native plants as designated in the attached HOA Plant List for Woodland Common Property.
2. Complete the attached Waiver Agreement and License to Use form and return it to the Association Board of Directors for review and approval. If the application is denied for reasons as stated in the Common Property Encroachment Policy, you will need to remedy the encroachment area as stated in 1 above.

If you fail to complete one of the two options within 60 days, the Board of Directors may retain legal counsel to file an injunction against the homeowner and begin legal proceedings. If injunctive relief is granted, the Association will seek recovery of all legal fees and costs, survey costs and other encroachment mitigation expenses. These expenses will be assessed and will be subject to collections based on the KWHOA Collections Resolution dated 6-10-2014 or any subsequent Collections Resolution adopted by the Board of Directors.

Sincerely,

_____ Date _____

Title,

Kimberly Woods Homeowners Association Board Member

Email address, address and phone number

Attachments:

1. Plot Plan with encroachment sketch (Plot obtained from <http://gis.ci.oswego.or.us/pub/>)
3. Common Property Encroachment Policy
4. Waiver Agreement and License to Use form
5. HOA Plant List for Woodland Common Property

**KIMBERLY WOODS HOMEOWNERS ASSOCIATION
COMMON PROPERTY ENCROACHMENT**

WAIVER AGREEMENT AND LICENSE TO USE

- A. I/We, _____ are owners of the property at _____ . “Homeowner” As Homeowner, we acknowledge there is or may be an encroachment as defined in attachment, onto the Common Property of Kimberly Woods Homeowners Association “Association.”
- B. In consideration of the impact of this encroachment, the Association grants a waiver of its policy on Encroachment on Common Property and will grant a License to Use allowing the encroachment, subject to the following conditions:
1. In no case shall the granting of Waiver and License to Use constitute a relinquishing of the Association’s ownership of the Common Property.
 2. The Homeowner shall at all times indemnify and hold harmless the Association, its directors, contractors and other representatives, for any and all claims of any type, including but not limited to claims for damage to property, injury to persons, or arising from the sale or attempted sale of the property, related in any way to the encroachment.
 3. At all times the Homeowner shall be responsible for the general upkeep, maintenance and repair of the encroachment area and structures and all associated costs.
 4. At all times the Homeowner shall be required to perform any upkeep, maintenance and repair of the encroachment area as directed by the Association or other government entity and all associated costs.
 5. The Homeowner shall not expand the encroachment in any way and is encouraged to return any and all of the encroachment to its natural state.
 6. At any time and at its sole discretion, the Association may terminate this Waiver and License to Use and require the Homeowner to remedy the encroachment.
 7. Upon the expiration of this Waiver and License to Use, the Homeowner shall remove the encroachment and restore the encroachment to a condition acceptable to the Association, or the Homeowner must complete a new Waiver and License to Use.

- C. Consistent with ORS 94.655, this Waiver and License to Use is granted by the Kimberly Woods Homeowners Association and valid until the property is sold or transferred or for a 2-year period of time, whichever occurs first. Subject to all conditions listed in II (above), Kimberly Woods Homeowners Association will renew the agreement every 2 years.

Kimberly Woods Homeowners Association will also offer this Waiver and License to Use process (as found on the KHWOA website) to new owners of this property.

This Waiver and License to Use will expire on _____.

This Waiver and License to Use is agreed to and executed on _____ by:

Kimberly Woods Homeowners
Association, Owner

Kimberly Woods Homeowners
Association, Representative

Recommended plant materials lists for the Desired Future Condition of the ~~Westlake~~ HOA forest tracts.

Kimberly Woods

Shrub and tree buffers

Scientific name	Common Name	Form	Annual or Perennial
Bare-root trees and shrubs			
Amelanchier alnifolia	Western serviceberry	Shrub	Perennial
Corylus cornuta var. californica	Western hazelnut	Tree	Perennial
Crataegus douglasii	Black hawthorn	Tree	Perennial
Euonymus ursinus	Western wahoo	Shrub	Perennial
Holodiscus discolor	Oceanspray	Shrub	Perennial
Mahonia aquifolium	Tall Oregon grape	Shrub	Perennial
Philadelphus lewisii	Mock-orange	Shrub	Perennial
Pinus ponderosa	Ponderosa pine	Tree	Perennial
Quercus garryana	Oregon white oak	Tree	Perennial
Symphoricarpos albus	Snowberry	Shrub	Perennial
Viburnum ellipticum	Oregon viburnum	Tree	Perennial

Riparian stream woody plants

Scientific Name	Common Name	Form	Annual or Perennial
Bare-root trees and shrubs			
Amelanchier alnifolia	Western serviceberry	Shrub	Perennial
Lonicera involucrata	Twinberry	Shrub	Perennial
Physocarpus capitatus	Pacific ninebark	Shrub	Perennial
Rosa pisocarpa	Cluster rose	Shrub	Perennial
Rubus parviflorus	Thimbleberry	Shrub	Perennial