



COMMUNITY DEVELOPMENT

SUBJECT: EXISTING FENCES IN THE CITY RIGHT OF WAY

FROM: KYLE THOMAS, PE – CONSTRUCTION AND RIGHT-OF-WAY MANAGER

DATE: MAY 31, 2018

RE: STANDARD OPERATION PROCEDURE FOR THE RELOCATION OR PERMITTING OF AN EXISTING FENCE

Purpose:

To provide a Standard Operation Procedure (SOP) for existing fences in the City's Right of Way (ROW)

Background:

On July 22, 2015 and again on February 13, 2017 the City Code Enforcement Division sent courtesy letters to the known fencing contractors in the greater Bend area. The letter provided clarification on state and local code requirements regarding height and authorized locations for constructing fences within the Bend city limits. Current Development Code language along with a diagram were enclosed as reference materials. Through community outreach it was our goal to proactively educate contractors to prevent fences from being installed in violation and avoid civil penalties from being issued.

Standards:

Bend Development Code (BDC) [3.2.500](#) Fences and Walls outlines requirements for any fence that is constructed on private property.

3.2.500 Fences and Retaining Walls. [Revised 3/18](#)

This section sets standards for new fences and retaining walls, including maximum allowable height and materials, to promote security, personal safety, and privacy. The following standards apply to all fences and retaining walls:

- A. The City may require installation of fences and retaining walls as a condition of development approval.
- B. All fences and retaining walls, regardless of district or location, shall comply with the following requirements:
 1. The allowable height must be measured from the lowest grade at the base of the fence or retaining wall unless stated otherwise. Posts, trellises, lattice and any other material placed on top of the fence is considered to be part of the fence when measuring the overall height. As illustrated in Figure 3.2.500.A, when a fence is placed atop a retaining wall, the height of the fence is determined exclusive of the height of the retaining wall such that the top of the retaining wall is considered the finished grade.

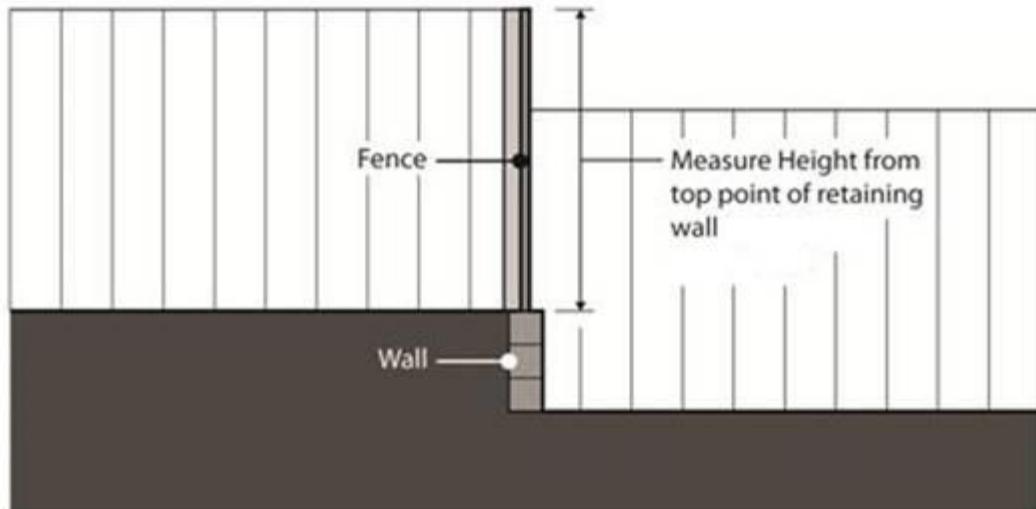


Figure 3.2.500.A

2. Fences to be built as required buffers shall comply with [BDC 3.2.300](#).
3. Fences and retaining walls shall comply with the clear vision area standards of [BDC 3.1.500](#).
4. Retaining walls may require a building permit and/or approved engineered plans.
5. Fences over seven feet in height require a building permit and/or approved engineered plans.
6. Fences and retaining walls may be placed on property lines.

C. Fences.

1. Residential Districts.
 - a. Fences located in the front setback must not exceed three and one-half feet in height, except decorative arbors, gates, and similar features which must not exceed six feet in length.
 - b. On corner lots, as illustrated in Figure 3.2.500.B, only one front setback area restriction applies relative to the three and one-half feet fence height restriction. The fence along the nonfront designated area must not exceed six feet in height from the area subject to the front setback to the rear property line.

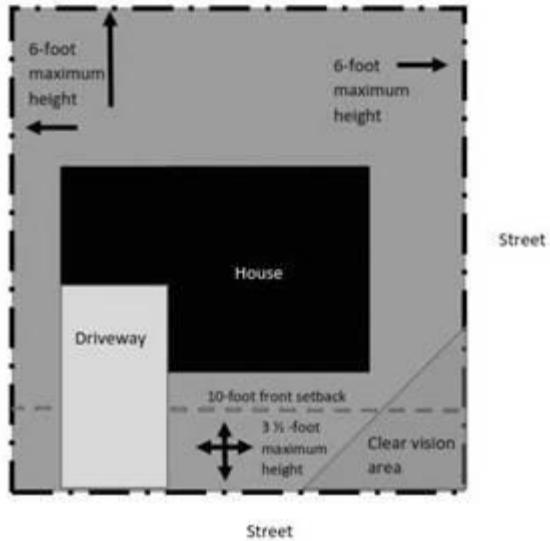


Figure 3.2.500.B Fence Example

- c. Fences must not exceed six feet in height in the side and rear setbacks. If there is a grade difference between two sites which would make a six-foot-high fence inadequate to provide for privacy, such fence must be no higher than six feet above the highest grade within five feet of the common boundary line, as illustrated in Figure 3.2.500.C.

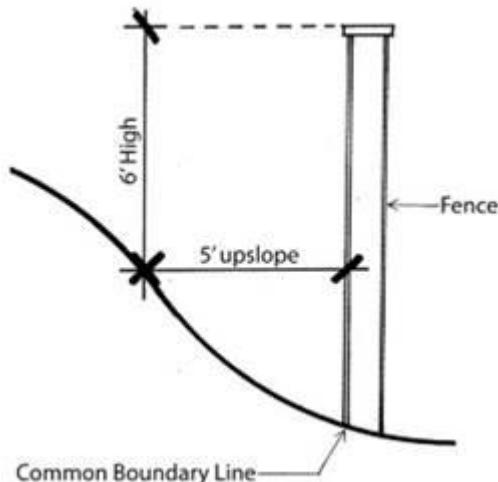


Figure 3.2.500.C

- d. Barbed wire and razor wire fencing is prohibited.

2. In all other districts fences shall not exceed eight feet in height.
3. The following fences are exempt from these standards, except for the requirement to comply with the clear vision area standards in [BDC 3.1.500](#) and any applicable building code requirements:
 - a. Any security fencing around a public or quasi-public utility facility.
 - b. Fences related to a park or approved recreational facility or a school athletic use including (but not necessarily limited to) tennis courts, driving ranges and ball fields.

c. Any fence exempted under subsections (C)(3)(a) and (b) of this section that is in excess of 20 feet in height requires a Conditional Use Permit.

D. Retaining Walls.

1. The maximum allowable height of retaining walls is six feet, with the following exceptions:

a. Retaining walls and terraced walls may exceed six feet when permitted as part of a Site Plan Review or land division approval. [Ord. NS-2303, 2018; Ord. NS-2251, 2015; Ord. NS-2016, 2006]

Revised SOP for fences:

The City of Bend is modifying their current informal fence policy and creating a new policy with respect to existing fences located in the City ROW. An existing fence may remain in the City's ROW if it:

1. Meets the front yard height requirements based on the BDC requirements at the time of construction;
2. Does not obstruct any pedestrian path, walkway, sidewalk or trail;
3. Does not restrict sight distances as provided by current standards and specifications;

Any property owner with a fence in the ROW is advised of the following conditions:

1. The City at any time can request the property owner to move the fence at their expense;
2. Franchise utility companies have a right to maintain their infrastructure and may require access to the ROW at any time, which could include removal or alterations to a fence;
3. A fence shall not restrict access to any City or Franchise utility and if access is necessary all rights are reserved and the City or Franchise may enter the ROW without notification, whether or not there is an emergency;
4. The property owner will indemnify and hold harmless the City, its officers, employees and volunteers from any liability associated with the private use of the ROW;
5. The City shall not accept any responsibility or liability for the property owner's fence or any injuries, losses, or damages related to or caused by the location, existence, or condition of fence;
6. Maintenance of the fence is the sole responsibility of the property owner;
7. Relocation of an existing fence may be required if 60% of the length of the fence or 60% of the support posts have to be removed and replaced due to damage, deterioration due to lack of maintenance or if it is in conflict with a franchise or City utility; and,
8. The property owner shall enter into an encroachment agreement with the City of Bend, and the agreement will be recorded with the Deschutes County Clerk and Recorders office at the owners expense. This agreement will run with the land until such time that, the City request the fence to be removed or the fence is replaced per condition 7 above.

The City reserves the right to require a fence to be moved out of the ROW at any time. Allowing a property owner's fence to remain in the City's ROW does not give the property any rights, implied or otherwise, to the City's Right of Way.

This SOP does not apply to new fences. All new fences shall be installed out of the City's ROW per the current City development code.