

The following is the existing Canby code under Subsections Fences 16.08.110 and Arbors 16.08.115 with additions in **bold underlined**, deletions in ~~double-strikeout~~, and Staff comments in *italics* after each proposed edit. Highlighted text is related to discussions between Planning Staff and the Planning Commission during Work Session #6 or other new edits.

#### 16.08.110 Fences.

**The City's fence code is intended to balance privacy with safety and aesthetic considerations.**

*Staff Comment: This addition is meant to establish the foundational principle of the fence code.*

- A. **In no case shall a fence be constructed in the vision clearance triangle of a street, alley, or pedestrian/bicycle pathway. This applies in all zones and in all lot configurations and supersedes all permitted fence heights identified in the subsections below. As defined in Chapter 16.04, vision clearance triangles must be free of obstructions between two and one-half feet and ten feet in height.**

*Staff Comment: This was added up front to emphasize that the vision clearance concept applies everywhere, which is something Planning Commission advocated for in their feedback. Highlighted text was added per comments by Commissioner Driskill.*

- B. Fences not more than three and one-half feet in height may be constructed within the **front** street setbacks of any R-1, R-1.5, R-2, **C-R**, or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or ~~street yard~~ along an alley; ~~provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.~~

*Staff Comment: This was reworded consistent with our proposal to be more permissive in street-adjacent side yards (see (C) below). The vision clearance language was moved to its own provision (see (A) above).*

- C. On corner lots, **fences may be constructed up to six feet in height along the secondary street frontage in the side yard setback (i.e., in the street-adjacent side yard), except where the side setback overlaps the lot's front setback. As with all fences within the front setback, fences that continue into the front setback must then step down to a maximum of three and a half feet.** ~~the 3.5-foot height limit will apply within the required setback along both street-facing yards.~~

*Staff Comment: This provision was the primary driver for us changing the fence code. Due to homeowner feedback, we are proposing to allow six-foot fences to wrap around into the street-adjacent side yard on corner lots, up to the front yard setback. This allows people to "box in" their back yards more easily. Right now, the fence either has to be low or pushed back to the setback line near the main structure.*

- D. **On lots where a rear yard abuts a public street or alley (such as "through lots" as defined in Chapter 16.04), rear yard fences may be constructed up to six feet in height.**

*Staff Comment: This new bullet aims to address a condition for which the existing code is silent. In practice, most new subdivisions already place full-height fences along rear yards where they back onto streets (e.g., at the edge of new neighborhoods).*

~~E. No more than one row of fencing is allowed within a required street yard setback.~~

*Staff Comment: Planning Staff and the Planning Commission agreed that there is no compelling reason to prohibit parallel rows of fencing. In many cases, two homeowners have their own adjacent back-to-back fences.*

- F. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews. **Any such requirement shall be tied to a specific adverse impact caused by the project (including impacts related to land use compatibility) and not required purely for aesthetic reasons.**

*Staff Comment: Language was added to this provision to add clarity and purpose. Added text in highlights was added per comments by Commissioners Driskill and Jarosh.*

Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, ~~or Planned Unit Development zones,~~ **including property lines where residential uses abut these zones.**

*Staff Comment: Planning Unit Developments were removed from this provision since PUDs are often residential neighborhoods, where eight-foot fences are not appropriate. A PUD could propose specific fence heights and include them in the land use approval for the PUD. Added text in highlights was added per comments by Commissioners Driskill and Hutchinson.*

- G. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)
- H. ~~In all R-1, R-1.5, R-2, C-R, and C-1 zones, private fences along a public pedestrian/bicycle pathway~~ **may be constructed up to six feet in height, except within a 20-foot setback along the street where they must step down to no more than three and one-half feet, as with other fences in those zones. In the C-2, C-M, M-1, and M-2 zones, private fences along public pedestrian pathways may be constructed up to eight feet but may not conflict with vision clearance requirements.** ~~shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence:~~
- ~~1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below:~~
  - ~~2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below:~~
    - ~~a. Solid fencing shall be no greater than four (4) feet in height; or~~

- ~~b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or~~
- ~~c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.~~

*Staff Comment: This existing code provision was confusing in structure and has been replaced with simpler requirements. The proposed replacement language is more permissive in two ways: a) allowing homeowners to “box in” residential side and back yards with six-foot fences adjacent to pathways, and b) not regulating fence material. Both are a response to comments that Staff have received from the public.*

*Staff heard from Commissioner Driskill that graphic guidance (including tables and illustrations) should be made available to property owners clarifying where and how vision clearance triangles apply. Staff will prepare these materials outside of the code update process, but will present the materials to the Planning Commission for their comments prior to general distribution.*

- I. Use of hazardous materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:
  - 1. ~~Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.~~ **Electrical fences categorically permitted by Oregon House Bill 4027.**

*Staff Comment: Livestock-based agriculture is not an allowed use in any of the City's zones. Therefore, this provision has no purpose. Replaced with provision related to Oregon state law that protects installation of some “battery-charged” electrical fences.*

- 2. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

#### **16.08.115 Arbors**

- ~~A. Arbors that are constructed of proper design (height and setbacks) and in accordance with the design standards of the particular zone where it is located are allowed with the following limitations:~~
  - ~~1. Arbors shall be stand-alone structures and shall not be attached to a fence.~~

- ~~2. The arbor shall not exceed eight feet in height and shall maintain a five foot setback from the property line.~~
- ~~3. If the vegetation becomes too full or too high, the owner is financially responsible to rectify the situation, and to maintain the vegetation, and arbor;~~
- ~~4. The primary purpose of the arbor is to support and sustain foliage/vegetation, provide shade, recreational space, and ascetic **aesthetic** amenity. (Ord. 1514, 2019)~~

*Staff Comment: Planning Commission came to the consensus that the entire section regulating arbors was not necessary as a standalone section. Staff had previously argued that portions of the section were too vague and enforceable (e.g., a reference to vegetation that is “too full or too high.” Furthermore, provisions elsewhere in the code address vision clearance and hazards in the public right-of-way.*

#### **Proposed Definitions:**

##### **16.04.XXX Fence.**

**A fence is a structure composed of wood, metal, plastic, masonry, or other permanent non-vegetated material erected in such a manner as to enclose or partially enclose all or any part of an outdoor space. Trellises, arbors, and similar structures supporting or for the purpose of supporting vegetation when erected in such position as to enclose all or any part of any premises shall be included within this definition.**

##### **16.04.XXX Height of fence.**

**The height of a fence is the vertical distance from the finished grade at the base of the fence to the top of the boards or panels, not including decorative elements such as post caps or finials. If the adjacent finished grade is different on opposite sides of the fence, the height is measured from the side with the highest finished grade.**

*Staff Comment: Commissioners Jarosh and M. Ellison suggested that the code provide definitions for “fence” and “fence height.” Planning-related definitions are found in Chapter 16.04 of the CMC.*