



# City of Oregon City

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## Staff Report

File Number: 16-484

**Agenda Date:** 8/17/2016

**Status:** Agenda Ready

**To:** City Commission

**Agenda #:** 7f.

**From:** Public Works Director John Lewis

**File Type:** Resolution

### **SUBJECT:**

Resolution No. 16-13, Authorizing Issuance of a Permanent but Revocable Obstruction Permit for Existing and Replacement Fencing within the McKinley Avenue and Promontory Avenue Rights-of-way (ROW)

### **RECOMMENDED ACTION (Motion):**

Adopt Resolution No. 16-13 authorizing staff to issue a permanent but revocable rights-of-way (ROW) obstruction permit to the owner of 801 Brighton Avenue which would legalize fence and landscaping encroachments by permitting the replacement and maintenance of the yard fencing within the unimproved Promontory Avenue and McKinley Avenue public ROW.

### **BACKGROUND:**

Wesley and Virginia Harper, the owners of 801 Brighton Avenue (Tax Lot 8000 of Tax Map 2-2E-31DB), desire to obtain City authorization legalizing the placement of their longstanding fence and encroach upon the Promontory Avenue and McKinley Avenue ROW. The Harpers have asked the City for permission to obtain authorization to replace an old and dilapidated section of their rear yard fencing. As shown in Exhibit A, two sections of their fencing encroach into both the unimproved Promontory Avenue ROW and unimproved McKinley Avenue ROW as shown in Exhibit A.

In consideration of the City Commission's suggestion that the City vacate the McKinley Avenue and Promontory right-of-way rather than authorize an obstruction permit, staff ensued the advantages and disadvantages of this suggestion. Following is the main considerations that has led staff to the recommendation for a revocable ROW obstruction permit:

1. The Harper's fencing alignment has been in existence for what is thought to exceed 40 years and sections of the existing fence are in need of replacement. The fence serves as both a landscape boundary and a protective barrier from a nearly vertical 100 foot drop off into Waterboard Park.
2. The Harper's use of the right-of-way have been consistent with good stewardship of land that would otherwise be difficult for the City to maintain.
3. Both the McKinley and Promontory ROW provide current and future public benefit. The ROW provides access for overhead utility line maintenance, slope and Water Board Park emergency access, as well as a possible access way for future public access.

4. The Promontory ROW has a history of fence and landscape encroachments (many neighboring properties). Singling the Harper request out and processing as a vacation obligates the City to proceed with other ROW vacations along the bluff.
5. The Harper property (home and landscaped lot) was built in 1968 and as far back as staff can confirm has always encroached and had special use of the McKinley and Promontory ROW.
6. Resolution 16-13 confirms that the obstruction permit is revocable and costs associated with City access and any associated restoration resulting from that access is not a City obligation.

Concerning permanent obstructions, Oregon City Municipal Code 12.04.120 states the following:

*It is unlawful for any person to place, put or maintain any obstruction, other than a Temporary Obstruction, as defined in subsection B of this section, in any public street or alley in the City, without obtaining approval for a ROW permit from the City Commission by passage of a resolution.*

Resolution 16-13 shall authorize the issuance of a Revocable ROW Permit for existing fence sections as well as replacement of several fence sections along the rear side of 801 Brighton Avenue.