

City Council Staff Report



Subject: Encroachments onto Rights-of-Way
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Type of Item: Work Session

Executive Summary

On December 5, 2019, City Council asked staff to complete an inventory of existing encroachments and to prepare information for a work session ([Minutes](#), p. 13).

Staff is preparing a Resolution for the Council's consideration at a later date regarding encroachments onto City property, including public parks and Open Space.

This work session is specific to encroachments in the Rights-of-Way. Staff compiled information on types of encroachments, the current approval for each encroachment, and a potential system for charging annual fees for certain encroachments. In addition to encroachments into the City Rights-of-Way, there are encroachments into the City's platted, but un-built, Rights-of-Way. The Engineering Department created maps to show the location of platted, un-built Rights-of-Way in Fairway Hills (Exhibit A), Morning Star Estates (Exhibit B), Thaynes Canyon (Exhibit C), and Old Town (Exhibit D).

Also, staff has included a proposed code to replace Land Management Code § 15-3-5, which required a Conditional Use Permit for private driveways in the platted, un-built Rights-of-Way and was repealed by the Council on February 6, 2020 ([Staff Report](#); [Minutes](#), p. 5).

Background

After reviewing applications for properties with encroachments in the Right-of-Way, the Planning Commission recommended that the City Council consider reviewing the City's overall encroachment policy. The Commission was concerned that some encroachment agreements may not have been—and may not currently be—issued with consideration of community impacts and that retroactive encroachment agreements for structures built in the Right-of-Way may promote encroachments without repercussion.

The Planning Commission requested that the Council hold a work session to determine whether the current encroachment approval process is sufficient or whether the Council would like to have more input. The Planning Commission recommends that as the Council re-evaluates the City's encroachment policy:

- (1) that Council act as the determining body for certain encroachment agreements;

- (2) that Council retain the Commission's position as an advisory body on private driveways in the platted, un-built Right-of-Way;
- (3) that Council retain the public notice process for certain encroachments; and
- (4) that the Council's policy be clearly outlined in a Resolution or a Land Management Code amendment to provide clarity for the public, future staff, Commissioners, and Council members.

Analysis

City Council has jurisdiction and control over the City's Rights-of-Way for public use.¹

TYPES OF ENCROACHMENTS & APPROVAL PROCESSES

Currently, most encroachment agreements are approved at a staff level.

Encroachments include (a) encroachments onto public property; (b) heated driveways that connect to the Right-of-Way; (c) landscaping and retaining walls; (d) parking spaces that encroach into the Right-of-Way; (e) signs; (f) temporary outdoor dining decks on the Main Street Right-of-Way; and (g) private driveways in the platted, un-built Rights-of-Way.

Outlined below are the different types of encroachments and the current approval process:

(A) ENCROACHMENTS ONTO PUBLIC PROPERTY

This report is limited to encroachments in the Rights-of-Way and excludes Structures that are a Landmark or Significant Historic Structure on the City's Historic Sites Inventory. However, there are a number of encroachments onto City-owned property. These encroachments will be addressed in a subsequent report.

(B) HEATED DRIVEWAYS

The majority of encroachment agreements the Engineering Department issues are for snowmelt systems for private driveways that connect to the Right-of-Way. Beginning in 2007, the Engineering Department required encroachment agreements to be recorded with Summit County. Since that time, the Engineering Department has approved three hundred and fifty-five (355) encroachment agreements for snowmelt systems citywide. The City Engineer requires these encroachment agreements in order to accommodate residents' desire for heated driveways while maintaining the City's ability to make improvements within the full width of the Right-of-Way or to perform utility work.

Heated driveway encroachment agreements are approved administratively by the Engineering Department, generally during the building permit process. The encroachment agreement must include an attached exhibit showing the location of the improvements and a notarized signature from the owner prior to recording with Summit County.

¹ Utah Code [§ 10-8-8](#); [§ 72-3-104\(3\)](#).

Applications for snowmelt systems are generally unambiguous and the impact to the Right-of-Way is minimal. Due to the high number of applications staff receives for snowmelt systems and the minimal impact snowmelt systems have on the public use of the Right-of-Way, staff recommends that the Engineering Department retain administrative authority to issue these encroachment agreements.

(C) LANDSCAPING & RETAINING WALLS

For historic structures, the City has entered into four (4) encroachment agreements for landscaping and five (5) encroachment agreements for retaining walls. For non-historic structures, the City has entered into twenty-eight (28) encroachment agreements for landscaping and eighty-five (85) encroachment agreements for retaining walls. The City Engineer approves landscaping and retaining wall encroachment agreements administratively during the final building permit review.

The City Engineer recommends that Council adopt a policy, possibly outlined in a Resolution:

- (a) Prohibiting new landscaping and retaining walls within platted, un-built Rights-of-Way;
- (b) Requiring an encroachment agreement for new landscaping in the Right-of-Way to put property owners on notice that at some point the landscaping may be disturbed at their expense for Right-of-Way improvements;
- (c) Prohibiting new retaining walls and planters that front a street from encroaching onto the Right-of-Way; and
- (d) Requiring Council approval for encroachment agreements for landscaping and retaining walls that are associated with a Historic Structure.

(D) PARKING

In the 1990s, the Land Management Code authorized the City Engineer to allow encroachments for partial parking stalls in the Rights-of-Way in the Historic Residential and Historic Residential Development Low-Density Zoning Districts. (See Land Management Code § 7.1.4(e) (Exhibit E) and § 7.14.5 (Exhibit F)).

In 2000, the City completed major amendments to the Land Management Code. On March 2, 2000, the City Council adopted [Ordinance No. 00-15](#) (p. 248), which repealed Land Management Code § 7.1 and § 7.14 and replaced these sections with Land Management Code § 15-2.1 and § 15-2.2. The section granting City Engineer authority to allow a portion of parking stalls to be placed in the Right-of-Way did not carry over with this change.

There are no recorded encroachment agreements for parking stalls in the Rights-of-Way. Parking stalls that encroach into the Rights-of-Way in the Historic Residential and Historic Residential Development Low-Density Zoning Districts may have been constructed and approved when the LMC provided the City Engineer discretion for these encroachments from 1992-2000.

There is currently no code that allows parking stalls to be constructed partially in the Right-of-Way. Any future parking stall encroachment into the Right-of-Way would require City Council approval.

(E) SIGNS

The City Engineer has discretion to approve encroachment agreements for signs that encroach onto the Rights-of-Way and City Property. The City Attorney must review and approve the agreement.² To date, the City Engineer has approved sixteen (16) sign encroachment agreements. Staff recommends that sign encroachment approval be retained by the City Engineer.

(F) TEMPORARY OUTDOOR DINING DECKS ON THE MAIN STREET RIGHT-OF-WAY

Since 2010, the Planning Department has issued Administrative Conditional Use Permits for outdoor dining decks on the Main Street Right-of-Way, which operate May through October. Along with the Administrative Conditional Use Permits, the City Council annually approves an Outdoor Dining Lease for these decks, which requires that the lessee pay rent to the City for the use of the Right-of-Way. The lease provides the terms of the temporary encroachment in lieu of an encroachment agreement.

In the past, the rent for these decks has been based on 30% of the total parking revenue the City could receive under the Main Street Special Use of Public Parking fee, established in the [Fee Schedule](#) (30% of the total potential parking revenue per parking space for the Street Dining on Main totals \$2,160 per parking space).

In 2019, the City issued seven leases for Main Street dining decks, generating a total of \$19,179, which was allocated to the Parking Fund ([Staff Report](#); [Minutes](#) p. 10). In 2020, the Council waived these fees due to the pandemic's impact on local businesses ([Staff Report](#); [Minutes](#), p. 6-7).

(G) PRIVATE DRIVEWAYS IN THE PLATTED, UN-BUILT RIGHTS-OF-WAY

In 1998, the City Engineer wrote an internal memorandum for planning staff that outlined several requests to use the City Rights-of-Way to access private residences (Exhibit G). The City Engineer recommended that such requests go through a Conditional Use Permit process in addition to obtaining an encroachment permit. The Engineer outlined eleven criteria recommended for consideration before allowing private driveway access to a private residence over a platted, un-built Right-of-Way.

On March 30, 2000, Council passed [Ordinance No. 00-25](#) (p. 202), enacting Land Management Code § 15-3-5, *Driveway Standards for Private Driveways Within Platted, Unbuilt City Streets*. Section 15-3-5 included eight of the 11 criteria proposed by the City

² Municipal Code of Park City (MCPC) [§ 12-4-6](#); [§ 12-9-1\(H\)\(4\)](#).

Engineer. After 2000, the only remaining code about encroachments into the public Rights-of-Way was Land Management Code § 15-3-5.

The Conditional Use Permit was problematic because Applicants could go through a long process with many site plan iterations before the proposed driveway in the Right-of-Way was considered by the Planning Commission. Under state law, the Commission was required to approve the Conditional Use Permit if an Applicant met the specified code criteria and mitigated the reasonably anticipated detrimental effects of the proposed driveway.

Then, the proposal had to be brought before the Council for an encroachment agreement. The Council could deny an encroachment agreement for the driveway, even after the Planning Commission approved a Conditional Use Permit for the driveway.

On February 6, 2020, City Council repealed Land Management Code § 15-3-5. Staff proposes a replacement code below that eliminates the Conditional Use Permit requirement and outlines a process that includes City Engineer review, Planning Commission recommendation, public notice, and final determination by the City Council.

Proposed Land Management Code § 15-3-5

There may be instances where—especially in the Historic Districts—the Rights-of-Way were not built in the platted Right-of-Way. This can lead to issues when property owners apply to develop their property, but do not have the required access to the Right-of-Way. In some circumstances, a private driveway within the platted, un-built city street may be required to best protect the existing Right-of-Way, while allowing a property owner to access their lot.

Staff recommends replacement code for LMC § 15-3-5, *Driveway Standards For Private Driveways Within Platted, Un-Built City Streets*, that (1) first considers vacation of the Right-of-Way; (2) establishes City Engineer recommendation to the Commission and Council; (3) retains public notice and a public process; (4) retains Planning Commission recommendation to Council; and (5) places final encroachment discretion with City Council.

The proposed LMC § 15-3-5 replacement code is below, which has not yet been reviewed by the Planning Commission:

15-3-5 Driveway Standards For Private Driveways Within Platted, Unbuilt City Rights-of-Way

A. A Property Owner may petition the City Council for an encroachment agreement to construct a private driveway within a platted, un-built Right-of-Way that abuts the Property Owner's Property. The Property Owner shall first consider vacation of the Right-of-Way pursuant to Resolution No. 8-98. If vacation of the Right-of-Way is not feasible or appropriate, the City Engineer and the Planning Commission shall review the proposed private driveway within the platted,

un-built Right-of-Way and provide a recommendation to the City Council.

B. The City Engineer shall consider the following when making a recommendation to the Planning Commission and City Council on a proposed private driveway within a platted, un-built Right-of-Way:

1. The existing and future use of the Right-of-Way;
2. The Right-of-Way status in the Streets Master Plan;
3. Existing and proposed utilities, walkways, and stairs within the Right-of-Way;
4. Driveway Slope, which may not exceed ten percent (10%);
5. Adequate snow storage Area;
6. Adequate pavement;
7. Replacement Parking. If the platted, un-built Right-of-Way has been improved to provide public Parking, then, in addition to required Off-Street Parking for the Property, the Applicant shall replace the public Parking with new public Parking of equal or better convenience and construction;
8. Private utilities, including snowmelt devices, and interference with existing or proposed public utilities;
9. Impact of the proposed driveway on future public improvements and public use of the Right-of-Way.

C. The Planning Commission shall consider the following in a public hearing when making a recommendation to the City Council on a proposed private driveway within a platted, un-built City Right-of-Way:

1. The recommendation of the City Engineer;
2. Compatibility of the private driveway in size and location with the size and location of the driveways of the adjacent Properties;
3. Compatibility of the physical design of the private driveway and any appurtenant retaining walls or

landscaping in mass, scale, style, design, and architectural detailing of the adjacent Properties;

4. Mitigation of the impact of the private driveway on public access and use of the Right-of-Way through fencing, Screening, and landscaping to separate the private driveway from adjoining Uses;

5. Compliance with the Land Management Code;

6. Compliance with the General Plan.

D. The City Council shall consider the City Engineer and Planning Commission recommendation and the following in a public hearing for a private driveway in a platted, un-built Right-of-Way encroachment agreement, which may be issued in the sole discretion of the City Council:

1. The proposal results in a design which improves upon existing alternatives to otherwise meet the intent of the Zoning District, applicable Historic District regulations, if any, and the General Plan;

2. Preserves intended uses of the Right-of-Way for the neighborhood and public;

3. Whether compensation to the City for the loss of the Right-of-Way based on the market value of the square footage is appropriate;

4. An encroachment agreement, in a form approved by the City Attorney, protects the City's interest in future public improvements, public utilities, and public use of the Right-of-Way.

E. If the City Council approves an encroachment for a private driveway within a platted, un-built Right-of-Way, the City Council may adopt a resolution approving the proposal and may limit such approval to a specific site plan and conditions of approval.

F. Public notice for a proposed private driveway in the platted, un-built Right-of-Way shall be the same as the public notice required for a plat amendment vacating or changing a Public Street, Right-of-Way, or Easement.

Potential Fees for Encroachments

Salt Lake City charges annual fees for encroachments into the Rights-of-Way. One staff member in the Department of Community & Neighborhoods manages the tracking, invoicing, and fee collection each year. If, after three months, payment is not submitted for the encroachment, the staff member forwards the outstanding balance to the City's collection department.

The annual encroachment fee is based on the land value set by the county assessor. Salt Lake City collects a minimum of \$350 per year per encroachment (starting at \$18.00 per square foot of encroachment), although the City makes fee exceptions for encroachments that provide a public good, like an ADA ramp, a planter box, or a bench. Salt Lake City then deposits these payments into the City's general fund.

If so directed by Council, staff could look into a process for the City to collect encroachment fees for certain encroachments.

Recommendation

- Staff requests the Council provide direction on any changes the Council would like to make to the current encroachment approval processes.
- Staff requests direction from Council on the proposed replacement code for private driveways in the platted, un-built Right-of-Way.

Exhibits

Exhibit A: Fairway Hills Platted, Un-Built Rights-of-Way

Exhibit B: Morning Star Estates Platted, Un-Built Rights-of-Way

Exhibit C: Thaynes Canyon Platted, Un-Built Rights-of-Way

Exhibit D: Old Town Platted, Un-Built Rights-of-Way

Exhibit E: 1992 Land Management Code § 7.1.4(e)

Exhibit F: 1992 Land Management Code § 7.14.5

Exhibit G: 1998 City Engineer Memo