



# Utility Services/Land Use/ Energy Development Committee

*City of Arts & Innovation*

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**TO: UTILITY SERVICES/LAND USE/ENERGY DEVELOPMENT COMMITTEE MEMBERS**      **DATE: DECEMBER 12, 2016**

**FROM: PUBLIC WORKS DEPARTMENT**      **WARDS: ALL**

**SUBJECT: UPDATE OF ENCROACHMENT PERMIT PROCESS IN REGARDS TO PRIVATE WALLS AND FENCES CONSTRUCTED IN THE PUBLIC RIGHT-OF-WAY**

## **ISSUE:**

Review the current policies and processes related to the issuance of encroachment permits as they relate to privately owned walls and/or fences constructed in the public right-of-way.

## **RECOMMENDATIONS:**

That the Utility Services/Land Use/Energy Development Committee:

1. Review the current policy and process related to the issuance of encroachment permits as they relate to privately owned walls and/or fences constructed in the public right-of-way (ROW);
2. Provide direction to staff regarding the policy and process related to the issuance of encroachment permits as they relate to walls and/or fences in the public ROW; and
3. Direct the City Attorney's Office to amend Riverside Municipal Code Section 13.08.015 to specifically state policy related to the construction of privately owned walls and/or fences in the public ROW.

## **LEGISLATIVE HISTORY:**

Section 13.08.015 of the Riverside Municipal Code (RMC) states, "No facilities or structures shall be constructed, or placed upon a street right-of-way or upon any City-owned easements except upon issuance of an encroachment permit by the City". The RMC does not currently provide any further guidance in regards to encroachment type, purpose, or location.

## **BACKGROUND:**

It has been standard practice for affected Departments to review encroachment permit applications on an individual basis and for the Director of Public Works to provide final approval. Public Works routinely receives encroachment permit applications for placement of privately owned walls and/or fences within the public right-of-way (ROW); this type of encroachment typically occurs where the public sidewalk is adjacent to the curb and there is a parkway between the sidewalk and property line. However, these requests are denied for a variety of reasons as discussed further below. In addition, there exist a number of unpermitted, privately owned fences and/or wall encroachments throughout the City (i.e. constructed by property owners without approval from the City). If the City receives a complaint regarding these encroachments, the Code Enforcement Division will notice the subject owner as necessary.

## **DISCUSSION:**

As previously mentioned, it has been a long-standing Public Works practice to not allow privately owned walls and/or fences within the public ROW for the following, but not limited to, primary reasons:

1. In addition to sidewalk, curb, gutter and parkway improvements, ROW is often set aside and relied on for various utilities (e.g. electric, water, sewer, telecommunication, gas, storm drain). The ROW is necessary to add new and maintain underground infrastructure as necessary. These lines provide service to surrounding customers. Constructing and placing privately owned improvements, (e.g. a wall) restricts timely access to existing utility lines and can cause damage to the lines as well.
2. In many cases, ROW is secured when streets are first constructed to allow for future widening of the roadway. Allowing permanent private structures within the ROW present issues at the time the City desires to widen the roadway.
3. Private structures within the ROW present a liability to the City in terms of public safety.

Requests for privately owned wall and/or fence encroachments have increased in recent years and many property owners have built such improvements without City approval. Due to this fact, staff performed a review of neighboring cities and their encroachment policies pertaining to privately owned fences and/or walls. The cities that were researched (see Attached) include Ontario, Rancho Cucamonga, Eastvale, Fontana, Colton, Norco, Lake Elsinore, Grand Terrace, Loma Linda, Victorville, Moreno Valley, and Highland. Of these cities, only Ontario, Colton, Lake Elsinore, and Moreno Valley grant encroachment permits (or agreements) for privately owned walls and/or fences; however, only subject to specific conditions of approval. The remaining cities did not allow the construction of privately owned walls and/or fences in the public ROW.

Staff is seeking direction considering one of the following two options:

1. No change to current policy and process related to the issuance of encroachment permits as they relate to walls and/or fences in the public ROW; or
2. Revise current policy to allow the issuance of encroachment permits for construction of privately owned walls and/or fences in the public ROW subject to the following conditions:

### Covenant and Agreement

A wall and/or fence encroachment permit is a contractual agreement with the City and as such all responsibility associated with the permit should be transferred to the new owner if the property sells. As a condition of the encroachment permit, a Covenant and Agreement (C&A) recorded with the County, would provide a legal notice to successors in interest, passing the permit conditions on to the purchaser.

### Owner's Insurance Certificate

In the event a person should suffer injury related to a permitted wall and/or fence encroachment, and a lawsuit be filed, it is possible that the plaintiff will name the City as one of the defendants, due to the encroachment being in the public ROW with City approval. Therefore, the Owner/Applicant would provide a certificate of insurance and rider naming the City as additionally insured. Typically, other agencies with similar encroachment requirements require general liability insurance for \$1 million dollars.

### One-year Expiration

In order to assure insurance requirements are in effect in perpetuity, a wall and/or fence encroachment permit should be issued for a period of one (1) year (or longer if deemed appropriate). The permit would automatically renew for successive one-year periods upon submittal and approval of current insurance certificates, unless terminated by the City. This would be a no-fee annual renewal.

### Street Opening Permit

Since a private wall and/or fence encroachment is within the City's ROW, the work must meet City minimum requirements. A Street Opening Permit would address all encroachment activities by the contractor and will require a Contractor's State License Number, verification of a current Business License, insurance requirements, a traffic control plan (if necessary), and the work would be subject to City inspection.

If this option is implemented it is recommended to create an Administrative Manual Policy to formalize a policy and procedure for obtaining a Fence/Wall Encroachment Permit. The Administrative Manual Policy would set forth specific criteria describing the circumstances and conditions under which such an encroachment permit will be issued.

Lastly, RMC Section 13.08.15 does not specifically address private walls and/or fences in the public ROW. The subject section should be amended by the City Attorney's Office to address private walls and/or fences and if applicable, provide general information pertaining to the requirements for approval of such an encroachment permit.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this report.

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Attachments:

1. Local City Comparison Private Wall/Fence Encroachments
2. Presentation