



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: APRIL 25, 2017**
FROM: PUBLIC WORKS DEPARTMENT **WARDS: ALL**
SUBJECT: REVISE ENCROACHMENT PERMIT PROCESS IN REGARDS TO PRIVATE WALLS AND FENCES CONSTRUCTED IN THE PUBLIC RIGHT-OF-WAY

ISSUE:

Revise the current policy 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 City Council:

1. Revise the current policy to allow the construction of privately owned walls and/or fences in the public right-of-way subject to the following conditions;
 - a. An Encroachment Permit will be approved and issued by the Director of Public Works, following input from the Councilmember of the respective Ward;
 - b. A Covenant and Agreement Encroachment into Public Right-of-Way will be recorded by the City with the Riverside Assessor-County Clerk-Recorder as a requirement of the Encroachment Permit; and
2. Approve the attached Covenant and Agreement for Encroachment into Public Right of Way.

COMMITTEE RECOMMENDATION:

On December 12, 2016, the Utility Services/Land Use/Energy Development Committee (Committee) met with Chair MacArthur, Vice-Chair Soubrious, and Member Gardner present, to consider revising the current policy related to the issuance of encroachment permits as they relate to privately owned walls and/or fences constructed in the public right-of-way. After discussion, the Committee unanimously voted to recommend (1) amend Riverside Municipal Code Section 13.08.015 to create a simple and streamlined process for issuance of private wall and/or fence encroachments subject to specific conditions of approval to include (a) a recorded covenant and agreement; (b) the property owner to hold the City harmless for the encroachment; (c) an acknowledgement that walls and/or fences are in the public right-of-way that may need to be

removed and replaced for a City project and such removal and replacement will be at the property owner's expense; (d) no insurance required; and (e) no expiration date on encroachment permits; and (2) direct staff to contact previous property owners to obtain a covenant and agreement.

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:

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, 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.

Based on direction provided by the Committee, staff recommends allowing the construction of privately owned walls and/or fences in the public ROW subject to the following requirements:

1. An Encroachment Permit will be approved and issued by the Director of Public Works, following input from the Councilmember of the respective Ward.
2. A Covenant and Agreement Encroachment into Public Right-of-Way will be recorded by the City with the Riverside Assessor-County Clerk-Recorder as a requirement of the Encroachment Permit.

A wall and/or fence Encroachment Permit is a contractual agreement with the City and as such all responsibility associated with the permit must 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, will provide a legal notice to successors in interest, passing the permit requirements on to the purchaser. In addition, the C&A will commit the owner/applicant to certain conditions and restrictions associated with the wall and/or fence encroachment. The C&A will include, but is not limited to, the following conditions and restrictions:

1. Owner/applicant may perform any new work as owner/builder OR hire a CA licensed contractor to perform work within the City ROW. Contractor must provide the following: (1) a Certificate of Insurance for General Liability and Workers' Compensation and (2) a current Riverside City Business Tax License.
2. All walls and/or fences must comply with Title 19 of the RMC for material, height, style, and size.
3. Prior to construction, applicant/owner shall contact Underground Service Alert to field locate existing utility lines. It shall be applicant/owner's responsibility to determine the location and required clearances from all public and private utility, sewer and drainage facilities prior to drilling any excavations and shall only drill excavate in compliance with such clearance requirements.
4. Owner/applicant agrees to insure that construction of their improvements will not interfere in any way with any existing City or utility facilities
5. After identification of public need, the applicant/owner shall remove encroachment, at his or her own expense, at the request of the City at any time and without claim or recourse against the City. Any cost of such a removal incurred by the City shall be paid by the applicant/owner and shall constitute a debt owed to the City. The City shall not unreasonably request removal of a wall and/or fence encroachment.
6. Applicant/owner agrees to indemnify the City against all damages and claims resulting from the subject encroachment.

The Director of Public Works reserves the right to deny an Encroachment Permit (e.g. if the encroachment obstructs a drainage or utility facility); however, an Encroachment Permit shall not be unreasonably held.

Upon approval of the above recommendations, staff will prepare a checklist for owner/applicants outlining the policy and procedure for private wall and/or fence encroachments. This information will be posted on the City website.

In regards to existing private wall and/or fence encroachments (i.e. constructed by property owners without approval from the City), staff is developing an approach utilizing GIS and Code Enforcement to identify these situations. Once identified, the associated property owners will be notified and directed to obtain an Encroachment Permit and C&A. Considering the magnitude of these illegal encroachments, identification and notification of the associated property owners is anticipated to take several years and will be ongoing.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Mark Steuer, Deputy Public Works Director/City Engineer
Certified as to
availability of funds: Scott G. Miller, PhD, Chief Financial Officer/City Treasurer
Approved by: Al Zelinka, FACIP, Assistant City Manager
Approved as to form: Gary G. Guess, City Attorney

Concurs with;



Chris Mac Arthur, Chair
Utility Services/Land Use/Energy Development Committee

Attachments:

1. Local City Comparison Private Wall/Fence Encroachments
2. Covenant and Agreement Encroachment into Public Right of Way.
3. Presentation