



EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

Council Policy and Valuation Committee: November 10, 2023

Discussion Topics

The following topics will be discussed during this presentation:

- ❖ Easement and Right-of-way use agreements
- ❖ How many do we have?
- ❖ How are these currently processed?
- ❖ Options for future considerations
- ❖ Allowable improvements
- ❖ Options for Council document
- ❖ Recommending body
- ❖ Future renewal process
- ❖ Fees
- ❖ Policy vs ordinance
- ❖ Timing/ next steps

EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

The City utilizes an easement and right-of-way (R-O-W) use agreement for any improvement or use within a publicly dedicated right-of-way or easement. The current process is detailed Section 3.3 of the City's Design Manual.

The following list identifies examples of items that require an agreement:

- ❖ Masonry fences or any part of a fence that is masonry
- ❖ Retaining walls greater than 3 feet or, if the wall supports a structure, less than 3 feet
- ❖ Private storm drains or area drains
- ❖ Swimming pool decks
- ❖ Wood decks, patios, and gazebos
- ❖ Buildings, signs, or other permanent improvements

EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

- ❖ An easement is the legal right to use a part of another owner's land for a specific purpose. Easements can be recorded and conveyed via a separate dedication instrument, or as part of a filed subdivision plat.
- ❖ The City's typically utilizes the following four types of easements:
 - ❖ Sewer easement is used for the installation or maintenance of public sewer facilities upon or under private land.
 - ❖ Utility easement is used for installing or maintaining public utilities across, over or under private land.
 - ❖ Water easement is used for public water facilities upon or under private land.
 - ❖ Drainage easement is used for the installation or maintenance of public drainage utilities upon or under private land.

EASEMENT AND RIGHT-OF-WAY USE AGREEMENT

- ❖ A right-of-way is generally defined as a legal right of access and passage over land.
- ❖ Rights-of-way can be used for railroad use, franchise utility use, vehicular (traffic) use and pedestrian-only use.
- ❖ Access can be legally conveyed and recorded via a separate instrument or plat dedication.
- ❖ A right-of-way can also be acquired via condemnation.

HOW MANY DO WE CURRENTLY HAVE?

- ❖ There are approximately 119 easement and right-of-way use agreements for pipelines, fences, pools, gazebos, sheds, signs, irrigations lines, etc.
- ❖ 110 of these agreements are for properties located within Johnson County, with the remaining 9 agreements for properties within Tarrant County.
- ❖ Roughly 55 to 60 of the approved agreements involve right-of-way use encroachments.

HOW ARE THEY PROCESSED?

- ❖ Historically, the Public Works Department has reviewed and approved easement and right-of-way use agreements for areas located outside of Old Town.
- ❖ Examples of administratively approved easement and right-of-way use agreement include the following:
 - ❖ Irrigation within city right-of-way (2023)
 - ❖ Electrical conduit crossing a sanitary sewer easement (2023)
 - ❖ Pole sign within a utility easement (2023)
 - ❖ None of these examples were within Old Town

EXAMPLES



Monument sign within utility easement



BI SD Band Tower within Utility Easement

EXAMPLES



Fence within utility easement



Private Irrigation within Candler Drive Right-of-Way

HOW ARE THEY PROCESSED IN OLD TOWN?

- ❖ Prior to 2016, Old Town easement and right-of-way use agreements were administratively handled by the Director of Engineering.
- ❖ Starting in 2016, City management directed staff to take Old Town easement and right-of-way use agreements forward for review and approval by the City Council for any improvement or use within a publicly dedicated right-of-way.
- ❖ There are currently six different Old Town establishments that have approved easement and right-of-way use agreements: Grumps, Old Texas Brewing, Babe's Chicken House, Eagle's Point, Spice Rack, and Old Town Station.

OPTIONS FOR FUTURE CONSIDERATION

- ❖ What elements does Council want to review?
 - ❖ Possible Options:
 - ❖ Public Parking
 - ❖ Public Sidewalk
 - ❖ Old Town Right-of-Way
- ❖ Staff would recommend that the review and approval process for encroachments within public easements continue to be reviewed and approved administratively.

ALLOWABLE IMPROVEMENTS

- ❖ Council has authorized various encroachment types. Staff is requesting direction on what improvements should be allowed within the right-of-way moving forward.
 - ❖ Permanent /semi – permanent; definitions will be need to be established.
 - ❖ Review on case-by-case basis
- ❖ Requirements of Agreements
 - ❖ Repair back to previous condition
 - ❖ Establish an escrow account with an annual CPI adjustment to account for repairs?
 - ❖ New lien language?
 - ❖ New Insurance requirements?
 - ❖ Changes to the termination requirements?
 - ❖ Any additional documentation?

OPTIONS FOR COUNCIL APPROVAL

- ❖ Option 1: Provide new form agreement for easement and/or right-of-way use agreements (this is staff's recommendation).
- ❖ Option 2: Provide a specific use permit (SUP) application for easement and/or right-of-way use agreements.

RECOMMENDING BODY

- ❖ New form agreement (within Old Town): Agreements within Old Town affecting public sidewalks, public parking and rights-of-way would proceed to the Old Town Design Standards Review Committee as the recommending body, and then forward to the Council for final consideration...Or proceed directly to the Council.
- ❖ New form agreement (outside of Old Town): Agreements affecting public sidewalks, public parking and rights-of-way would proceed directly to the Council for final consideration.
- ❖ Specific Use Permit: The SUP application would proceed to the Planning and Zoning Commission as the recommending body, and then forward to Council for final consideration.

FUTURE RENEWAL PROCESS

- ❖ How would the Council like to process renewals of existing easement and right-of-way use agreements?
- ❖ Does Council want to see renewals on a rolling basis or all at once?
- ❖ An option includes the items being presented the first time as general discussion items and proceed to Council as subsequent consent agenda action items.

FEES

- ❖ As part of this process, Council can determine possible changes to fees.
- ❖ Currently, the city charges a one-time flat fee (\$125).
- ❖ Council can consider continuing this process, adopting an annual renewal fee, imposing a price per square feet fee based on the property's value, or other fee structures.

Policy vs Ordinance

- ❖ Does Council prefer changes to the easement and right-of-way use agreement to take place as part of an established policy or an ordinance?
- ❖ For example, changes that affect development regulations, or a new SUP process, would need to take place as an ordinance amendment.
- ❖ A new form agreement could be addressed by a policy or code change. Staff would recommend codifying the new procedure.

TIMING/NEXT STEPS

- ❖ Based on Council direction, staff will proceed with making changes to existing ordinances.
- ❖ Does the Committee want to review any proposed changes prior to Council?
- ❖ Will the Council prefer a briefing or an action item?