



# EASEMENT AND RIGHT-OF-WAY USE AGREEMENTS

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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 foot 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?