

MEMORANDUM

To: Staff

From: Curt Poore

Date: April 15, 2025

Subject: Issues and Procedures for Obtaining Public Access Through School's Private Parking Lot in Exchange for Abandonment of W. Madison Street

I. Introduction

The City is considering a request from the school to abandon W. Madison Street in front of the School's football stadium. This will eliminate public access between Colorado Street and Oklahoma Street. In exchange, the City may seek public access through the School's private parking lot via either (1) a dedication of a public right-of-way for a public street or (2) a grant of an easement for public ingress and egress. This memorandum evaluates the legal, procedural, cost, liability, and maintenance issues associated with each option and outlines the procedures for implementation.

II. Dedication of Public Right-of-Way for a Public Street

A. Description

A dedication of a public right-of-way involves the School transferring ownership or control of a portion of its private parking lot to the City for use as a public street. The City would assume full responsibility for the street's construction, maintenance, and regulation, and the public would gain unrestricted access.

B. Issues

1. **Loss of School Control:** Dedication permanently transfers control of the designated portion of the parking lot to the City. The School would lose the ability to regulate access, parking, or use of the area, potentially disrupting its operations (e.g., game-day parking or events).
2. **Impact on School Property:** Creating a public street may reduce the parking lot's capacity, affecting the School's ability to accommodate visitors.
3. **Public Use Expectations:** A public street implies unrestricted access, which may conflict with the School's need for controlled access during events. Parents of students may not support a public street through a school parking lot.

C. Procedure

1. **Negotiation and Agreement:** The City and School must negotiate terms, including the size, location, and design of the right-of-way.
2. **Survey and Plat:** A licensed surveyor must prepare a plat delineating the right-of-way.
3. **City Approval:** The Board of Aldermen must approve the dedication through a public hearing process, ensuring compliance with municipal codes.
4. **Recording:** The dedication is formalized by recording the plat and deed with the County Recorder, transferring the right-of-way to the City.

D. Costs

- **School:** Surveying fees for preparation of legal description for abandonment of road.
- **City:** Costs for the street (paving, signage, lighting), surveying, and ongoing maintenance.

E. Liability

- The City assumes liability for accidents, injuries, or property damage on the public street, including claims arising from design defects, poor maintenance, or hazardous conditions.
- The School has no liability for the dedicated area unless it retains adjacent property that contributes to unsafe conditions (e.g., drainage issues).

F. Maintenance

- The City is solely responsible for maintenance, including paving, snow removal, signage, and repairs.
- The School has no maintenance obligations for the dedicated right-of-way.

III. Grant of an Easement for Public Ingress and Egress

A. Description

An easement grants the City a non-possessory right to use a portion of the School's private parking lot for public ingress and egress. The School retains ownership and control of the property, subject to the easement agreement terms, which defines the scope of public access.

B. Issues

1. **School Control Retained:** The School maintains ownership and can impose restrictions on the easement's use (e.g., hours of access, types of vehicles, or event-specific closures), subject to the easement agreement. This flexibility may better align with the School's operational needs.
2. **Shared Use Challenges:** Public access through an active parking lot may create conflicts, such as congestion, pedestrian safety concerns, or disputes over parking spaces during School events.
3. **Ambiguity in Scope:** Without clear terms, disputes may arise over the extent of public use, maintenance responsibilities, or the School's ability to modify the easement area.

C. Procedure

1. **Negotiation and Drafting:** The City and School must negotiate the easement's terms, including its location, width, permitted uses, duration (e.g., perpetual or limited-term), and any restrictions. A detailed legal description is required.
2. **Survey:** A surveyor must define the easement area, which may be less extensive than a full right-of-way.
3. **Approval:** The Board of Aldermen must approve the easement agreement.
4. **Recording:** The easement is recorded with the County Recorder, binding future owners of the School's property.

D. Costs

- **School:** Surveying and potential loss of parking.
- **City:** Surveying and potential improvements (e.g., signage or pavement markings). Costs are lower than for a public street, as no full-scale construction is required unless the easement area needs upgrades.

E. Liability

- **School:** As the property owner, the School may face liability for accidents or injuries in the easement area, particularly if caused by poor maintenance (e.g., potholes) or School activities (e.g., event-related hazards).
- **City:** The City's liability depends on the easement terms. If the City assumes maintenance responsibilities, it may share liability for accidents caused by its negligence. Clear allocation of liability in the easement agreement is critical.
- **Insurance:** Both parties may need to adjust insurance policies to cover potential claims arising from public use.

F. Maintenance

- Maintenance responsibilities depend on the easement agreement. Typically, the School maintains the easement area as part of its parking lot, but the City may contribute to costs for public-specific improvements (e.g., signage).
 - Ambiguity in maintenance obligations can lead to disputes, necessitating clear terms in the agreement.
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IV. Comparison and Recommendations

Factor	Public Right-of-Way	Easement
School Control	None; City controls street	Retained; subject to easement terms
Property Impact	Permanent loss of parking lot area	Shared use; potential congestion
Cost to City	High (construction, maintenance)	Lower (minimal improvements)
Cost to School	Surveying	Surveying
Liability	City assumes full liability	Shared; depends on agreement
Maintenance	City responsible	School primarily; City may contribute
Procedure	Complex (plat, hearings, recording)	Simpler (agreement, recording)

Recommendations:

- An **easement** is likely preferable for both parties. It allows the School to retain control over its property, minimizes City costs, and provides flexibility to address operational needs (e.g., event-specific restrictions). However, the easement agreement must clearly define:
 - The scope of public access (e.g., hours, vehicle types).
 - Maintenance and liability responsibilities.
 - Dispute resolution mechanisms.
 - If the City prioritizes unrestricted public access and is willing to bear construction and maintenance costs, a **public right-of-way** may be appropriate. However, this option reduces the School's control and substantially increases the City's responsibilities.
 - Public input should be considered by a public hearing to address community concerns about access changes.
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V. Conclusion

The choice between a public right-of-way and an easement hinges on balancing the City's need for reliable public access with the School's need to maintain control over its property. An easement offers a more flexible, cost-effective solution, provided the agreement is carefully drafted to address liability, maintenance, and use conflicts.