



RESIDENTIAL CONSTRUCTION ORDINANCES AND POLICIES REPORT

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PURPOSE:

The purpose of this report is to outline the questions presented at the January 19, 2022 City Council meeting in agenda item twenty by Council Member Hutson. The report shall provide code references for instances where questions are addressed in local and state governing code, and to detail any unaddressed questions contemplated in the code, and offer staff views for improvements or clarifications that may be beneficial to the community at large.

Questions posed:

- What is the allowable location on property for the following-
 - Construction fences
 - Silt Fences
 - Construction material staging
 - Port-a-cans
 - Dumpsters/trash receptacles
- What usage is allowed of city streets for material deliveries and storage
- Construction vehicles parking
 - Proper side of the street
 - Intersection visibility
 - Emergency vehicle traffic pathway, ingress/egress
- What work can be done outside of allowable construction hours
 - Deliveries
 - Landscaping
 - Worker arrival/departure
- Should heavy equipment usage be restricted after dark
- What can be built in the setbacks/easements/ROW

FORMAT:

This report will go item by item through the above bullet points. Any related ordinances, or sections therein shall be listed, with a brief analysis of how those ordinances are, or may be applied. The final conclusion will offer other staff comments and recommendations.



ITEM 1: RESIDENTIAL PROPERTIES AND MATERIALS STAGING

Fencing-

Ordinance: 107-3 Fence means a fixed-in-place physical barrier, including a wall, that wholly or partially encloses, screens, separates, or establishes a border for a portion of real property (e.g., yard or field) and is commonly used to control access, to confine, or to mark a boundary. Unless otherwise specifically provided, the term "fence" does not include temporary barriers, including, but not limited to, silt fencing or other erosion controls, or temporary construction barriers.

Ordinance: 107-32(d) Vision Clearance On a corner lot, no structure, fence retaining wall, or berm with a height greater than 36" above the top of the curb may be constructed, placed, planted, maintained or allowed to grow within 15 feet of the intersection of the right-of-way lines of the two streets bordering the lot.

Analysis- Temporary construction fences and silt fences may be placed at the property line *except* when they violate the vision clearance ordinance. In those instances, staff will work with contractors to relocate the construction fence at the corner in order to provide sufficient visibility for motorists.

Construction Materials Staging

Ordinance: Sec. 101-252. Storage of job site materials and equipment.

Building materials and equipment may only be stored on the property and within view of the public or an adjoining property as long as the building permit has not expired and construction work is active and progressing. If active construction work ceases or no substantial progress is made for more than four consecutive weeks, all building materials and equipment stored on the property must be removed from the property within ten days after the end of such four-week period. The penalty for violating this subsection may not exceed \$100.00 per day that the materials or equipment remain on the property.

Ordinance: 101-247 Portable toilets and receptacles

(e) Exceptions applicable to prohibited receptacles and portable toilet. A receptacle or portable toilet is permitted:

- (1) During the pendency of a building permit affecting the property but not longer than a period of ten days after active and progressing construction work pursuant to such building permit for such property ceases. Construction work shall be deemed not to be active and progressing if such work ceases or no substantial progress is made for more than four consecutive weeks; and
- (2) During the pendency, not to exceed 90 days, of construction, renovation or landscaping activity for which no building permit is required pursuant to the terms of this Code, if the owner of the affected property first submits a registration to the city secretary on a form promulgated by the building official indicating the nature of the work and the number of receptacles or portable toilets to be used and the commencement date for their use.



Ordinance: Sec. 101-253 – Construction sites to be kept clean

(a) All construction sites must be kept clean. Trash and debris associated with any construction may not be allowed to migrate to other lots, properties, or rights-of-way. Each construction site or lot must have a solid-sided trash container of sufficient size to contain the trash and debris generated on the site. The trash container must be located on the site, unless otherwise allowed in writing by the city. The trash in the container must be removed and properly disposed of without allowing the container to be overfilled. All trash or debris that drifts or spills onto the site, other lots, properties or rights-of-way must be picked up and securely placed in the trash container or otherwise properly disposed of on a daily basis.

Analysis- There are no restrictions in the code as to where on the premises portable toilets and dumpsters may be located. It is up to staff to work with contractors with respect to these items. Because topography varies dramatically, flexibility in the code may be overall beneficial.

ITEM 2: WHAT USAGE IS ALLOWED OF STREETS FOR MATERIALS DELIVERY AND STORAGE

Ordinance: Sec. 101-250 – Storage of dirt, gravel and other pervious materials

The holder of a building permit shall enclose with a silt fence or securely cover with a water-resistant tarp or other material any dirt, fill, gravel, or other pervious material stored on the site for a period in excess of eight hours.

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Building materials and equipment may only be stored on the property and within view of the public or an adjoining property as long as the building permit has not expired and construction work is active and progressing. If active construction work ceases or no substantial progress is made for more than four consecutive weeks, all building materials and equipment stored on the property must be removed from the property within ten days after the end of such four-week period. The penalty for violating this subsection may not exceed \$100.00 per day that the materials or equipment remain on the property.

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must be picked up and securely placed in the trash container or otherwise properly disposed of on a daily basis.

(b) All building materials, equipment and fill must be stored and accessed from staging areas that are clearly marked on the site plan. These areas shall be designated in places on the lot that are outside the canopy and drip zone of existing trees that are six inches in diameter and greater. If compliance with this requirement is not possible due to the location or size of trees on the property or the size or configuration of the property, the building official will designate the staging areas on the property.

Analysis: The City's Code of Ordinances is unclear as it relates to public streets and the delivery and storage of materials. The code *is* clear that onsite storage of any pervious material requires silt fencing. There are two ways to interpret the code, both with assumptions. The first interpretation would be to assume that since the code describes "on site" storage, that nothing off premises is allowed, however code does not expressly prohibit it. The other interpretation would be that since a period of 8 hours is described, that an individual could be granted a grace period of 8 hours to relocate materials and provide any necessary silt control. Both are assumptions that are not fully supported by the language of the ordinances.

ITEM 3: CONSTRUCTION VEHICLES AND PARKING

Ordinance: Sec. 101-249. Designated routes for construction vehicles.

- (a) At the time of issuance of a building permit, the building official or other designee authorized by the city council shall prescribe in writing the routes on streets or parts of streets in the city to be used by all regulated vehicles in connection with the improvement of property authorized by such building permit, which written prescription shall constitute a term of the building permit. The building official or authorized designee shall determine the streets to be used based on the condition of affected streets, the minimization of traffic congestion, other anticipated or regular uses of city streets, and the efficiency and convenience of travel to and from the worksite.

Parking on the proper side of the street

Texas Transportation Code – TRANSP 545.303 (a) An operator who stops or parks on a two-way roadway shall do so with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb or edge of the roadway.

Analysis: The building official shall determine a route for construction traffic that seeks to aid in traffic flow, and prevent bottlenecking as much as possible around a particular site. Vehicles must park in accordance with the Texas Transportation code.

Intersection visibility



Texas Transportation Code - TRANSP § 545.302. Stopping, Standing, or Parking Prohibited in Certain Places (Intersection Visibility)

(a) An operator may not stop, stand, or park a vehicle:

- (1) on the roadway side of a vehicle stopped or parked at the edge or curb of a street;
- (2) on a sidewalk;
- (3) in an intersection;
- (4) on a crosswalk;
- (5) between a safety zone and the adjacent curb or within 30 feet of a place on the curb immediately opposite the ends of a safety zone, unless the governing body of a municipality designates a different length by signs or markings;
- (6) alongside or opposite a street excavation or obstruction if stopping, standing, or parking the vehicle would obstruct traffic;
- (7) on a bridge or other elevated structure on a highway or in a highway tunnel;
- (8) on a railroad track; or
- (9) where an official sign prohibits stopping.

(b) An operator may not, except momentarily to pick up or discharge a passenger, stand or park an occupied or unoccupied vehicle:

- (1) in front of a public or private driveway;
- (2) within 15 feet of a fire hydrant;
- (3) within 20 feet of a crosswalk at an intersection;
- (4) within 30 feet on the approach to a flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;
- (5) within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within 75 feet of the entrance, if the entrance is properly marked with a sign; or
- (6) where an official sign prohibits standing.

(c) An operator may not, except temporarily to load or unload merchandise or passengers, park an occupied or unoccupied vehicle:



(1) within 50 feet of the nearest rail of a railroad crossing; or

(2) where an official sign prohibits parking.

(d) A person may stop, stand, or park a bicycle on a sidewalk if the bicycle does not impede the normal and reasonable movement of pedestrian or other traffic on the sidewalk.

(e) A municipality may adopt an ordinance exempting a private vehicle operated by an elevator constructor responding to an elevator emergency from Subsections (a)(1), (a)(5), (a)(6), (a)(9), (b), and (c).

(f) Subsections (a), (b), and (c) do not apply if the avoidance of conflict with other traffic is necessary or if the operator is complying with the law or the directions of a police officer or official traffic-control device.

(g) If the governing body of a municipality determines that it is necessary to improve the economic development of the municipality's central business district and that it will not adversely affect public safety, the governing body may adopt an ordinance regulating the standing, stopping, or parking of a vehicle at a place described by Subsection (a)(1), other than a road or highway in the state highway system, in the central business district of the municipality as defined in the ordinance. To the extent of any conflict between the ordinance and Subsection (a)(1), the ordinance controls.

Ordinance: Sec. 107-32. - Vision clearance.

(a) On a corner lot, any tree and any vegetation with a height greater than 36 inches above top of curb may not be placed, planted, or maintained within 15 feet of the intersection of the street surfaces of the two streets bordering the lot.

(b) A tree existing prior to January 1, 2017, is exempt from the requirements of subsection (a) of this section; provided, however, that the foliage of an exempted tree shall be maintained at a height no lower than 96 inches above the top of curb.

(c) New plantings, including trees, shall not impede vision of approaching traffic through the intersection.

(d) On a corner lot, no structure, fence, retaining wall, or berm with a height greater than 36 inches above the top of the curb may be constructed, placed, planted, maintained or allowed to grow within 15 feet of the intersection of the right-of-way lines of the two streets bordering the lot.

Analysis: The Texas Transportation Code, in conjunction with the Vision Clearance Ordinance provides requirements that should generally allow for visibility. There are topographical conditions in Rollingwood that play a part. Rollingwood City Council may want to consider an intersection striping project that would assist in the enforcement of parking near intersections.

Emergency vehicle traffic pathway, ingress/egress



***No state law, or local ordinances could be found related to the prohibition of construction vehicles and emergency traffic. No law could be found that prevented legal parking due to egress concerns.**

ITEM 4: WHAT WORK MAY BE DONE WHEN – ALLOWABLE CONSTRUCTION HOURS

Ordinance: Sec. 101-247 – Construction Hours and Conduct

- (b) *Prohibited days and hours/signage.* Except as provided in subsection (f) of this section, construction or demolition activities shall not be permitted on weekends or city holidays, or between the hours of 7:00 p.m. and the following 7:00 a.m. on weekdays. Except in connection with activity excepted by subsection (f) of this section, the building permit holder shall post on the affected site a sign prescribed by the building official or other designee of the city council site providing notice of the restrictions provided in this subsection. At the permit holder's election, the building official may provide the prescribed sign to be posted and may charge a reasonable fee therefor, based on the cost of production to the city, to be added to the building permit fee.
- (c) (f) *Exceptions to prohibited days and hours of construction and demolition.*
- (d) (1) *Minor construction.* Minor construction and demolition activities include maintenance and repair work normally associated with home or business ownership and occupancy, landscaping, mowing, fencing, or painting, provided that no such activity creates a nuisance condition related to noise, traffic, odor, dust, or other conditions and is not in violation of any other city ordinance.
- (e) (2) *Interior construction activities.* Between the hours of 10:00 a.m. and 4:00 p.m. on Saturdays, interior construction activities are permitted provided the activities:
 - (f) a. Take place wholly within a dried-in structure (i.e., for which exterior veneer and roof are substantially complete);
 - (g) b. Do not require large equipment such as cement trucks, dozers, cranes or dump trucks;
 - (h) c. Do not create a nuisance condition related to noise, traffic, odor, dust, or other conditions and are not in violation of any other city ordinance.
- (i) (3) *Emergency work or work on public utilities.* Emergency work or work on public service utilities or work in the interest of public safety, as may be approved by the city administrator or his designee, is permitted.

Ordinance: Sec. 18-54 Prohibited Noise

- (8) The continued operation of any device such that the noise level exceeds 60 decibels on the "A" band level, as measured by a sound level meter at the common boundary of the adjacent property.
- (9) Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials or similar objects between the hours of 8:00 p.m. and 7:00 a.m. on the following day.



Analysis: Minor construction is generally interpreted by staff to be either work that does not require a permit, or work that requires a single-day or trade permit. This may include installation of turf and plants, irrigation system installation, painting, roof repair/replacement, fence installation, HVAC repair or installation at an existing structures where it can be considered maintenance, similarly plumbing and electrical repair and replacement. The ordinances are unclear as to whether or not deliveries outside of designated construction hours are acceptable. Staff has proceeded as though deliveries are not acceptable.

ITEM 5: SHOULD HEAVY EQUIPMENT BE RESTRICTED AFTER DARK

***No ordinances were found that related to operating equipment and darkness.**

Analysis: There should be set construction hours that do not deviate. This means that during certain times of the year, it may be dark during those normal construction hours. Staff does not see an practical way to measure conditions of “darkness.”

ITEM 6: WHAT CAN BE BUILT IN THE SETBACKS/EASEMENTS/ROW

Ordinance: Sec. 107-33. - Retaining walls.

(a) No retaining wall, or portion of a retaining wall with a height greater than 36 inches above the street curb level may be constructed within 15 feet of a front lot line, or side lot line adjacent to the street of a corner lot.

(b) If a retaining wall is constructed at a distance greater than 15 feet from a front lot line, or a side lot line adjacent to the street of a corner lot, the maximum allowable height of the retaining wall above the street curb level may be increased by 12 inches for each additional five feet of distance between the retaining wall and the applicable lot line.

(c) The height of a retaining wall is defined as the vertical distance measured from a reference datum, which may vary with the elevation of the curb at the street, to the top of the retaining wall at the point where the measurement is taken. The reference datum shall be the point where a line, which is level with the top and perpendicular to the face of the curb at the street, intersects the vertical face of the retaining wall.

Ordinance: Sec. 107-34 Fences – Front Yard

(5) All fence components shall be a minimum of 15 feet from the curb, or edge of the street pavement where there is no curb;



Ordinance: Sec. 107-36 – Driveways

Each driveway shall be located at least five feet from a side lot line and ten feet from a rear lot line.

Ordinance: Sec. 107-35 Swimming pools and tennis courts

(e) A deck or apron designed to serve a swimming pool or tennis court shall be located at least five feet from a side lot line and ten feet from a rear lot line.

Ordinance: 2021-10-20-06 Ordinances Not Yet Codified – Retaining walls

Definition: Retaining Wall means any fence or wall built or designed to retain or restrain lateral forces of soil or other materials, said materials being similar in height to the height of the soil or other materials be restrained.

ANALYSIS: Flatwork is generally allowed to occupy the half setback. Flat work includes structures such as decks, driveways and parking pads, and sport courts. Fences and walls which may serve as barriers or drainage features may be located along the property line in side and rear yards. Drainage detention facilities may be located at the property line when approved in conjunction with an onsite detention plan by the City's engineer, and must be installed and maintained in accordance with the Drainage Criteria Manual. Front yard fences may occupy the setback, and in certain instances may be crossing a public utility easement or right-of-way. The code is unclear as it relates to landscaping and retaining walls on interior lots, and on corner lots away from the curb. It appears that the original retaining wall ordinance language seeks to work in conjunction with the vision clearance ordinance to ensure clear visibility around corners, but it is poorly written, and there may be other interpretations. The addition of the retaining wall definition in October was to provide a clear working definition to apply to retaining walls so that they may not serve as fences that would otherwise be in violation of the front yard fence ordinance.



CONCLUSION:

Item 1: RESIDENTIAL PROPERTIES AND MATERIALS STAGING

In general, the flexibility in the code related to the staging of construction fences, portable toilets, dumpsters, is seen by staff as being beneficial. Creating stricter rules related to staging will result in compliance feasibility issues because of topography. In general, staff does not have difficulty working with contractors when concerns arise, and issues are typically resolved within one business day. Policy suggestions raised by Council may be more helpful than an ordinance that could not be uniformly applied.

Item 2: WHAT USAGE IS ALLOWED OF STREETS FOR MATERIALS DELIVERY AND STORAGE

City code is generally unclear as it relates to public streets and the delivery and storage of materials. It is agreed that public streets should not be used for delivery and storage of materials, however, there are instances with the city's topography of logistical challenges of getting materials onsite, without first unloading them. Certain vehicles may not safely be able to traverse steep driveways. Alternatively doing so may result in damage to those vehicles, or city curbs and rights-of-way. Often times these types of deliveries reported to staff are for residential landscaping materials deliveries which do not otherwise require a permit, and as such, tracking is infeasible. Leaving flexibility in the code, allows us to approach these issues and work with contractors or property owners on a case-by-case basis.

Item 3: CONSTRUCTION VEHICLES AND PARKING

There is unquestionably congestion on public streets from increased construction activities. Without limiting parking to a single street side, staff sees difficulty in reducing this congestion. Limiting traffic to one street side would also be burdensome on homeowners on the side of the street where parking was authorized. It would also create logistical difficulties related to unloading and staging of materials. There appears to be no state law that contemplates emergency vehicle access when vehicles are lawfully parked on public streets.

There are regulations that generally allow for greater visibility at intersections. An intersection striping project would assist in the ease of enforcement of parking regulations around stop signs and intersections. There will always be areas where visibility is difficult due to topographical conditions. Individual intersection improvement recommendations should be considered in those areas.

Item 4: WHAT WORK MAY BE DONE WHEN – ALLOWABLE CONSTRUCTION HOURS

Minor construction is interpreted by staff to be acceptable on weekends as long as that work does not result in the violation of other ordinances. It is generally believed by staff that much of this type of work is being solicited by homeowners, and allowing this type of work on the weekend is likely preferable for those homeowners who work during the week and wish to oversee the work themselves.

Item 5: SHOULD HEAVY EQUIPMENT BE RESTRICTED AFTER DARK



It may be appropriate to have an internal policy for staff operations and emergency repairs to not perform certain city systems repairs at night with heavy equipment, or to supply work lights for the safety of staff and city contractors. That decision could be a policy decision and not one regulated by ordinance. It seems prohibitive to institute an ordinance which would need to be variable based on the time of year.

Item 6: WHAT CAN BE BUILT IN THE SETBACKS/EASEMENTS/ROW

Staff feels that the code is clear with what can be allowed in the setbacks, easements and right-of-way with the exclusion of landscaping. No ordinances could be found that prohibit landscaping in rights-of-ways generally. It is typically understood that landscaping in the right-of-way is installed is at the homeowner's risk. Greater clarification for how the city wants to manage landscaping in the right-of-way would be of benefit to staff.