

Exhibit A

Amendments to Chapter 28, Article II – Construction in City Rights-of-Way

The City of Rollingwood Code of Ordinances, Chapter 28 - Streets, Sidewalks and Other Public Places, Article II - Construction in City Rights-Of-Way is hereby amended to add a new Division 4 – Right-of-Way Encroachments as follows:

DIVISION 4. - RIGHT-OF-WAY ENCROACHMENTS

Sec. 28-140 Purpose

Section 28-140 establishes the purpose of this Division, which is to create a process for review of any encroachments into the public ROW.

To establish a process and standards that allows encroachments into the public right-of-way in order to:

- (1) Encourage investment and improvements in the City by allowing businesses and homeowners limited use of the public right-of-way adjacent to their properties.
- (2) Provide an option to allow minor encroachments to be approved administratively.
- (3) Ensure public safety by maintaining minimum construction and design standards in the public right-of-way.
- (4) Protect and enhance the streetscape of business districts and neighborhoods within the City.

Sec. 28-141 Application

Section 28-141 creates an application process describing examples of encroachments and granting the City Administrator with the authority for managing the process.

- (a) Any person desiring to place or modify a structure, equipment, or other material on, above, or below a public right-of-way of the City, including but not limited to fencing, landscaping, parking, signs, lighting, fixtures, or other appurtenance, unless exempt, shall make an application to the City Administrator for review and approval.
- (b) The City Administrator, or designee, shall circulate an application to City departments and outside agencies as necessary to ensure compliance with applicable ordinances and statutes.
- (c) The City Administrator, or designee, may require additional information from the applicant as needed, including review by a professional engineer for structural improvements, to ensure compliance and to ensure public health and safety.

~~(d) Any building or structure to be placed within the public right-of-way shall obtain any building permits as required.~~

Section 28-142 creates exceptions for types of encroachments that do not require going through the approval process.

This can be added to or items can be removed and required to go through the approval process below.

Item (3) simply exempts any encroachments that are approved through a different process that already exists, such as for utility equipment, construction, etc.

Sec. 28-143 establishes a list of types of encroachments that can be approved administratively and do not require City Council approval.

This is intended to allow quick approval for items such as landscaping. These items can be moved to the section for City Council approval if desired.

Note that the Administrator may forward any request to the Council.

Sec. 28-142 Exceptions

The following exceptions do not require an encroachment application:

- (1) Freestanding mailboxes not located within a sidewalk, other pedestrian path, vehicle parking or maneuvering area, or sight triangle.
- (2) Landscaping/Vegetation up to three feet in height.
- ~~(3) Trees with a vertical clearance of at least seven feet underneath their branches and not located within 15 feet of a street intersection nor within 10 feet of a driveway intersection with a street.~~
- (43) Encroachments already governed or authorized under a separate ordinance or process which may include but not be limited to signs, wireless communication facilities, utilities and utility poles, street and traffic-control signs or signals, temporary construction and barricades for public safety, and transit shelters.

Sec. 28-143 Administrative review by City Administrator

- (a) The City Administrator, or designee, may review and approve, conditionally approve or disapprove applications for the following types of encroachments:
 - (1) Trees and landscaping not excepted above;
 - (2) Steps or ramps to comply with Texas Accessibility Standards;
 - (3) Sidewalk furniture and surfacing, lighting, fixtures, and other appurtenances not associated with a patio or dining area.
- (c) An approval may require the applicant and/or adjacent property owner(s) to obtain a right-of-way license use agreement and/or an aerial easement, and certificate of insurance, as determined by the City Administrator.
- (d) The City Administrator may refer any application to the City Council for review and approval.
- (e) An applicant or designated representative may appeal a decision of the City Administrator, or designee, made under this Section to City Council by filing a written, signed notice of appeal stating the grounds for appeal with the City Administrator within 30 days of the written decision.

Section 28-144 establishes that any encroachments not exempted or listed for administrative approval must be approved by City Council (and may require a license agreement for situations where the City might want the applicant to accept certain liabilities).

This newly proposed Section 28-145 makes clear encroachment are discouraged and that the burden is on the applicant to justify the request.

This section also establishes review criteria for consideration by the City Administrator or City Council when considering proposed encroachments.

These are broad but allow something to point to when approving or denying a particular request.

Sec. 28-144 Review by city council

- (a) City Council shall review applications for all other encroachments not otherwise authorized administratively under this article, including those referred by City Administrator, or designee.
- (b) An approval may require the applicant and/or adjacent property owner(s) to obtain a right-of-way license use agreement and/or an aerial easement, and certificate of insurance, as determined by the City Administrator.

Sec. 28-145 Review Criteria

(a) Generally, encroachments within the right-of-way are discouraged. The burden is on the applicant to show that a proposed encroachment is necessary or desirable and will meet the review criteria established below.

(b) In determining whether to approve a requested encroachment, the City Administrator or City Council should consider the following criteria:

- (1) Safety. Ensure the encroachment will not pose a safety hazard to pedestrians, cyclists, motorists, or other users of the right-of-way nor interfere with access by emergency vehicles.
- (2) Visibility. Ensure the encroachment will not obstruct visibility for persons or vehicles using the roadway.
- (3) Utilities. Ensure the encroachment will not interfere with existing or future utility infrastructure within the right-of-way.
- (4) Drainage. Ensure that the encroachment will not negatively affect stormwater drainage.
- (5) Aesthetics. Ensure the encroachment will not negatively impact the aesthetics of the property, neighborhood, or right-of-way.
- (6) Duration. Consider whether the proposed encroachment is intended to be permanent or temporary.
- (7) Alternatives. Consider whether there are available alternatives to placing the encroachment within the right-of-way.

(8) Maintenance. Consider who will be responsible for maintaining the encroachment, including provision of adequate agreements to ensure necessary maintenance.

(9) Liability. If deemed necessary, the applicant has adequately indemnified the city from any risks created by the encroachment.

(10) Reversibility. Ease with which the encroachment can be removed and the area restored in the future, if necessary.

Sec. 28-14~~5~~6 Minimum standards

Section 28-146 establishes certain standards for all encroachments.

Item (5) was removed, since those standards are adequately covered by existing visibility standards in Chapter 32 (Traffic & Vehicles) and Chapter 107 (Zoning).

All encroachments, including the exceptions, shall adhere to the following minimum development standards to the satisfaction of the City Administrator, or designee:

- (1) Be incidental and accessory to a primary use located on an adjacent property.
- (2) Shall not be located adjacent to any designated fire lane, loading or unloading zone, or block ingress or egress to any facility or utility.
- (3) Maintain a minimum four-foot unobstructed sidewalk clearance.
- (4) Maintain a minimum 18 inches from back of curb, or three feet from the edge of pavement in the absence of a curb.

~~(5) Maintain a minimum vertical clearance of:~~

- ~~a. Between three and nine feet within 15 feet of the intersection of the street surfaces of two streets, and~~
- ~~b. Between three and nine feet within 10 feet of where a driveway intersects the edge of pavement or curb of a street.~~

Sec. 28-14~~6~~7 Revocation

Section 28-147 allows the City Council to revoke a previously approved encroachment. This could be for a road project, installing necessary utilities or street signs, installation of sidewalks, etc.

(a) Revocation.

- (1) City Council reserves the right to revoke, in its sole discretion, any encroachment authorized under this article subject to the terms of any applicable written agreement or easement executed by the City.
- (2) The City Administrator, or designee, may temporarily prohibit encroachments excepted under section 28-142 or authorized under section 28-143 subject to the same right

of appeal granted by section 28-143(e). Encroachments may be temporarily prohibited when such encroachments interfere with public construction or improvement projects, emergency management measures, or any other matter pertaining to the public health, safety, and welfare.

Other notes/discussion items:

- This ordinance merely creates a process and standards for allowing encroachments within the right-of-way. Except for those items exempted (mailboxes and vegetation up to 3' in height) any encroachment would require approval, which the Administrator and City Council is not obligated to approve.
- An alternative would be to simply prohibit any encroachments within the right-of-way, basically the currently policy, but this would eliminate even the option to consider such encroachments and would not allow a property owner to make a request.
- The primary questions for the Council are:
 - Do you want to provide a process to consider encroachments with the right-of-way?
 - If so, what kinds of encroachments should be 1) exempt from the requirement, 2) approvable by the Administrator, 3) approvable by Council, or 4) specifically prohibited

Examples:

- The photos on the following page are just a few examples of existing situations (most existing in Rollingwood, but also examples from other cities). These include raised flower beds, retaining walls, steps, mailboxes, landscaping, and decorative fencing. It is not clear that any other ordinance specifically authorizes these types of encroachments in the ROW.
 - Section 107-33 addresses retaining walls by limiting them to no more than 36" within 15 feet of the front property line, but the assumption is that this is on private property, not within the right-of-way.
 - Section 107-34 addresses fencing, but subsection (e) specifically prohibits any fencing within the ROW. If this proposed ordinance is to allow decorative fencing this section may need to be modified.
 - References in the draft ordinance to protecting visibility near intersections have been removed since other city ordinances already adequately address that, including Section 32-3 - Obstructions to view at intersections (in the Traffic & Vehicles chapter) and Section 107-32 - Vision clearance (in the Zoning chapter)

Examples of encroachments:

