



# STAFF REPORT

## CITY of YORBA LINDA

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### PUBLIC WORKS DEPARTMENT

**DATE:** OCTOBER 18, 2022

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAMIE LAI, P.E., DIRECTOR OF PUBLIC WORKS / CITY ENGINEER  
PREPARED BY: JEVEE TAGARAO, ASSISTANT ENGINEER

**SUBJECT:** ENCROACHMENT ONTO CITY EASEMENT REQUEST – 4067 ELSIE DRIVE

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### RECOMMENDATION

It is recommended that the City Council:

- 1) Authorize the proposed improvements (concrete hardscape, patio cover, electrical lines, sewer and water lines, propane barbeque, sink, gate, and low-growth landscaping) to encroach within the City's storm drain easement at 4067 Elsie Drive; and
- 2) Determine such encroachments will not adversely impact the City's normal use of the easement for storm drain purposes, and
- 3) Require the homeowner to execute a Declaration of Restrictive Covenants Agreement pursuant to City Council Policy E-5.

### BACKGROUND

The Developer (Toll Brothers) offered the City a storm drain easement on 4067 Elsie Dr, Yorba Linda (Subject Property) for storm drain purposes. The 20-ft easement is identified on Tract Map No. 16595 dated June 19, 2007. A 48-inch reinforced concrete pipe (RCP) runs along Elsie Drive, centered in the easement, through the Subject Property, and exits westerly of the Tract boundary. The storm drain line is approximately 10-ft deep within the Subject Property. The storm drain easement, restrictions within the easement, and easement rights recorded in the CC&Rs should have been disclosed to the property owner at the time of purchase.

Improvement plans were submitted to the City and during the initial engineering review, it was determined that the proposed improvements encroach onto the City's storm drain easement. Revised improvement plans were resubmitted to accommodate the storm drain easement restrictions.

## **DISCUSSION**

The current Policy E-5, adopted in 2020, addresses the use of City-held easements. The City owns easement rights over properties citywide for various defined uses. In the Encroachment Permit section of the E-5 Policy (see Attachment 4), “no significant impact” is defined as less than one foot of encroachment onto City-owned property / easement. The policy continues to state that over one foot of encroachment constitutes a property / easement vacation process. However, this specific easement is for storm drain purposes and should not be vacated.

After reviewing the proposed improvements and conducting a site visit, Public Works has verified that there can be future impacts to the intended use of the storm drain easement. The proposed improvements could potentially conflict with future maintenance or repairs to the underground storm drain facility when necessary but does not significantly impact the City’s normal use of the easement. As such, any above-ground improvements may need to be removed and/or demolished before gaining access to the underground storm drain line. Access to the underground storm drain line from the easement is not required for routine maintenance but is necessary if the storm drain line fails or requires an upgrade within the easement area. Thus, a Declaration of Restrictive Covenants Agreement is required (see Attachment 3).

The proposed improvements within the easement area were evaluated by the owner and Public Works and determined to have no physical adverse effects on the City’s daily use of the storm drain and does not adversely impact existing buildings or adjacent properties.

Staff recommends that the proposed improvements within the City’s storm drain easement be permitted and requests authorization from the City Council to grant the proposed improvements over the storm drain easement, and to enter into a Declaration of Restrictive Covenants Agreement (Agreement). This Agreement requires the property owner to bear any costs for damage to the City-owned facility within the easement and includes an indemnity clause to protect the City from any future liability or lawsuits relating to the improvements. In addition, the homeowner would be responsible for the removal/ replacement costs of said improvements in the event of a storm drain repair. The Agreement will be recorded with the County and will bind all future owners of the property. Construction of these improvements is not allowed until all terms of the Agreement are satisfied.

## **FISCAL IMPACT**

There is no direct fiscal impact. The homeowner will be required to pay for the recording of the Declaration of Restrictive Covenants Agreement with the County and staff time associated with processing any permits, as allowed in the City’s Fee Schedule. The homeowner would be responsible for the removal/ replacement costs of said improvements in the event of any storm drain work.

**ALTERNATIVES**

Determine that the proposed improvements do significantly impact the City's normal use of the easement for storm drain purposes, deny the applicant's encroachment request, and request the applicant to redesign all improvements within the storm drain easement.

**ATTACHMENTS**

Attachment 1: Vicinity Map

Attachment 2: Site Plan

Attachment 3: Declaration of Restrictive Covenants Agreement

Attachment 4: City Council E-5 Policy

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