

EXHIBIT D: CITY COUNCIL E-5 POLICY

**POLICY: ENCROACHMENTS AND USES WITHIN CITY EASEMENTS**

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Issue Number: 3
Date Adopted: June 2, 2020
Replaces: July 5, 2016

I. PURPOSE

To establish City guidelines and procedures for issuing permits for encroachments within City easements; to establish guidelines by which permits for encroachments within City easements may or may not be considered; and to identify the difference between a request for an encroachment permit as compared to a request for a vacation of a City easement. Encroachments include development, construction on, or use of City easements and public right-of-way.

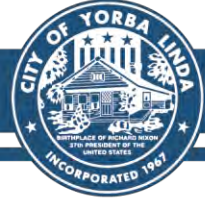
II. BACKGROUND

The City holds easement rights over properties citywide for various defined uses. Where easements have been granted to the City, the fee title to the property is owned by the underlying property owner. However, the rights of the property owner are subject to the rights that the City possesses pursuant to the City's easement.

There are five typical types of easements held by the City:

- 1) Right-of-way easements are typically for street purposes that allow for utilities and transportation purposes, such as a roadways, trails, sidewalks, and pedestrian paths.
- 2) Access easements allow the City to ingress and egress through private property to service, maintain, or monitor a City facility within or beyond the property.
- 3) Underground structure/utility easements are typically located over a City-owned buried structure or utility (*i.e.*, a storm drain or other City-owned infrastructure), and generally restrict the type of use on the land above the infrastructure to protect it from damage and to allow access should the infrastructure need to be excavated and repaired.
- 4) Drainage easements allow for the conveyance of storm-water runoff over the encumbered property and restrict the type of use and improvements on the land to ensure proper conveyance of the established drainage.
- 5) Maintenance easements restrict the use of the land within the easement area and allow the City control of the land surface. The City uses maintenance easements throughout the City to maintain landscape areas and trails for public benefit and enjoyment.

The City frequently receives requests from property owners to allow for specific uses or construction within the limits of City easements. For requests that primarily seek private use of a City easement, such requests more appropriately should be processed as a vacation of the City's easement to reflect the private nature of the proposed use. Therefore, this policy distinguishes between those requests that are appropriately

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encroachment permits and those requests that should be processed as easement vacations. Access, underground structure/utility, and drainage or other similar related easements should not be vacated due to public safety reasons.

III. POLICY

The City, in accordance with California and federal law, has property rights as an easement holder. Property owners and easement holders shall retain all rights granted to each under the law. The intent of this policy is to clarify basic requirements to be implemented in regard to encroachments within City easements to ensure proper safety and protection of the public, public property, and public infrastructure. The City will apply the following restrictions and exceptions to the use of land within City easements.

As the owner of the City easements, the City will apply the following restrictions and exceptions to the use of land within City easements. Because there is an element of public safety to some easements, any existing unauthorized encroachments into access, drainage, or underground structure/utility easements (or similar public safety related easements) that interfere with the proper use of the easement shall be removed within 30 days of receiving written notice by the City unless specifically authorized in this Policy. Existing unauthorized encroachments within access, drainage, or underground structure/utility easements (or similar public safety related easements) may remain only by City Council approval.

Right of Way Easements: Obstruction of right of way easements is prohibited. Private improvements are not permitted within right of way easements that inhibit the use of utilities, trails, sidewalks, pathways, and roadways. At the discretion of the City Engineer, the City may permit an exception to allow private landscaping and minor hardscapes within parkways. Private landscaping and improvements are not permitted in landscaped areas that are maintained by the City.

Access Easements: Obstruction of access easements is prohibited. Stored vehicles or materials shall not be placed within an access easement area. Trees or other objects are not permitted to interfere with the free and clear access within the easement limits. At the discretion of the City Engineer, the City may permit an exception to allow a gate across the access easement. However, any permitted gate must remain unlocked by the permittee at all times or locked with a City-owned padlock. No electronic operated gates will be allowed.

Drainage Easements: Obstruction of drainage easements is prohibited. Trees, walls, structures, and intrusive hardscape are prohibited within the easement area. The easement area may not be used for storage. At the discretion of the City Engineer, the City may permit an exception to allow a gate or fence perpendicularly across the drainage

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easement. However, any permitted gate must remain unlocked by the permittee at all times or locked with a City-owned padlock and allow for the proper conveyance of storm-water runoff.

Underground Structure/Utility Easements: Trees, walls, structures, and intrusive hardscape are prohibited within the easement area. At the discretion of the City Engineer, the City may permit gates to be constructed perpendicularly across to the easement. Any accessory items or uses within the easement must be easily moveable, as determined by the City Engineer. The easement area may be used for storage, but items must be removed immediately upon City request to allow access to the underground infrastructure. The City will not be responsible for reconstruction or repair of private improvements constructed within the easement area.

Maintenance Easements: Encroachments, including privately owned, fixed or permanent structures, into the easement area are prohibited unless specifically allowed as outlined in the sections below.

IV. PROCEDURES

Requests for authorization to encroach within the limits of City easements may be issued under the following guidelines:

A. Temporary Encroachment

The City Manager or his designee may issue an encroachment permit with conditions for the construction of temporary improvements that encroach onto City easements. The term of the encroachment permit issued under this policy may not exceed one (1) year. Such improvements shall be able to be removed quickly and easily within ten (10) calendar days of notice to remove such items from the City. Encroachment permits for temporary improvements may be renewed for up to five one-year periods at the discretion of the City Manager or his designee. The following conditions apply to Encroachment Permits for temporary improvements:

- Proposed temporary improvements shall not alter the nature or design of a City maintained easement area, which is visible to passersby and which will change the intent and/or design of the community as it was originally approved by the Planning Commission and/or the City Council.
- Proposed temporary improvements must meet the requirements of the current Yorba Linda Municipal Code and Building and Safety Codes and may require the issuance of a building permit. Proposed temporary improvements shall not violate any land use regulations or be detrimental to the City's property interest.

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- The design, placement, and construction of any temporary improvement is subject to the approval of the City Manager or his designee. The City may revoke a permit if, in the judgment of the City Manager or his designee, such revocation is in the public interest. Any decision to revoke an encroachment permit may be appealed to the City Council following the appeal process as outlined in the Yorba Linda Municipal Code Article IX of the Zoning Ordinance. Written notice of the appeal for an encroachment permit is required within 10 calendar days of notice of revocation.

B. Permanent Encroachment

Fixed, permanent structures or permanent improvements encroaching upon City easements are not allowed, except in those instances where there is “no significant impact” on the City easement involved, and/or where it is not practical to formally vacate such easement. The term “no significant impact” means an encroachment of one foot or less onto a City easement, and which does not deprive the public from the normal use and enjoyment of the remaining easement or adversely impact the purpose of the easement. For example, if a property owner accidentally builds a wall/fence that encroaches a few inches onto the City easement, it may be considered to be within a tolerable level where no Planning Commission or City Council action is required.

Requests for permanent improvements that exceeds these standards (i.e. one foot) shall be deemed a request for a vacation of the easement and shall be subject to the vacation hearing process. However, due to their public safety connection, access, underground structure/Utility, and drainage easements or similar safety related easements should not be vacated. Requests for encroachments onto access, underground structure/Utility, and drainage easements or other similar safety related easements for privately owned, fixed or permanent structure require a City Council determination/finding that the proposed permanent improvements will not adversely impact the City’s easement or general public safety and the property owner may be required to execute a Declaration of Restrictive Covenants (DORC).

C. Encroachments Requiring Vacation of City Easement**Existing Fence Encroachments on City Maintenance Easements**

Existing fences encroaching into City landscape easements that were authorized pursuant to a City encroachment permit and were constructed prior to July 15, 2003, will be allowed to remain subject to the following:

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- The easement area encompassed by the fence will be vacated by the City, at the City's expense, including landscape and irrigation modifications. If the underlying property owner does not want the encompassed area to be vacated, the fence shall be relocated outside the City's easement area by the property owner within thirty (30) calendar days of receiving such notice.
- Any unpermitted accessory structures or improvements in the prior easement area shall require a Design Review through the Planning Commission.

Existing unauthorized encroachments without permits will be allowed to remain subject to the following:

- The easement area encompassed by the fence will be vacated by the City, with all costs of the vacation process, including landscape and irrigation modification, being borne by the property owner. If the underlying property owner does not want to vacate the encompassed easement area, the unauthorized encroachment shall be removed within thirty (30) calendar days of receiving a notice from the City.
- Any unpermitted accessory structures or improvements in the prior easement area shall require a Design Review approval through the Planning Commission.
- Compliance with the "General Fence Relocation Guidelines".

Each case will be evaluated individually, and the City Manager or his designee shall take into account unique circumstances when applying this Policy. At the discretion of the City Manager or his designee, the property owner may be required to execute a Declaration of Restrictive Covenants for the prior easement area.

Proposed New Fence Encroachments on City Maintenance Easements

Proposed fence encroachments into City maintenance easements may be allowed subject to the following:

- Upon approval by the Planning Commission as part of a Design Review process including any proposed accessory structures or improvements in the easement area. Each case will be evaluated individually, and the Planning Commission shall take into account unique circumstances when applying this Policy. At the discretion of the Planning Commission, the property owner may be required to execute a Declaration of Restrictive Covenants (DORC) for the prior easement area.



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- Adjacent and/or affected neighboring properties shall be notified of the request prior to the Planning Commission review. The easement area encompassed by the fence will be vacated by the City, with all costs of the vacation process, including landscape and irrigation modifications shall be borne by the property owner.
- The proposed fence shall be installed at a distance from the top of slope equal to any adjacent existing fence or as approved by the Planning Commission. However, unless there is a consistent fence line either adjacent to the property or along a majority of the slope, the City would not grant encroachments greater than 18 feet from the top of slope.
- The establishment and maintenance of the fence and landscaping within the fenced area shall be consistent with the "General Fence Relocation Guidelines" as determined by the Planning Commission.

D. Other Implementation Procedures

The City Manager or his designee may develop any other rules, regulations, or procedures that may be necessary for the effective implementation of this policy. Such regulations and procedures may incorporate (but are not limited to) provisions relating to insurance, indemnification, maintenance, notice, permit form, appeal process, etc.

E. Appeal Process

Any decision related to the land use within a City easement may be appealed in writing to the City. Public Works staff shall review the proposed appeal and forward the request for encroachment authorization to the City Manager. The final determination for encroachment authorization may ultimately be made by the City Council.



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GENERAL FENCE RELOCATION GUIDELINES

1. Each homeowner will be responsible for their own fencing costs and any other costs associated with fence relocation, including any damage to plants or sprinklers resulting from the fence relocation, and all costs incurred in the easement vacation process.
2. The homeowner may need to obtain a permit for the fence from the City of Yorba Linda Building Department.
3. All fence irrigation and landscape plans are subject to Planning Commission review and approval.
4. The fence shall be painted Hunter Green and remain maintained in good condition with minimal fading, rust, or corrosion visible from the street below at any time.
5. The irrigation system within the easement vacation area shall be installed and maintained by the property owner with a water source connected to the property owner's water meter.
6. Trees, shrubs, and ground cover planting shall match the adjacent city-maintained trees, shrubs, and ground cover plant pallet.
7. Subject area shall remain at the existing grades prior to the easement vacation and shall not be modified in any way.
8. No new tree(s), shrub(s) or ground cover shall be planted within the subject area unless replacing existing naturally damaged or diseased tree(s) or shrub(s) or ground cover in kind and number.
9. Area shall not be used as an animal kennel or holding area.
10. Maintenance of fences, irrigation systems, trees, shrubs, and ground cover shall match, at a minimum, the standard of care provided by the City for the landscaped area adjacent to the easement vacation area.
11. Fence location shall be parallel to the top of slope at the limit of the easement vacation.