

DATE ISSUED: September 19, 2000.....REPORT NO. 00-190

ATTENTION:Land Use and Housing Committee
Agenda of September 20, 2000

SUBJECT: Public Right-of-Way Use Permit Procedures

SUMMARY

- Issues -
1. Should the Land Use and Housing Committee recommend adoption of an ordinance amending the San Diego Municipal Code to add a Section, "Public Right-of-Way Use Permit Procedures?"
 2. Should the Land Use and Housing Committee recommend the granting of Public Right-of-Way Use Permits to enable the establishment of Eruvin?

Manager's Recommendation - Recommend that City Council approve the ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures." Direct staff to process a Process Two, or Process Five Public Right-of-Way Use Permit for the establishment of Eruvin.

Other Recommendations - None. (Staff proposes to review this item at the October 12 Planning Commission Meeting to obtain their recommendation.)

Fiscal Impact - None.

BACKGROUND

The City has received requests from several organizations to install monofilament wire over the public right-of-way to help establish boundaries to enclose areas of the City. The area enclosed by such a boundary would be known as an Eruv (Eruvin, plural.) The Land Use and Housing Committee members were apprised of these requests and that the City Manager would develop a policy and approval process to address these requests.

An Eruv is a symbolic enclosure and pooling of all private and public property rights within its boundaries to create a large, private domain. The creation of this large, private domain would allow certain activities that would otherwise be prohibited on the Sabbath as observed by Orthodox Jews. For example, establishment of an Eruv would permit members of the synagogue to carry children to parks, push strollers and wheelchairs, and transport items to and from the synagogue and among homes within the Eruv.

Beth Jacob, an Orthodox Jewish synagogue in the College Area, proposes to establish an Eruv in the College area. The boundary of the proposed College Area Eruv is attached. Other Orthodox

Jewish synagogues in the City have expressed an interest in establishing Eruvin as well. These Eruvin would be in La Jolla and University City. The purpose of this report is to propose a process whereby these encroachments would be reviewed and approved or denied as deemed appropriate.

Eruvin have been established in many cities around the country--and the world. Those Eruvin researched by City staff have boundaries that follow geographic features and use pre-existing structures. An Eruv may be established using natural boundaries, such as rivers, and other physical features such as fences, buildings or power lines. However, it is not possible to utilize streets as a boundary. The request to the City is to enable the establishment of an Eruv boundary by attaching brackets to existing street light poles or other poles through which a continuous monofilament line would be strung. The installation of poles and brackets with monofilament line in and over the public right-of-way would constitute an encroachment in the public right-of-way.

The City currently has an encroachment approval process to enable property owners to place encroachments within the public right-of-way where they hold the underlying fee title. While the wire delineating the Eruv would be unobtrusive, it would run along public right-of-ways dedicated over privately held properties not owned by the groups requesting the encroachment. To enable the requested wires for an Eruv, the San Diego Municipal Code would need to be amended to provide for an encroachment over property not in the applicant's ownership.

DISCUSSION

Encroachments within the public right-of-way are addressed under Section 62.0302 of the Municipal Code. However, the only encroachments authorized under this Section are those for which the applicant owns the underlying property. In such cases, an Encroachment Maintenance and Removal Agreement is recorded against the owner's property. This agreement binds the owner to maintain the encroachment in a safe and sanitary condition. It also binds the owner to indemnify the City from any liability arising from the encroachment.

Imposing requirements and obligations because of encroachments associated with an Eruv would require a different form of approval. An applicant for an Eruv would not have rights to the property underlying the public right-of-way. The Municipal Code currently does not provide a mechanism to allow a permanent encroachment when the applicant has no property rights to the underlying property. The attached proposed amendment to the Municipal Code, Public Right-of-Way Use Permit Procedures, provides for City Council authorization of these types of encroachments.

The proposed amendment, Public Right-of-Way Use Permit Procedures, provides that the applicant for an encroachment, as described above, would be required to maintain the encroaching structure in a safe condition. The applicant would also have to indemnify the City from any liability arising from the encroachment. The City Engineer would make a decision on an application for the Public Right-of-Way Use Permit based on established criteria (Process Two approval). The City Engineer's decision would be appealable to the Planning Commission, or when of sufficient public interest, the matter would be processed for decision by the City Council (Process Five approval). The proposed amendment does not supersede the provisions of other applicable regulations such as the San Diego Municipal Code Section 61.0509 (Prohibition of Poles and Wires in Underground Utility Districts) nor franchise agreements. Pursuant to the proposed ordinance, an applicant for a Public Right-of-Way Permit will still be required to comply with all applicable laws and regulations.

Besides enabling the establishment of Eruvin, the Public Right-of-Way Use Permit would provide City staff greater options in dealing with encroachment requests. It could allow for the efficient location of utilities in some circumstances. For example, a property owner may need a private sewer service to traverse part of the dedicated public right-of-way for which the property owner does not have underlying property rights. That alignment might be needed to achieve gravity flow to a public trunk sewer. Without the public right-of-way use permit, the alternative would be that either the applicant obtain the permission of the parties holding the property rights, or the applicant would need to construct a public sewer pump station--a large expense and potential public nuisance. The Public Right-of-Way Use Permit would provide a way for the City to grant an encroachment across the dedicated public right-of-way, as needed, and avoid the associated problems of the public pump station.

CONCLUSION

A permit process is needed to facilitate the establishment of Eruvin in the City of San Diego. Staff recommends that City Council approve an ordinance amending the Municipal Code to add the Section, “Public Right-of-Way Use Permit Procedures;” and that staff be directed to process a Process Two, or Process Five Public Right-of-Way Use Permit for the establishment of Eruvin.

Respectfully submitted,

Tina P. Christiansen, A.I.A. Approved: George I. Loveland
Planning and Development Review Director Assistant City Manager

HALBERT/WESTON

- Attachments: 1. Boundary of the Proposed College Area Eruv/Map
2. Proposed Ordinance Amending the Municipal Code to Add “Public Right-of-Way Use Permit Procedures”

Note: Attachments not available in electronic format. A copy of the attachments is available for review in the Office of the City Clerk.