

DATE ISSUED: December 18, 2000.....REPORT NO. 01-003

ATTENTION:Honorable Mayor and City Council
Docket of January 23, 2001

SUBJECT: Public Right-of-Way Use Permit Procedures

REFERENCE: Manager's Report No. 00-190, dated September 19, 2000

SUMMARY

Issues -Should the City Council adopt an ordinance amending the San Diego Municipal Code to add a Section, "Public Right-of-Way Use Permit Procedures?"

Manager's Recommendation - Approve the ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures." Direct staff to process requests for Public Right-of-Way Use Permits as a Process Four.

Other Recommendations - The Land Use & Housing Committee approved the Manager's Report No. 00-190 on September 20, 2000, which directed staff to take the draft ordinance to the Planning Commission for recommendation and to City Council for approval. The Planning Commission recommended 7-0 at their hearing on October 19, 2000 that the City Council approve the ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures." The Planning Commission further recommended that staff process requests for Public Right-of-Way Use Permits as a Process Four decision to ensure adequate public notice and environmental review.

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, which would constitute encroachments.

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. For the City to grant encroachments over public rights-of-ways dedicated over privately held properties not owned by an applicant, the San Diego Municipal Code would need to be amended.

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.

The proposed amendment, Public Right-of-Way Use Permit Procedures would allow for encroachments where the applicant does not hold the underlying fee title. The draft ordinance, provides that the applicant for an encroachment, 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. Staff recommends that the Public Right-of-Way Use Permit be processed as a Process Four level decision appealable to the City Council. The Code Monitoring Team (a Land Development Code update oversight committee) and the Planning Commission recommend that the permit be a Process Four level approval with a decision by the Planning Commission appealable to the City Council.

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.

The Public Right-of-Way Use Permit would provide City staff greater options in dealing with encroachment requests. In addition to the Eruvin requests, the following encroachments would be possible:

- sewer and water laterals
- private bus shelters
- non-franchise phone booths
- private mail collection boxes

CONCLUSION

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 requests for the Public Right-of-Way Use Permit as a Process Four. The Public Right-of-Way Use Permit Procedures will provide the City a mechanism to consider requests for these encroachments when they are to the public good. The findings which must be made for approval of the encroachment will ensure protection of abutting property owners' rights.

ALTERNATIVES

1. Adopt the proposed ordinance for Public Right-of-Way Use Permit Procedures with the revision that the approval of the abutting property owners be obtained for proposed

encroachments.

2. Adopt the proposed ordinance as a Process Two level approval, under which staff's decision is appealable to the Planning Commission.
3. Do not adopt the ordinance for Public Right-of-Way Use Permit Procedures.

Respectfully submitted,

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

HAASE/WESTON