

RIGHT-OF-WAY OCCUPANCY PERMITS AND FEE IN-LIEU FOR OFFSITE IMPROVEMENTS

Infrastructure, Planning, and Sustainability
Committee

February 22, 2017

RIGHT-OF-WAY OCCUPANCY PERMITS (ROP) Background

- Chapter 9.08 – Right-of-Way (ROW) Occupancy has not been comprehensively updated in over 30 years
- Currently known as Street Occupancy Permits (SOP)
- Planning and Development Services proposes an update to include:
 - Reduce barriers to development
 - Streamline permitting
 - Define authority
 - Track all development in City ROW
 - Agreement that removal and/or relocation of improvements in ROW will be at owner's expense

ROP Permit Summary:

Right-of-Way Occupancies include development and/or activities that are located within City right-of-way. These can include fences, retaining walls, stairs, underground private utilities, irrigation systems, parking areas, and sidewalk cafes.

All Right-of-Way Occupancies will be:

- Recorded through an ROP or associated development permit.
- Subject to an Agreement to remove and/or relocate improvements at property owner's expense if the City needs to access the area.

Policy Discussion:

1. Should all right-of-way occupancies be required to obtain insurance or can some indemnify the City via a “Hold Harmless” agreement?
2. Which right-of-way occupancies should be required to pay a Commercial Use Fee?

Insurance:

Currently, all Commercial and Residential SOPs (ROPs) are required to obtain a minimum of \$500,000 insurance

Option 1 – Maintain Status Quo (staff recommendation)

- Process is perceived to be onerous, particularly for residential property owners
- Process is perceived to be a barrier to redevelopment
- Many existing conditions currently do not have insurance

Option 2 – Hold Harmless Agreement for Residential

- Existing development (fences, retaining walls) in ROW
- May expose the City to additional litigation and expense

Commercial Use Fee:

Currently, virtually all Commercial businesses that have development in the City's right-of-way are required to pay a commercial use fee. Sidewalk cafes are currently exempt.

Methodology – Current approach assumes all commercial uses are benefiting from their use of right-of-way, regardless if it is a private utility, construction fence, sign, or sidewalk cafe.

Revenue – Currently the City collects \$568,000 per biennium.

Fiscal Impact Discussion

- **Option 1** – Bill for above-ground development that “impedes” the primary purpose of the right-of-way. Discontinue billing for underground private utilities, soil nails, irrigation, development behind the sidewalk, and code-required amenities. This would include billing for sidewalk cafes which are currently exempt.
 - Approximate Fiscal Impact (Biennium) \$200,000 reduction to GF
- **Option 2** - Discontinue billing for code-required amenities. Sidewalk cafes would remain exempt.
 - Approximate Fiscal Impact (Biennium) \$90,000 reduction to GF
- **Option 3** – Discontinue billing for code-required amenities including, underground private utilities, soil nails, irrigation, development behind the sidewalk. Sidewalk cafes would remain exempt.
 - Approximate Fiscal Impact to GF (Biennium) TBD

Fee-in-Lieu Offsite Improvements

- **Background**

- Program allows developers to pay a fee in-lieu of engineering and constructing off-site improvements
- Funds future strategic offsite improvements
- Improves predictability for the development community
- Only for offsite improvements associated projects of no more than two houses

Fee-in-Lieu: Nexus & Proportionality

- **The purpose of this policy is to develop fair, consistent, and equitable methods for assessing off-site improvements.**
- **New Residential**
 - Nexus Exists
 - Offsite improvements should not exceed 5% total project construction costs
- **Alteration Residential**
 - Additions and remodels of 2,000 or more sq. ft. lot coverage may be subject to offsite improvement requirements
 - Offsite improvements should not exceed 5% total project construction costs

Fee-in-Lieu Calculation

Improvement Type	Unit of Measurement	Cost
Concrete Sidewalk	LF	\$ 53
Concrete Curb & Gutter	LF	\$ 90
Concrete Driveway Approach	SY	\$ 90
New Residential Street Paving	SF	\$ 10
Grind & Overlay Existing Asphalt Pavement	SF	\$ 8
Directional Curb Ramp	EA	\$3,000
HMA Receiving ramp	EA	\$ 450
Restore pervious ROW per BMP L613	SY	\$ 8

For example, if it was determined that the required site improvements were 30 LF of Cement Concrete Sidewalk with Cement Concrete Curb and Gutter and 3 Directional Curb Ramps, the fee would be calculated as follows:

- Cement Concrete Sidewalk: $30 \text{ LF} \times \$53 = \$1,590$
- Cement Concrete Curb and Gutter: $30 \text{ LF} \times \$90 = \$2,700$
- Directional Curb Ramps: $3 \text{ ea} \times 3,000 = \$9,000$
- **Total In-Lieu of Fee: $\$13,290$**

NEXT STEPS

City Council Study Session:	February 28
City Council Committee Discussions:	March
Full City Council Consideration:	March/April