



Agenda Item No. 11.

Staff Report

Date: January 11, 2018

To: Mayor Robbins and Council Members

From: Rich Simonitch, Public Works Director

Subject: Discussion on Right-of-Way Encroachment Permit Regulations and Enforcement

Recommendation

Council to provide policy direction to staff as to whether the Right-of-Way Encroachment Permit regulations should be modified, in addition to policy direction on the enforcement and abatement of unpermitted encroachments.

Background and Discussion

The Town Staff has received complaints about rocks, boulders, and other obstructions being placed by residents along the roadway for the purpose of limiting vehicular parking along property frontage within the public right-of-way. Only in very few cases are the obstructions part of an Encroachment Permit that was issued based on an approved plan. The purpose of this report is to ask for Council direction on whether modifications to the existing Encroachment Permit regulations should be considered and in providing direction on when to enforce or abate an Encroachment Permit violation.

The encroachments purpose section RMC 12.08.010 states: "The public right-of-way and public property are resources held by the Town for the benefit of the public. While it is recognized that special and unusual conditions may justify the installation, use, or operation of encroachments upon then public property, it is the policy of this Town to discourage encroachments onto public lands, and such encroachments shall be kept to a minimum. Encroachments shall be permitted on the public right-of-way or other public property only when necessary or desirable and not in conflict with the General Plan." RMC 12.08.020(c) defines an encroachment as "any, improvement, structure or object, temporary or permanent, upon any public right-of-way or other public property so as to prevent, obstruct or interfere with its normal use."

There are many encroachments throughout the Town that have occurred – some approved by the Town and others likely not. RMC 12.08.080 grants the Public Works Director the authority to take action to approve or deny any Encroachment Permit application based on certain criteria including necessity, desirability, conformance with the General Plan, and adverse impact on public health and safety or personal property. Once action is taken to per RMC 12.08.160, an

applicant is able to appeal the decision to the Town Council within ten (10) days after issuance of the encroachment permit or notice of the written decision to deny a permit. It is also important to note that all permitted encroachments may be required to be altered, removed, relocated, revoked, and/or abated per RMC Sections 12.08.240 and 12.08.250.

While the Encroachment Permit regulations recognize that special and unusual conditions may justify the installation, use, or operation of encroachments upon the public property, public right-of-way and public property are important resources held by the Town for the benefit of the public and not for the privatization of the right-of-way fronting one's property. As such, a question for the Council is whether the current regulations are sufficient in allowing the Public Works Director the authority to grant an Encroachment Permit for permanent features, such as landscaping, hardscape, and new driveway aprons for driveway access, or should the Council have the discretionary authority to grant approval of an Encroachment Permit for permanent features.

An alternative for consideration is to allow the Director of Public Works the authority to grant an Encroachment Permit for ministerial projects and to have the Town Council have the authority to grant an Encroachment Permit when the Encroachment Permit is associated with another discretionary action, such as Design Review, a Variance, a Nonconformity Permit, etc.

Another question is when should staff enforce or abate unpermitted encroachments? The current code enforcement policy of staff is that the enforcement of the Town's Encroachment Permit regulations is when we find out about new encroachment violations and with resale inspections. In these cases, we notify the owners that the encroachment be removed within 10 days of notice. Property owners could apply for an encroachment to remain by applying for an encroachment permit. Staff reviews any permit applications to determine if there is sufficient justification for the encroachment to remain under the provisions of the Municipal Codes. Should staff continue to administer that policy, or should the Town take a more proactive approach, such as identifying the unpermitted encroachment at the time of planning permit and/or building permit review? Are there other triggers for an encroachment review of property?

In summary, staff is seeking direction from the Council to determine whether the current Encroachment Permit regulations are sufficient and policy direction on when to enforce or abate an Encroachment Permit violation.

Fiscal, resource and timeline impacts

Staff time to prepare the staff report.

Alternative actions

Discuss alternative actions that may be preferable.

Environmental review (if applicable)

N/A

Attachment

1. Chapter 12.08 of the Ross Municipal Code

Chapter 12.08

ENCROACHMENTS IN THE PUBLIC RIGHT-OF-WAY OR
OTHER PUBLIC PROPERTY

Sections:

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12.08.230	Maintenance of encroachment.
12.08.240	Alteration, removal or relocation of encroachment.
12.08.250	Revocation of permit and abatement.
12.08.260	Restoring the public right-of-way or other public property.
12.08.270	Penalties.

12.08.010 Purpose. The public right-of-way and public property are resources held by the Town for the benefit of the public. While it is recognized that special and unusual conditions may justify the installation, use, or operation of encroachments upon the public property, it is the policy of this Town to discourage encroachments onto public lands, and such encroachments shall be kept to a minimum. Encroachments shall be permitted on the public right-of-way or other public property only when necessary or desirable and not in conflict with the General Plan. The encroachment shall not create a substantial adverse impact on persons or property or adversely affect the public health, safety and welfare. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.020 Definitions.

a. "Applicant" shall mean any person who applies for a permit pursuant to this chapter to encroach, obstruct, grade, construct improvements, or cause any of the same to occur upon a right-of-way or other public property.

b. "Director" shall mean the Town Manager or his or her designee.

c. "Encroachment" is any, improvement, structure or object, temporary or permanent, upon any public right-of-way or other public property so as to prevent, obstruct or interfere with its normal use.

d. "Permanent encroachment" means any encroachment which remains on the public right-of-way or other public property for over ninety (90) days.

e. "Permittee" means any person who has been issued an encroachment permit.

f. "Person" means any individual, group of individuals, business, organization, public agency or other entity.

g. "Temporary encroachment" means any encroachment which remains on the public right-of-way or other public property for ninety (90) days or less. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.030 Permit Required. No person shall create or maintain an encroachment, without obtaining and keeping in force and effect a permit as required by this chapter. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.040 Exceptions. The following shall be exempt from the provisions of section 12.08.030 of this chapter:

a. Public utilities which have an existing easement for utility service.

b. Town officers, employees, or independent contractors serving the role of Town officials, or agents acting in the discharge of their official duties.

c. Any work being performed by any person pursuant to a contract with the Town.

d. Lawn or ground cover of any grass or type not prohibited by other law within the public right-of-way directly adjacent to that person's property, provided, however, that the lawn or ground cover shall be properly maintained and shall not extend into the traveled way of the public street nor into the drainage ditches, gutters or other drainage facilities, nor impede pedestrian travel. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.050 Prohibited Encroachments. The following encroachments are specifically prohibited and no applications will be accepted nor permits issued therefor:

a. Construction or placement of any fill, wall, pipe, column, pole, fence, tree, shrub, or any other object, which would constrict and reduce the capacity of any watercourse to carry stormwater.

b. Erection or maintenance of a post, pole, column or structure for the support of advertising signs.

c. Erection, installation or maintenance of posts, poles or columns for the purpose of carrying lights intended primarily for lighting of abutting private property.

d. Installation or maintenance of underground tanks, vaults or elevators, except that underground vaults may be permitted as a part of facilities owned by public utilities and public agencies.

e. Installation or maintenance of signs bearing flashing or moving lights, except for temporary warning signs, barricades, or flashers required for protection of the public during construction operations.

f. Placing a plant or portion thereof, whether living or dead, including but not limited to, trees, flowers, mushrooms, bushes, fencing, vines, grass, turf, cones, or deadwood or any other encroachment in open space or on park land except in such cases as deemed necessary by the Director to provide for the public health, safety and welfare of this community. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.060 Application and Fees. An application for any encroachment under this chapter shall be submitted to the Director on approved Town forms. Additionally, concurrent with the application submittal, the Applicant shall comply with the following requirements:

a. Applicant shall notify in writing by first-class mail, postage prepaid, owners and residents, including business occupants, within 100 feet of the location of the proposed encroachment of the following:

1. Description of encroachment;
2. Notice of availability of inspection of a plan showing the location of the encroachment and construction details;
3. Notice of last day to inspect plans and/or file objection to the proposed encroachment;
4. Scheduled day of Director's action to be taken on application;
5. Estimated length of time to complete installation of encroachment;
6. Possible disruption of service or accessibility to adjoining properties; and
7. Hours of construction.

Applicant shall attach to his or her application a declaration under penalty of perjury on a form supplied by the Director attesting to the fact that these requirements have been met.

b. Applicant shall furnish two sets of any maps, diagrams, plans or similar exhibits sufficient to clearly illustrate the location and construction details of the proposed encroachment and its relation to existing and proposed facilities in the right-of-way or other public property.

c. Applicant shall pay the permit fee as prescribed by Town Council resolution.

d. When the Applicant requests the temporary closure of a public street to pedestrian and/or vehicular traffic, the Applicant shall apply for the permit at least two (2) weeks in advance of the date of requested closure. When emergency situations arise due to unforeseen circumstances or other causes, the two (2) week period may be waived by the Director.

e. The Director may waive this requirement including application and fees, if the encroachment is minor in nature and does not include a structure. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.070 Permit Authority of Director. The Director shall have the authority to grant, conditionally grant or deny an encroachment permit pursuant to this chapter. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.080 Action on Applications. The Director shall grant or conditionally grant a permit if all of the following criteria are met:

- a. The Applicant has fulfilled all of the requirements listed in section 12.08.060;
- b. The encroachment for which the permit is requested is necessary or desirable;
- c. The encroachment is not in conflict with the General Plan;
- d. The encroachment does not create a substantial adverse impact on persons or property; and
- e. The encroachment does not adversely affect the public health, safety or welfare.

The Director shall deny any permit regarding an application that does not satisfy all of the above criteria. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.090 Issuance of Permit or Notice of Written Decision to Deny Permit. The Director shall either issue the permit or send notice of the written decision to deny a permit within thirty (30) days of making his or her determination. Any required conditions other than the ones listed within this chapter shall be included in the permit. If the Applicant does not appeal pursuant to section 12.08.160, the decision of the Director shall be final. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.100 Conditions of Permit. Where the Director grants a permit, he or she may condition that permit as he or she deems necessary to protect the Town, persons, property or the public health, safety and welfare. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.110 Term of Permit.

a. A temporary encroachment permit shall be valid for a term of ninety (90) days, unless the permit sets forth a different time frame or is revoked pursuant to section 12.08.250.

b. A permanent encroachment permit shall be valid for a term of one (1) year, unless the permit sets forth a different time frame or is revoked pursuant to section 12.08.250.

c. Any encroachment permit may be renewed at the end of its term provided the Permittee pays the renewal fees set by City resolution before the expiration of the prior permit term. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.120 Insurance. Within five (5) days of obtaining an encroachment permit and in any case before commencing any installation of the encroachment, as a condition of that permit, the Permittee shall obtain and at all times during the term of the permit carry, maintain, and keep in full force and effect such insurance as required by the Director. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.130 Security. Within five (5) days of obtaining an encroachment permit and in any case before commencing any installation of the encroachment, as a condition of that permit, Permittee may be required to post, and at all times while the permit is in existence maintain, security for use by the Town in the event that Permittee fails to remove the encroachment after the permit expires or fails to comply with the terms of the permit, this chapter, and all applicable law. The security required in this section may be in the form of a cash deposit or a surety bond in a form acceptable to the City Attorney and from a surety company approved to do business in the State of California. The security also may be in the form of an irrevocable letter of credit approved by the Town Attorney. The security shall be in the amount designated by the Director, which is determined to be sufficient for removal of the encroachment and proper restoration of the right-of-way or other public property to its former condition. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.140 Indemnification. Any person who creates or maintains an encroachment in the right-of-way or on public lands shall indemnify the Town. The Permittee shall execute an indemnification agreement on a form approved by the City Attorney. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.150 Standards and Specifications. The Director shall establish such standards and specifications as he or she may deem necessary for the proper construction, use and maintenance of encroachments. Any work performed or use pursuant to an encroachment permit issued under provisions of this chapter shall conform to these standards and specifications. In the absence of specific standards and specifications, recognized standards of construction or approved practices shall govern the work or use. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.160 Appeal. Any Applicant may, within ten (10) days after issuance of the encroachment permit or notice of the written decision to deny a permit, file an appeal with the Town Council by written notice to the Town Clerk. The Council may, on its own motion, direct that the Director's action be referred to it for review. The Town Council after considering the action of the Director and hearing the appeal or referral shall approve, modify or overrule the action. The decision of the Town Council shall be final. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.170 Continuing Encroachments. If an encroachment continues on a right-of-way or other public property for more than five (5) years from the date of issuance, the Director may require the Permittee to enter into a lease agreement with the Town for the continued use of the encroachment area. The Permittee shall be responsible to follow all rules and regulations pursuant to this chapter and those contained in the lease agreement. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.180 Display of Permit. The Permittee shall keep any permit issued pursuant to this chapter so that it may be made available at the site of work during installation of the encroachment and must show the permit to the Director or a law enforcement officer on demand. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.190 Inspection. The Director is authorized to make such inspections as he or she may deem necessary in connection with permits issued under this chapter. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.200 Unanticipated Pipe or Underground Facility. Upon uncovering any pipe or underground facility not previously located or anticipated, Permittee shall cease work immediately and shall notify the Director. Permittee shall proceed with the work only after the proper utility has been notified and permission is granted by the Director to proceed. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.210 Changes in Permit. No changes may be made to the location, dimension, character or duration of the encroachment as granted by the permit or to any condition of the permit except upon the written approval of the Director. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.220 Notices.

a. Before beginning any work that includes construction of concrete sidewalks, curbs, gutters, or driveway approaches, planting, trimming or removing trees, or making, placing or causing an obstruction in the watercourse or traveled way, the Permittee shall give the Director one (1) full working day notification. Owners of abutting property shall be notified as directed by the Director of any inconvenience to them which will result from any such work.

b. Upon completion of all work authorized in the permit, the Permittee shall notify the Director. No work shall be deemed to be completed until notification of completion is given pursuant to this chapter and the work is accepted by the Director. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.230 Maintenance of Encroachment. As a condition of the permit, Permittee shall exercise reasonable care in inspecting and maintaining the encroachment and the area affected by the encroachment after installation and for the duration of the permit. Upon notice from the Director, the Permittee shall immediately repair any injury, damage or nuisance in any portion of the right-of-way or other public property resulting from the installation, operation, use or maintenance of the encroachment. In the event that the Permittee fails to act promptly or should the exigencies of the injury or damage require repairs or replacement to be made before the Permittee can be notified or can respond to the notifications, the Town may, at its option, make the necessary repairs or replacement or perform the necessary work, and the Permittee shall be charged with all the expenses incurred in the performance of the work. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.240 Alteration, Removal or Relocation of Encroachment. At any time, when any encroachment authorized by this chapter is found to be in conflict with existing or proposed facilities or improvements owned, maintained or operated by the Town, such encroachment shall, upon written demand of the Director, be altered, removed or relocated at the sole expense of the Permittee in such a way as to eliminate the conflict.

Should the Permittee fail to comply with the written demand within the period of time listed in the notice, or within a reasonable time if no time period is listed, the Town may cause such alteration, removal or relocation of the encroachment at the expense of the Permittee. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.250 Revocation of Permit and Abatement.

a. The Town reserves the right to revoke any encroachment permit at any time if the permit is no longer in the public interest or if the Permittee has violated a permit condition, any provision in this chapter, or any other applicable law. Failure of the Permittee to maintain the required insurance or security bond shall result in the immediate revocation of the permit.

b. The Director shall give ten (10) days' written Notice of Permit Revocation and Order of Removal, which shall instruct Permittee to remove the encroachment and fully restore the public right-of-way or other public property to the same condition existing prior to the permit. The Notice of Permit Revocation and Order of Removal may state a date whereby the removal and restoration shall be complete; if the order does not state a date, all removal and restoration shall be completed within five (5) days of Notice of Permit Revocation and Order of Removal. Should the Permittee fail to comply with the Notice of Permit Revocation and Order of Removal within the required time, the Town may undertake the removal of the encroachment. The Town may utilize the security for this purpose and may charge Permittee any additional costs of removal and restoration.

c. The Permittee may, within ten (10) days after issuance of the Notice of Permit Revocation and Order of Removal, file an appeal with the Town Council by written notice to the Town Clerk. A timely appeal shall stay the Director's notice until the Town Council acts on the appeal. The Town Council after considering the action of the Director and hearing the appeal shall approve, modify or overrule the action. The decision of the Town Council shall be final.

d. Whenever the Director or the Council on appeal determines that an encroachment exists contrary to one or more of the provisions of this chapter or to any other applicable law, the

encroachment shall constitute a public nuisance and may be abated by the Town pursuant to Chapter 9.04. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.260 Restoring the Public Right-of-Way or Other Public Property. Upon expiration of the permit term or when required by the Director, the Permittee shall replace, repair or restore the right-of-way or other public property at the place of the encroachment to the same condition existing prior thereto, unless otherwise provided in the permit. The Permittee shall remove all obstructions, impediments, materials or rubbish caused or placed within or upon the right-of-way or other public property pursuant to the permit and shall do any other work or perform any act necessary to restore the right-of-way or other public property to its former condition.

Upon satisfactory completion of all work authorized in the permit, fulfillment of all conditions of the permit, and the full restoration of the public right-of-way or public property to its former condition, as determined by the Director, the Town shall release the security within thirty (30) days from the Director's determination. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).

12.08.270 Penalties. Any person who does any act not in conformance with the requirements of this chapter may be prosecuted. The violation shall constitute a misdemeanor or an infraction. Illegal encroachments constitute a public nuisance and may be abated by the Town pursuant to Chapter 9.04. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued or permitted by that person. The person responsible for installing or maintaining the illegal encroachment in violation of this chapter shall be liable for the costs of removal and the cost of restoring the property to its original condition in addition to any damages arising from the illegal encroachment. (Ord. 638 (part), 2013; Prior codes §3400, §3401, §3402, §3403).