

June 7, 1996

TO: All Holders of the City of Salem Design Standards

EFFECTIVE DATE: August 1, 1996

SUBJECT: **DEVELOPMENT BULLETIN #26**

The following information is distributed as a public service to the Salem development community of engineers, architects, contractors, builders, and developers to make them aware of any changes in the City permit and plan approval process, design standards, or construction standards which may have an impact on their operations:

RECORDED ENCROACHMENT AGREEMENT REQUIRED TO ENCROACH PUBLIC EASEMENT

PURPOSE: NOTICE OF POLICY CHANGE

Effective August 1, 1996, the Public Works Department will no longer approve encroachments into public easements by permanent private structures **without a signed and recorded encroachment agreement**. There will be no exceptions made.

BACKGROUND:

Many residential and commercial areas in the City have public water, sewer, and storm drain lines located in easements across private property, usually along the back or side lot lines. The standard legal easement form has restrictions that prohibit the construction of private structures within the easement.

For a number of years, the Department has attempted to find ways to reasonably accommodate slight encroachments into these public utility easements in residential areas by what are usually considered "minor" structures such as decks, patios, small toolsheds, and roof overhangs. In commercial areas, this has not been a serious problem. In residential areas, with smaller lot sizes, the overall results have been very poor. Maintenance access to public utilities in these easements has been severely hampered and manholes and valve boxes have been buried or destroyed. Unfortunately, too many builders have ignored the limitations and constructed elaborate permanent structures in the easements, thereby making it impossible to access the buried utilities without very expensive damages to private property.

The Department's first duty is to the general public and the protection and safe operation of public utilities. Access to the utilities for maintenance, sometimes on an emergency basis, must be preserved, and the general public should not bear the additional financial burden of replacing expensive private structures. As a result of the cumulative impact of too many problems created by these private encroachments and the unacceptable additional public expense incurred, the policy is being changed to prohibit any further harmful encroachments into easements in residential areas.

NEW POLICY:

- A) The only private structures allowed outright in a public water, sewer, or storm drain easement are:
- 1) Fences that can be dismantled for access (example: wooden or chain-link fences are allowable, concrete block walls are not);
 - 2) Walkways (gravel paths, stepping stones, and concrete sidewalks);
 - 3) Asphalt or gravel driveways or RV pads.
- B) In addition to the above uses, it **may** be possible, with permits and a signed and recorded encroachment agreement, to install the following items:
- 1) Concrete driveways or pads with no structure above them;
 - 2) Minor retaining walls for landscaping purposes (less than four feet high, not supporting any structures, and of removable materials such as railroad ties or dry-stack blocks).

Decisions on approving encroachments will be made on a case-by-case basis, considering the type of public utility, the location and nature of the proposed encroachment, access needs, and other relevant factors.

- C) The placement of any fill or any excavation within or adjoining a public easement requires permits.

ANY SUCH WORK DONE WITHOUT THE REQUIRED PERMITS AND/OR AGREEMENTS, OR THE PLACEMENT OF ANY OTHER PERMANENT PRIVATE STRUCTURES IN A PUBLIC EASEMENT WILL BE CITED FOR REMOVAL BY THE PROPERTY OWNER WITHIN 30 DAYS, AT THE OWNER'S SOLE EXPENSE.

Staff recognizes that a “no exceptions” policy will, on occasion, create individual hardships, but proper design and siting of buildings on a lot will avoid the vast majority of these problems. City staff has a responsibility to the general public; builders in turn have a responsibility to work within the legal confines of the particular parcel, including all required setbacks and easement restrictions. Developers and builders should pay careful attention during the platting or land division process to ensure that required easements do not interfere with their future building plans. Consulting engineers should consider these limitations when developing utility plans.

For more information, please contact the Public Works Department Permit Application Center, at (503) 588-6211 or (503) 588-6292 (TTY).

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