


CITY COMMISSION POLICY

 GRAND RAPIDS MICHIGAN	NUMBER: 1000-2	HISTORY	
	DATE: November 7, 1961	FILE #	DATE
	FILE NUMBER: 11848	50717	11/22/88
	DEPARTMENT: ENGINEERING	85280	12/15/15
		86604	3/28/17

SUBJECT: PROCEDURE TO VACATE OR PERMIT ENCROACHMENTS WITHIN CITY CONTROLLED RIGHTS-OF-WAY

PURPOSE: To establish the bases for permitting private encroachments within City controlled public rights-of-way and for major and minor vacations of public rights-of-way.

POLICY:

Applicable Law

Article V, Section 32 (paragraph 81) of the City charter prohibits the City Commission from giving away, surrendering, or relinquishing control of any street, lane, alley, court, public square/place (hereinafter referred to as public right-of-way), or create any permanent use other than for street or public uses, except by regular vacation proceedings in a proper court of record. Michigan’s Land Division Act, 1967 PA 288, as amended, MCL 560.101 *et seq.*, otherwise would allow the City to vacate a street or other platted right-of-way by resolution except when that vacation necessitates a plat amendment or is within 25 meters of a lake or the general course of a stream. Title IV, Chapter 51, Title 10 of the Code of the City of Grand Rapids (the “ROW Vacation/Encroachment Ordinance”) addresses a number of issues related to these matters.

Required Factors

Those requesting the vacation of or encroachment into any portion of any right-of-way controlled by the City may voluntarily, using easements, particularly designed features of their proposed improvements, or other means to ameliorate adverse effects of a proposed right-of-way vacation or encroachment in a manner satisfactory to the City Commission. In order to approve a proposed right-of-way vacation or encroachment, the City Commission shall conclude that, after considering the applicant’s efforts to ameliorate its effect, the proposed right-of-way vacation or encroachment:

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1. Will not inhibit or impede safe and efficient access to any parcel, building or structure by emergency personnel or equipment, by residents, employees or patrons, including those with mobility limitations, by vendors or suppliers serving building occupants, or by others.
2. Will not inhibit or impede safe and efficient travel of vehicles or pedestrians using any remaining right-of-way.
3. Will not inhibit or impede access to, maintenance on, or replacement of, any existing or reasonably foreseeable above or underground infrastructure, utility lines, facilities, or appurtenances within the portion of right-of-way proposed for vacation.
4. Will not set a precedent that may be applicable to other sites in the City and that would result in situations with un-ameliorated adverse impacts.
5. Will not adversely affect other parcels, area residents or occupants, or the general public.
6. Has been granted any needed zoning variances due to reduced setbacks, increased lot coverage or other factors.

Permissive Factors

The Commission may consider factors such as the following that may make the proposed right-of-way vacation or encroachment necessary or desirable:

- A. The proposed right-of-way vacation or encroachment is needed to use or continue to use an existing building or structure in a financial viable way.
- B. The proposed right-of-way vacation or encroachment will allow for desired renovation, improvement, change in use, or other economic development objective on the property owned by the property owner requesting the vacation.
- C. The proposed right-of-way vacation or encroachment will enhance the vitality of neighborhood, block or other area of the City.
- D. The proposed right-of-way vacation or encroachment will reduce City costs to maintain infrastructure.

Review Process

Requests to vacate or for a license agreement to encroach on portions of City controlled rights-of-way are filed in the City Engineer's office and are reviewed in accordance with the ROW Vacation/Encroachment Ordinance.

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1. If the request is for an encroachment that is to last 6 weeks or less (e.g., those needed to use rights-of-way for the display of artworks during “Art Prize”), the City Engineer may enter into and execute on behalf of the City a limited term encroachment license agreement on a form approved by the City Attorney.
2. If the encroachment is for foundation structural support components that will be decommissioned not later than the earlier of the completion of construction or 3 years and then abandoned in place, the City Engineer may approve an encroachment agreement in form approved by and upon payment of fees established by resolution of the City Commission.
3. If the request is for an encroachment of a longer duration or for an encroachment that is more extensive, the City Commission must approve the encroachment license agreement which may then be executed on behalf of the City by the City Engineer.
4. If the request is for an encroachment to place an outdoor seating area (which refers to a balcony, patio, terrace, walkway, parking area, lawn, garden or any other place where seating, tables, or other activities take place in association with a commercial use), the City Engineer may enter into and execute on behalf of the City a seasonal encroachment license agreement. Such license shall under no circumstance extend beyond December 31 of the then-current year. The fee for the seasonal encroachment license shall be an annual fee.
5. All encroachment license agreements shall address the following in a manner acceptable to the City Attorney or for those requiring its approval in a manner acceptable to the City Commission:
 - A. A fee shall be paid in an amount established by resolution of the City Commission which shall be sufficient to pay the costs incurred to review and approve the request and to ensure compliance with the request.
 - B. Insurance covering the City, its officers and employees for any injuries or property damage that might occur as a result of the encroachment shall be provided by the party to whom the permission for the encroachment is given in such amounts as are deemed appropriate for the permitted encroachment.
 - C. No encroachment license agreement shall have a term longer than 3 years, though renewal provisions may be included.
 - D. For an encroachment lasting longer than 6 weeks, the permittee shall agree to remove the encroachment within 60 days of written notice from the City, to pay the full cost of such removal and restoration of

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the right-of-way and adjacent property to a safe condition, and file a performance bond for said work with the City as deemed necessary under the circumstances. For an encroachment of less than 6 weeks, the permittee shall agree to remove the encroachment within 48 hours of written notice from the City, to pay the full cost of such removal and restoration of the right-of-way and adjacent property to a safe condition, and file a performance bond for said work with the City as deemed necessary under the circumstances. Notwithstanding any provision herein to the contrary, for an outdoor seating area pursuant to a seasonal encroachment license, the permittee shall agree to remove the encroachment within 14 days of written notice by the City, to pay the full cost of such removal and restoration of the right-of-way and adjacent property to a safe condition, and file a performance bond for said work with the City as deemed necessary under the circumstances. Any encroachment may be removed immediately if such encroachment is deemed by the City to constitute a hazard to the public.

- E. The permittee shall provide the City as determined necessary such plans, insurance, bonds, specifications, information, releases, guarantees, licenses, permits, conditions, coordination with the owners and occupants of any affected property, approval from others, and comply with all other requirements pertaining to the encroachment and any necessary subsequent removal/restoration.
6. If the request is for the vacation of any portion of a City controlled right-of-way, the City Commission, by resolution, may approve the proposed vacation, deny the proposed vacation, or approve vacating a portion of the right-of-way that is less than that proposed, and may add conditions to any approval to address the interests of the general public, affected utilities, or affected property owners, residents or occupants. A resolution approving a vacation of all or any portion of a right-of-way may also preserve easements for existing or future infrastructure, utility lines, poles and appurtenances.
7. Unless otherwise waived by the City Commission for good cause stated in the resolution, a resolution approving a vacation shall require that the requesting property owner bear the costs of initiating and completing the required circuit court lawsuit to confirm the vacation and, in the case of a major vacation, to undertake and complete any required plat amendment. The resolution shall further specify (i) whether the City's legal counsel (either the City Attorney or special legal counsel) will undertake and complete the circuit court action or whether the requesting party's legal counsel will do so, (ii) who will be performing any surveying and other work related to any required plat amendment, (iii) the estimated costs to be incurred by the City or the party requesting the vacation to undertake

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and complete the circuit court action and any required plat amendment, and (iv) the amount required to be escrowed with the City pursuant to an escrow agreement in a form and substance acceptable to the City Attorney to ensure the circuit court action and any required plat amendment are properly undertaken and completed.