



Procedure Outline for Initiating an Encroachment Approval Process in the Public Right-of-Way

A Working Document

SURVEYS DIVISION ***Right-of-Way Management*** **Department of Public Works**

Note: As these guidelines and/or requirements must be revised and updated on occasion, the applicant will be responsible for the requirements as outlined on the City's most current version of this outline, in addition to any City Administration and City Code requirements.

Encroachments Requiring Administrative Approval ONLY:

The Division of Permits and Services of Community Development coordinates this effort and received the application submittals in Room 110 on the first floor of City Hall (corner of 10th and Broad). Various steps and requirements are as follows:

- A. Acquire an administrative approval form (Administrative Approval Process Encroachment Application) from Room 110, the City's web site, or via e-mail.
- B. Discuss and resolve any building code compliance issue with the Building Commissioner's office (646-6310) prior to an application submittal. Any encroachment not in compliance with the building code (i.e. to include, but not limited to, swinging doors, steps more than 12 inches, etc.), and prior to any considerations for an approval, must have a code modification form completed, approved by Community Development, and attached to the application. The applicant is responsible and liable for assuring that all requests that are in compliance with the building code and advising staff of any request that are not in compliance with the code. An application that has been approved for any encroachment item that is not in compliance with the code and does not have an approved code modification form is automatically null and void.
- C. Fill out the application and attach a scaled drawing/plat showing the exact dimensions of the encroachments, including: 1) length, 2) height, 3) width, 4) extent into right-of-way, 5) a dimension to the closest side-street **right-of-way line**, 6) width of sidewalk, 7) elevation above sidewalk. (Applicant responsible for the accuracy of plat and the dimensions or for any issues related to the plat information provided.)
- D. Submit four (4) copies of the applications, plans, and all attachments to Room 110 with a \$300 non-refundable application and processing fee (ref.. City Code Sec. 90-123). The application must be submitted and signed by the licensee (an officer in the company with title included). Four copies of the plans fully dimensioned as to encroachment locations, lengths, extent, area, ties to right-of-ways (bordering street and side street), etc. must be submitted with the encroachment application.
- E. The Administrative Approval Process Encroachment Application must include the required liability insurance certificate for any approval considerations. Contact Room 110 (646-6440) to obtain the needed application number to be included on the certificate. The certificate must be provided to Room 110 and

preferable at the time of the application submittal to avoid separation and delays. The application number must be a permanent part of the insurance certificate so that it appears on all renewals.

- F. The insurance certificate with application number should be submitted with the application, but no later than 15 working days after submittal of the application to Room 110 City Hall. In the event the insurance certificate is not received within 15 working days after the application submittal, or in the event an insurance certificate is allowed to lapse or expire by an applicant or successor, assign, etc. during any time that the encroachment is in existence, then the application shall become null and void and the applicant will need to submit a new application, fee, and insurance certificate for approval considerations within ten business days of the application becoming null and void, or the applicant may choose to remove the encroachment from the public right-of-way. (Insurance limits enabled by Ord. 2005-49-122 adopted 06.13.05)
- G. Items that are to be illustrated on the insurance certificate include, but are not limited to, the following: 1) the amount of coverage; 2) explicitly naming the City of Richmond as being covered/an additional insured; 3) the owner (i.e. has to be the owners insurance), name and contact numbers; 4) the encroachment application number as assigned by Community Development in Room 110. The required licensee insurance shall remain in effect for the life of the encroachment to protect the City of Richmond from any liability resulting from the existence of the encroachment. Minimum requirements for the insurance are: for commercial at least \$1,000,000 coverage and a minimum 45-day cancellation notice, for homeowners or renters at least \$300,000 coverage and a minimum 30-day cancellation notice. (Insurance limits enabled by Ord. 2005-49-122 adopted 06.13.05).
- H. The encroachment may require a removal bond, letter of credit, etc., as required and approved by the City, which may be established at any time during the application process or for an approved encroachment. Typically removal bonds are set at a minimum of \$5000. However, the bond amount shall be set at the discretion of Public Works (i.e. may be higher than \$5000) and subject to review by the department's Construction and Inspection office (6th Floor City Hall).
- I. The applicant is responsible for making arrangements to be placed on a review schedule for and submitting applications, materials, plans, dimensions, information, etc. with and as required by the Community Development staff for any necessary reviews by the Urban Design Committee (UDC Secretary /646-6314) or the Commission on Architectural Review (CAR Secretary /646-7550). Final reviews and recommendations, as required for a particular encroachment, must be completed before Public Works can consider an approval of the encroachment request.
- J. The City is not the applicant for any encroachment improvements within the public right-of-way.
- K. Revisions to an original application already submitted and approved are not permitted. A separate application submittal and \$300 application and processing fee is required for the new or additional request for the same building, address, or area.
- L. An annual Assessor area tax will be charged [\$0.25 per sq./lin. foot] (ref. City Code Sec. 90-71). The area calculated to be subject to the area tax is the actual area covered by the encroachment item or the area of right-of-way that is deemed to be inaccessible or enclosed by the encroachment (i.e. the total encroachment area for a wall encroachment would include the area of the wall and any portion of the right-of-way encompassed/surrounded by the wall).

(Questions on the administrative approval process may be directed to Room 110 at 646-6440 or Room 600 at 646-0436)

Conditions of Administrative Approval: (similar to ordinance conditions)

1. Applicant/owner shall satisfy all requirements for survey plat or plan and insurance as stated on the application.
2. The Licensee, on the Licensee's own behalf and on behalf of any successor or assign, shall acknowledge and assume all responsibility for the permitted use of the right of way and the installation, construction, maintenance, repair, operation and removal of the encroachments, which shall be undertaken without risk or liability to the City. Upon approval and/or authorization for the encroachment, the owner, his heirs, devisees, successors and assigns shall agree to indemnify, keep and hold the City free and harmless from liability (i.e. liability insurance in City's name) on account of injury or damage to persons or property growing out of or directly or indirectly resulting from such encroachment or other use for which the permit is sought, and the maintenance, operation, construction, and removal thereof: and if any suit or proceeding shall be brought against the City, at law or in equity, either independently or jointly with such owner on account thereof, the owner will defend the City in any such suit or proceedings without expense to the City; and in the event of a final judgment or decree being obtained against the City, either independently or jointly with the owner, then the owner will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the City harmless.
3. The Director of Public Works may issue a written notice at any time requesting the encroachment to be removed, thereby revoking the authorization for the encroachment. Upon such notice, the Licensee, or any successor or assign: shall be responsible for the removal of the encroachment; shall bear all costs directly or indirectly associated with the removal; and, shall be responsible for reimbursing the City for all associated removal costs in the event the Licensee, or any successor or assign, fails to remove the encroachment by the notice deadline and the City chooses to remove the encroachment with City forces. Removal bonds shall be required in accordance with the City Code.
4. All cost incident to the encroachment to be borne by the applicant, including, but not limited to, realignment of utilities, replacement of street signs, etc., as directed by City Agencies.
5. It shall be the sole responsibility of the applicant to provide the Department of Community Development, Division of Permits and Services (Room 110 City Hall) with written evidence that all conditions of the Administrative Approval Process Encroachment Application have been satisfied. Conditions and requirements are to be satisfied within a 6-month period from Director's signature, or the application/approval becomes null and void.
6. The applicant/owner shall bear all costs for repair, relocation, or replacement of the encroachments in the event of damage or movement due to, but not limited to, vehicular travel, alterations or failure of City utilities, or due to the public's use of the right-of-way.
7. Applicant shall secure proper permits (i.e. Work in Streets permit required prior to any installation of encroachment), and the work shall be performed in a manner satisfactory to the Directors of Public Works and Community Development.
8. Applicant shall satisfy all other conditions as attached to this application, as contained in the City Charter, and as recommended by the City administration. Upon signing this permit application, the applicant agrees to abide by all applicable provisions of Chapter 90, et. seq. of the City of Richmond, Va. Code and/or as authorized by the building code (VSUBC).
9. Underground fiber optic cable (associated conduit, etc.) or telecommunication encroachments must meet and satisfy fiber optic cable installation policies and requirements of the Division of Permits and Inspections (646-3905) in Pubic Works.

Encroachments Requiring Council Approval:

In order to initiate the right-of-way encroachment process requiring City Council approval, the applicant must submit the following:

A. a letter of request to the Director of Public Works; (Address: Director of Public Works, City Hall, Room 701, 900 E. Broad Street, Richmond, Virginia, 23219.)

B. a drawing showing the exact dimensions of the encroachments, including: 1) length, 2) height, 3) width, 4) extent into right-of-way, 5) a dimension to the closest side-street right-of-way, 6) width of sidewalk.

C. A \$1000 non-refundable application and processing fee (as required by City Code Section 90-123).

D. The applicant (i.e. the City is not the applicant) is responsible for making arrangements and submitting applications to the Community Development staff for any necessary reviews by the Urban Design Committee (UDC Secretary /646-6308) or the Commission on Architectural Review (CAR Secretary /646-6313). Their final review and recommendations are required before Public Works can submit a final drawing or complete the preliminary Council papers.

- We can proceed with the City administration's review and consideration of an encroachment request once we receive the required fee and information. The review includes various departments such as Community Development, Public Works, Fire, Police, Public Utilities, Law, etc. The applicant should also make arrangements with Community Development staff (UDC Secretary/646-6308) for any necessary review by the Urban Design Committee or the Commission on Architectural Review.
- Once the preliminary reviews and approvals have taken place, Public Works will prepare a drawing and the preliminary Council papers. The Law Department will process the final ordinance for Council approval. The ordinance will be introduced (2nd or 4th Monday) at one Council meeting (i.e. read into the minutes), go to the Planning Commission the following Monday and then back to Council the following Monday for final action.
- The City Administrator's office cut-off day (a Wednesday) for a Department's preliminary ordinance submittal to qualify for an upcoming Council meeting introduction is 13 business days prior to the desired Council meeting introduction. To give the administration the opportunity to satisfy this cut-off day after receiving the initial letter of request, Public Works will need to receive, be provided, and/or obtain the following information (at a minimum) from the applicant and all stakeholders, reviewing agencies, etc. by the Wednesday that is 30 business/40 calendar days prior to the desired Council meeting introduction: the requested information from the applicant, completed research material, completed drawing, and the final considerations, responses, requests, and directions from all the reviewing City departments and agencies. Also, the complexity of the research for record information needed and other issues involved may extend the proposed introduction date.

Encroachment ordinances are subject to various conditions that include, but are not limited to the following:

- All cost incident to the encroachment to be borne by the applicant, including, but not limited to, realignment of utilities, replacement of street signs, etc., as directed by City Agencies;
- Liability insurance, naming the City as being insured, shall be maintained in effect for the life of the encroachment.
- Applicant shall furnish removal bond.
- An annual Assessor area tax be charged [\$0.25 per sq./lin. foot] (ref. City Code Sec. 90-71); A twelve month expiration clause be included
- The applicant/owner shall bear all costs for repair, relocation, or replacement of the encroachments in the event of damage or movement due to, but not limited to, vehicular travel, alterations or failure of City utilities, or due to the public's use of the right-of-way
- Applicant to secure proper permits, and the work shall be performed in a manner satisfactory to the Directors of Public Works and Planning and Community Development.

An adopted ordinance does not give the applicant the authorization to build a new encroachment or refurbish an existing encroachment. A Work in the Streets (WiSP) permit must first be obtained in Room 110 city Hall,

Permits and Services, Community Development (ref. Sec. 90-69); The applicant/owner shall provide written notification to the Assessor, Director of Finance and the Director of Public Works of the new owner's name and mailing address immediately upon transferring ownership or encroachment rights to another party; It shall be the sole responsibility of the applicant to provide the Department of Community Development, Division of Permits and Services, Law Department and the City Clerk's office with written evidence that all conditions of the ordinance have been satisfied. Should this written evidence not be submitted to the said offices prior to the expiration date, twelve months after final approval of ordinance, the ordinance will become void automatically.

Discouraged Encroachments: Encroachments the administration would most likely not approve

In general, these can be encroachments, as decided at the discretion of administrative staff, which can be or are:

1. hampering or obtrusive to pedestrian or vehicular traffic
2. considered unsightly or obtrusive to the existing environment or provide a negative impact to the aesthetic quality of the City's streetscape
3. considered offensive
4. not in conformance with the City's master plan
5. excessively extending into or across improved or unimproved (street or alley) right-of-way, where such an approved encroachment would serve as evidence that the City desires no potential use for the right-of-way and the City would prefer the applicant to pursue a closing request
6. contrary to the administration's practices and policies for encroachment approvals
7. not in conformance with desired "location, character, and extent" of reviewing bodies (i.e. overhead cables/wires per Planning Commission resolution of September 18, 2000)
8. considered to be temporary
9. considered to be an encroachment at a remote location (i.e. not adjoining the applicant's property)
10. objects, unless otherwise permitted by code, within 4 feet from the back of curbing or, in the event of no existing curbing, from a location where the administration would consider an appropriate location for the back of curbing if/when installed
11. signage or advertisement at any location other than immediately adjacent to the property relative to the signage
12. attached to city infrastructure, other than approved ground level surfaces

While an applicant would be permitted to pursue Council action (i.e. letter of request, additional application and processing fee (i.e. \$700) to total \$1000 as required by code) for such a discouraged encroachment, the administration would often recommend to Council that the request be denied.

Issues concerning the encroachment process may be addressed to the Surveys and Acquisitions Administrator, Surveys Superintendent, or Drafting Technician Supervisor at 646-0436. On the average, the process takes approximately four to eight weeks.

Other Guidelines or Conditions Considered in the Review Process for Sidewalk and Right-of-Way Encroachments:

1. Where there is ample sidewalk width, Public Works does not want to reduce the pedestrian travel sidewalk width to less than five feet of clear, open, and relatively straight path, which shall be free of, but not limited to, tree grates, utility infrastructure, bus shelters, other inanimate objects, etc.). Most city agencies, and beyond ADA requirements, will often want to either create or maintain spacious pedestrian travel areas or widths on the sidewalks. It is not uncommon for most initial considerations to call for a five-foot minimum width (beginning at the back of the curb) and some are greater in other areas. The final decision will be dependant upon existing conditions and situations.
2. Considerations are given to exiting right-of-way width, existing utilities, maintenance access to utilities and sidewalks, safety issues, etc. prior to approvals.
3. Encroachments may not extend onto or over the curbing, street travel, or needed pedestrian-travel areas where such travel is hampered or potential safety issues are involved.

4. Encroachments or associated objects cannot obstruct an opening door of a car parked next to the curb (i.e. encroachments should be a minimum of 2 feet behind the curb)
5. Existing brick, concrete, sidewalks, property/right-of-way monuments, or any other infrastructure may not be removed or displaced. Applicant responsible for all replacement costs.
6. Handicap ramps may not be obstructed.
7. Encroachments should not be permitted within 20 feet of a corner curbing intersection (extended) or at an uncurbed street corner.
8. The City must be advised of the specific makeup of material, objects, etc. that would be beneath the encroachment, if it is material other than original/suitable ground to provide the expected and needed support of the subject encroachment, especially if the encroachment is proposed to be over or near to being over a footing, un-compacted fill material, basement ceiling, vacant area, building or slab extension, etc. or if it creates a void or cavity under or potential dangers to areas of vehicular and pedestrian travel.
9. The City may require professional verification/certification (for Community Development's and Public Works' review/approval) from the applicant's (applicable) professional source that addresses the current condition and the structural integrity of any encroachment objects and structures, or area below the encroachment that will support the actual encroachment object. The certification would be expected to explicitly identify items such as, but not limited to, the construction, age, use, weight or load capacity, integrity, etc. or any other attribute of any object itself. This professional verification/certification shall be included with the application prior to consideration for approval.
10. Encroachments cannot cause visual or safety impacts on vehicular or pedestrian traffic and applicant/owner is responsible for monitoring and preventing any potential safety issues.
11. Applicant/owner may be required to provide a plan and illustration verifying how they plan to satisfy any of the above guidelines or conditions.
12. Encroachments shall not hinder or restrict permitted or authorized vehicular or pedestrian traffic.
13. Applicant/owner/successor(s) shall be responsible for protecting pedestrians or clients from injury or potential injury from the encroachments, to include but not limited to, the following:
 - a) Applicant/owner/successor(s) shall take necessary/required measures and practices so as to not allow the encroachments to strike, impact, or create a hazard for anyone walking or standing on the sidewalk area.
 - b) Applicant/owner/successor(s) shall provide any necessary/required barricades to or around the open or covered areas as related to the encroachments, and provide the necessary on-going maintenance, so as to protect pedestrian and vehicular traffic from falling into or around the encroachments or being injured by the encroachments or as a result of related parts thereof.
14. ADA requirements for all portions of the sidewalk surface or contiguous with the sidewalk area must be satisfied at all times.
15. Applicant/owner/successor(s) shall satisfy all building and zoning codes, obtain necessary permits, and maintain the encroachments.
16. Various guidelines and conditions of the City's facility naming policies adopted through Council ordinance No. 2004-35-64 on April 13, 2004 shall be guidelines and conditions considered for encroachments of markers, plaques, or other encroachments items that illustrate or recognize a title or a group's or person's name to include, but not limited to, the following:
 - A. Provide background of notable actions, achievements, and reputation of any person's name being recommended.
 - B. The names bestowed shall be consistent with the values and character of the community
 - C. Names, which could be construed as advertising a particular business, shall be avoided.
 - D. Cumbersome, corrupted, or modified names and discriminatory or derogatory names from the point of view of race, sex, color, creed, political affiliation or other social factors, shall be avoided.
 - E. Proposed names shall be based upon a relationship to:
 - (1) Individuals who have made major and distinct social, cultural, historical, or civic contributions;
 - (2) Neighborhood or geographic identification;
 - (3) Historical figures, places, events or other instances of cultural significance; and
 - (4) Natural or geological features.

(f) City Facilities shall be named after individuals only and not after multiple persons, groups or organizations.

(g) Preference shall be given to the names of persons who are natives of the City of Richmond or who resided in the City during the time of their contributions.

(h) With rare exception for individuals whose service or contributions are extraordinary, memorials shall only be made recognizing persons who have been deceased for five years or more in order to ensure that actions being recognized stand the test of time.

17. Written consent from any and all owners of infrastructures or objects on which an encroachment is proposed to be attached must be provided with the application prior to considerations for approval.

Telecommunication Service, Access Line, & Fiber Optic Encroachments:

1. The required first step for any encroachments associated with telecommunication services or equipment, is the applicant must submit a written description/analysis identifying which category their encroachment (equipment, lines, etc.) falls into regarding "access lines" as it pertains to City Code Section 90-73 (i.e. A written explanation will be requested answering how you conform with or not conform to City Code and State Code [section 56-468.1(A)] sections, and are you (the applicant) providing telecommunication services?) This written description or analysis will be evaluated by the City to determine the applicability of entering into a franchise agreement or an administrative encroachment process.
2. The City of Richmond now requires *all* telecommunication access line encroachments (as per City Code 90-73), including any existing/authorized and proposed telecommunication (access) service encroachments, to be under the franchise agreement with the City. (i.e. All upcoming and former service/access provider applicants must obtain a franchise before continuing existing telecommunication services or providing additional services if they have existing or provide new access lines in accordance with code.). The franchise agreement is approved through Council actions. Questions regarding the franchise and franchise process should be directed to the Law Department at 646-7940.
3. In the event the applicant is not a telecommunications service/access provider and is permitted to utilize an encroachment application permit for (underground) approval considerations, then subject to the general requirements of City Code Section 90-69, the Licensee shall furnish the City a bond with corporate surety, an irrevocable letter of credit or other type of financial guaranty, payable to the City and approved by the City Attorney, in the minimum amount of \$5000. The bond amount may be higher at the discretion of the City. The required liability insurance must name the City of Richmond as being insured and is at a minimum of \$500,000 with at least a 60-day cancellation notice. The required bond/surety and insurance must remain in effect for the life of the encroachment.
4. An encroachment application permit applicant must provide and make available an additional 4" conduit for excess capacity, that may be utilized by the applicant or another entity at a future date with the City's approval, and a 4" diameter duct for the City's Department of Public Works or its designee, both running to the applicant's manholes or by other terminus as agreed upon by Public Works. In some instances, the City may require separate manholes for its conduit.
5. The applicant (i.e. not the City) is responsible for the ownership and maintenance of the excess capacity and the additional conduit for the City.
6. In the event the applicant is not a telecommunications service/access provider and wished to provide visible/overhead equipment, then they must send a letter of request to the Director of Public Works to initiate the Council Approval Process.

Other Notes:

- A. An administrative approval to authorize a location for a specified encroachment *does not* give the applicant the authorization to actually build the encroachment. A Work in the Streets permit must first be obtained in

Room 110 City Hall, Permits and Services, Community Development (ref. Sec. 90-69), along with satisfying any other City or Code requirements.

- B. The “Work in Street Permit” allows the applicant to block or hinder travel the City right-of-way , as outlined in the permit and per safety requirements, while the applicant performs the necessary encroachment work. The “Permit” application requires the submittal of three copies of the plan(s) that depict the area(s) to be blocked and the work to be done. The fee is \$40.00 for 60 days work duration or less, otherwise it is \$80.00. The contractor's insurance must meet the criteria noted above, except the application number does not need to be referenced. The “Work in Street Permit” does not require any bond, letter of credit, etc., as the encroachment application (approval) does.
- C. In addition to all code and permit requirements, all applicants are responsible for satisfying requirements of a City agency's guidelines and the City's Design and Construction Standards Manual (found on City web site; (i.e. Excavation & Restoration manual) if/when they are applicable
- D. An ordinance with conditions that were not satisfied (i.e. not approved in writing by the appropriate City agency) within the designated time period becomes null and void. Another ordinance/Council process will have to be initiated by an applicant with the application and processing fee if the action of the original null and void ordinance is desired.
- E. Another ordinance/Council process, at the discretion of the administration, will have to be initiated by an applicant for an amendment of the original request if the ordinance is already introduced or adopted.
- F. Portions of the ordinance/Council process (i.e. another letter of request, fee, notification to others, etc.), at the discretion of the administration, may have to be initiated again by an applicant for some revisions in other stages of the process.
- G. Upgrading, changing, etc. an encroachment that has already been submitted or approved may be considered without submitting another application and the processing fee, or request for Council action and fee, only if a) the type of encroachment has not changed, b) the encroaching item does not exceed or extend beyond the limits of the previously approved encroachment area, and if c) the Urban Design Committee Secretary approves of the changes when their review is requested by the administration. Once these three conditions are satisfied, the applicant must submit a letter explaining there actions, changes, etc and a drawing to the Director of Public Works. The new information will be attached to the original application. Otherwise, another application or letter of request will have to be submitted along with all the required information and fees associated with the specific encroachment process. At its discretion, the administration may request an applicant to submit a new application or letter of request for Council action with all applicable fees for any upgrades, changes, etc. to a submitted or approved request.
- H. While applicants are responsible for all and ongoing maintenance for any authorized or unauthorized encroachments, some encroachments may require additional maintenance agreements at the discretion of the administration.

Amended last: 06.16.08 by BCJ