



THE CITY OF KEY WEST

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EXECUTIVE SUMMARY

Date: March 22, 2022

To: Patti McLauchlin, City Manager

From: Kelly Crowe, P.E., City Engineer
Ron Ramsingh, Chief Assistant City Attorney

Cc: Christina Bervaldi, Finance Director
Steve McAlearney, Engineering Director

Subject: Approval of Modified Process to Permit Encroachments Within the City of Key West Right of Way (ROW)

ACTION STATEMENT

Amend the City of Key West Municipal Code Chapter 2 to authorize the City Manager with the advice and consent of the City Attorney to enter into recorded easements with property owners to permit encroachments within the public rights of way (ROW). The new category of easement is referred to as “easement lite”.

BACKGROUND

The Engineering Department is responsible for permitting activities performed within the City of Key West’s public ROW. Currently, there are two classifications of permitted right of way activities: temporary and permanent. Temporary activities typically include sidewalk, lane and road closures associated with adjacent construction activity. These activities have a finite end date. Permanent activities typically include the installation of pavers, landscaping and/or easily

removable improvements within the public ROW by private property owners. The permanent activities do not have a finite end date.

There are several issues with the permanent ROW permit process that the Engineering Department is proposing to resolve with a modification to the process. The issues include, but are not limited to:

1. Weak indemnification language.
2. No requirement for property owners/permittees to submit Certificates of Liability Insurance with the City of Key West named as an additional insured.
3. There are no provisions that clearly state that the city has the right to remove any encroachment at any time.
4. The encroachments are not defined or clearly dimensioned.
5. The Permanent ROW permit remains open. Realtors work to close all permits prior to the transfer of real property. The Permanent ROW permits tend to complicate the process of resolving open permit issues when realtors are trying to complete a real estate transaction.

The proposed solution is to create an Encroachment Easement Agreement that would be entered into by the property owner proposing the encroachment and the City of Key West. The easement would be recorded with the County Clerk's Office and run with the title of the land.

Currently, city staff processes all permanent encroachments as easements under Sec. 2-938. The issue from staff's perspective is that Sec. 2-938 is a "one size fits all" for situations that involve landscape pavers as well as building encroachments. The costs for the current easement process from the city is \$2,315.25 processed through the Planning Department and considered by the City

Commission. The current proposal still contemplates issuing an easement, but with approval of this ordinance, staff will be able to issue them at a far more affordable cost and efficiency for such encroachments as landscape and pavers in the right of way. All other easements for building encroachments such as houses, porches and businesses will still go through the more involved and costly easement process currently in place.

A draft agreement is provided as an attachment to this report. The following are anticipated benefits of the recorded easement:

1. Stronger indemnification language that better protects the city.
2. Requirement to submit Certificates of Liability Insurance that names the City of Key West as an additional insured.
3. The ability to remove the encroachment at the property owner's expense.
4. Clearly defined limits and scope of the encroachment.
5. The easement will be a recorded document and will appear on the title of the adjacent property as an encumbrance, which makes it more transparent during real estate transactions to future owners.
6. Code Compliance will have an easier time determining whether an encroachment was permitted by the City.

The Engineering Department will review all Encroachment Easement Agreement applications and provide review comments if necessary. Engineering staff will have the ability to deny an application if the encroachment would violate any applicable code or create a hazardous condition

that could adversely impact public safety. Renewals will be through Licensing. The easements will run from June 1st to May 31st and be pro-rated.

PURPOSE AND JUSTIFICATION

Recently, there has been an increase in the number of unpermitted encroachments that have been discovered by the Code Compliance Department- particularly pavers and landscaping in the ROW. In addition, Engineering Department staff are frequently contacted by realtors who are trying to resolve open permits with the city prior to closing a real estate transaction. In reviewing the current process, Engineering Department staff explored ways to improve the process, better protect the city and be cost effective to the applicant. Staff believes the Encroachment Easement Agreement process will resolve many of the issues that have been encountered.

This action supports the Key West Strategic Plan including meeting Infrastructure Goal #4, *Long term sustainability of the City's hard assets.*

FINANCIAL

The fee structure as outlined in Section 62-3(a) of the City of Key West Municipal Code addresses right of way issues such as dumpsters, licenses, overnight storage, ROW construction, and the like. The total cost for the initial application to Engineering will be \$150. Subsequent renewals with Licensing will be \$100.00. Reinspection fees after a failed or missed inspection will be \$50.00. The easement will be required to be recorded with the county clerk and a copy returned to the city.

COMMUNITY IMPACT STATEMENT

This action is not expected to adversely impact the community. It will only affect those in the community that wish to seek permission to install private improvements within the public right of way that do not involve building, parts of building, or other permanent structures. The extent of the impact to those affected will be the requirement to record the document and submit Certificates of Insurance to the Licensing Department each year. Current violators without an easement will have a 9 month amnesty period to come into compliance from the effective date before active enforcement efforts begin.

RECOMMENDATION

Staff recommends approving the modified Permanent ROW process by amending Section 2 of the City of Key West Municipal Code to authorize the City Manager or designee to enter into recorded agreements with property owners to permit encroachments within the public ROW.