

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: November 5, 2018

Reviewed by: NA

**SUBJECT:** Resolution No. 2018-129, granting approval of an encroachment permit to allow a retaining wall in the public right-of-way at 958 Neilson Street

**REPORT BY:** Jeff Bond, Community Development Director

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**SUMMARY**

The applicant is seeking approval of an encroachment permit to allow a retaining wall in the public right-of-way at 958 Neilson Street.

**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2018-129, granting approval of an encroachment permit to allow a retaining wall in the public right-of-way at 958 Neilson Street.

**BACKGROUND**

There are various properties throughout the City that have landscape, fencing, stairs, or retaining wall encroachments into the public right-of-way. These encroachments generally do not affect the current or anticipated future use of the public right-of-way, and in most situations, are not formally documented. Contemporary planning practice, however, is to document structural encroachments in the form of an encroachment permit.

Although dimensions vary from street to street, it is common throughout Albany for the public right-of-way to project into front yards. Neilson Street public right-of-way is 60 feet total. The roadway, curb to curb, is 32 feet, leaving 14 feet on each side of the street for planter strip, sidewalk, and front yards. The actual property line on this block is five feet into the front yard (from the outside edge of the sidewalk).

The property at 958 Neilson Street has an unusual configuration, with a single-family residence located on a lot with 57-foot width in the front of the lot, and depth ranging from 47 feet to 53 feet. There is a minimal 4-foot rear yard.

## **DISCUSSION**

The construction of the wall was brought to City staff's attention by a neighboring resident. Normally the City would not require permits for property owners to landscape or to construct a low fence in the public right of way to enclose a front yard (three feet maximum height). In this case, however, a retaining wall was constructed. Pursuant to the California Building Code, any retaining wall greater than four feet in height (from its base) does require a building permit. Since this is located in the public right-of-way, the requirement for an encroachment permit is triggered.

Section 14-2 of the Albany Municipal Code establishes encroachment permit requirements. These provisions also apply to improvements in the public right-of-way. However, the encroachment is not an easement, nor does it grant development rights beyond the construction of the retaining wall.

### *14-2 USE OF RIGHT-OF-WAY.*

#### *14-2.1 Permit Required.*

*It shall be unlawful for any person to build, construct, maintain, occupy or use, or cause the same to be done, any structure over, under or upon public property of the City, without an encroachment permit to do so. (Ord. #98-03, §1)*

#### *14-2.2 Permit Issuance.*

*a. Application for an encroachment permit required by subsection 14-2.1 shall be made by the property owner to the Director, upon such forms as he/she shall prescribe, and shall be accompanied by the payment of a fee in an amount set by the Master Fee Schedule.*

*b. The Director shall review the application. If he deems it necessary, the Director may demand that a cash or surety bond be filed with the City in such an amount as set by the Master Fee Schedule. The Director may also impose an additional fee, if resurfacing of the work area by the City will be required.*

*c. The permit shall grant no right in or to the use or occupancy of public property, other than that explicitly contained therein, and shall not be construed as a grant of any right or interest in the property affected thereby.*

*d. The permittee shall indemnify and hold harmless the City in a manner approved by the City Attorney.  
(Ord. #98-03, §1)*

Conditions of approval can be imposed to ensure that the construction of the retaining wall is consistent with City regulations, including but not limited to:

- Indemnity and hold harmless agreement
- Reference to noise regulations contained in Municipal Code Section 8-1
- Reference to public nuisance regulations contained in Municipal Code Chapter 18
- Reference to requirement to maintain improvements in the right-of-way contained in Municipal Code Section 14-2
- Reference to stormwater drainage requirements

Should the Council approve the permit to allow the retaining wall, the permit and the associated indemnity and hold harmless agreement will be executed and recorded with the County Recorder's Office to document the conditions and responsibilities associated with the permit.

The recommendation to approve the retaining wall is related to the layout of this particular parcel. The only usable open space for this residence is the front yard, and thus an approval would not be considered by staff as setting a standard for approval of similar construction in the future.

If a majority of the City Council determines that the encroachment permit should not be approved, Council should provide guidance on the basis for the denial, such as impacts on public health, safety, general welfare, or appearance.

### **SUSTAINABILITY IMPACT**

Not applicable.

### **FINANCIAL IMPACT**

There are no financial impacts associated with the request.

### **Attachments**

1. Resolution 2018-129
2. Photograph of existing conditions



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- 4. Compliance with requirements to maintain improvements in the right-of-way contained in Municipal Code Section 14-2
- 5. Compliance with stormwater drainage requirements

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PEGGY MCQUAID, MAYOR





958 Neilson







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