

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

Agenda Date: October 19, 2020
Reviewed by: NA

SUBJECT: Resolution No. 2020-102, granting approval of an encroachment permit to allow a retaining wall in the public right-of-way at 955 Ordway Street

REPORT BY: Jeff Bond, Community Development Director

SUMMARY

The applicant is seeking approval of an encroachment permit to allow a retaining wall in the public right-of-way at 955 Ordway Street.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2020-102, granting approval of an encroachment permit to allow a retaining wall in the public right-of-way at 955 Ordway 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 planned 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. Ordway Street public right-of-way is 60 feet total. The roadway, curb to curb, is 36 feet, leaving 17 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).

DISCUSSION

The property at 955 Ordway Street is a 45 ft. wide by 119 ft. deep lot with a single-family residence. Historically, there has been a rock wall and front steps encroaching into the right-of-way. The construction of a new replacement wall was brought to City staff's attention pro-actively by the homeowner. The property owner indicated that if the front wall were to be located on the property line it would conflict with the location of the existing water service to the house as well as drainage improvements. Locating the wall in

the public right of way preserves existing utility connections for the property. In addition, due to the topography of the parcel, the existing front steps encroach into the public right-of-way as well.

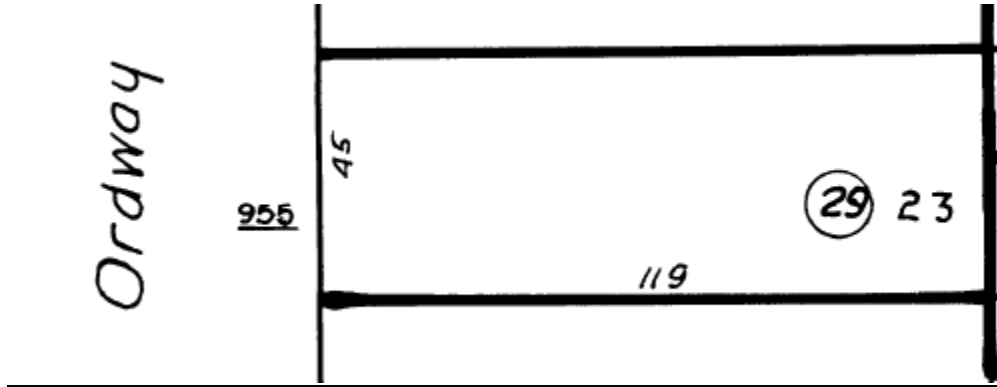


Image 1. APN Map 955 Ordway



Image 2. Original Stone Wall at 955 Ordway

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 stone wall was constructed adjacent to the sidewalk. Since this is located in the public right-of-way, the requirement for an encroachment permit is triggered.



Image 3. New Stone Wall at 955 Ordway

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.

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 No. 2020-102
2. Encroachment Permit Application

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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

NICK PILCH, MAYOR



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APPLICATION FOR ENCROACHMENT PERMIT

FOR TEMPORARY OR PERMANENT CONSTRUCTION ACTIVITY IN THE PUBLIC RIGHT-OF-WAY

Permit #: _____ Munis # _____

Location of Work: 955 Ordway Street

Applicant Company Name: N/A

CSLB License Type: _____ CSLB License #: _____

Company Address: _____

Name of Person Submitting Application: David Greensfelder and Karen Buttwinick

Contact phone: 510-708-8927 Contact email: dgreensfelder@gmail.com

Owner/Client Address: 955 Ordway Street

Contact phone: 510-708-8927 Contact email: dgreensfelder@gmail.com

Adjacent Property Owner Name (if applicable) N/A

DESCRIPTION OF WORK

Replace an existing rock wall at the sidewalk line with a new rock wall in the same location. Some minor grading of the front yard hillside behind the wall will take place so as to avoid underground utility lines.

STAFF USE:	Permit Fee Calculation	
	Total cost subject to fee:	
	New Construction at 8% of construction cost:	
	In-Lieu slurry seal fee (when street is out):	
	Minimum fee per schedule (if greater than % fee):	
	Total:	
Permit Approved By:		Date:
Permit Issued By:		Date:
Permit Expiration Date:	Not to exceed 180 days from date of issuance	
Rough Inspection:		Date:
Final Inspection:		Date:



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CONDITIONS OF APPROVAL

ACCEPTANCE OF CONDITIONS

I, the undersigned authorized agent of the applicant herein described, hereby make application for approval of the project described in this application in accordance with the provisions of the City's ordinances, and I hereby certify that the information given is true and correct to the best of my knowledge and belief.

The applicant shall hold harmless, defend, and indemnify the City, and its officers, agents and employees, from and against any and all liability, loss, damage, or expense, including without limitation reasonable attorney's fees which the City may suffer or incur as a result of any claims arising from the issuance of the encroachment permit or the design, installation, operation, maintenance or removal of the encroachment, excepting those claims arising from the City's sole negligence, willful misconduct, or active negligence. The prevailing party in any action to enforce this provision shall be entitled to an award of reasonable attorney's fees.

Applicant Signature:  Date: 10/1/2020

Print Name: David Greensfelder

SPECIAL CONDITIONS

1. All work per City Standard Details; any sidewalk concrete removed must be replaced within 14 days.
It is not anticipated that any sidewalk concrete will be removed.

STANDARD CONDITIONS

SAFETY

1. All construction personnel must wear personal protective equipment pursuant to Caltrans safety standards.
2. Permittee shall provide for traffic control and pedestrian safety and lane closures per Caltrans California Manual on Uniform Traffic Control Device (MUTCD) Part 6.
3. The permittee shall take all necessary precautions to allow emergency vehicles to pass through the construction zones without delays Roadway closures or access restrictions affecting emergency vehicles shall be reported to the City of Albany Police Department dispatch at 510-525-7300.
4. No open excavations shall be left unsupervised. All excavations shall be back filled or covered at the end of the working day.
5. Permittee is responsible for identifying all underground facilities and utilities before any excavation. Contact Underground Service Alert (USA) and/or pothole (i.e. prospect for and locate the existing sewer lateral by hand excavation which will not be located by USA) in advance.



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6. Large high-pressure natural gas transmission line is located on portions of Jackson Street, Castro Street, and Adams Street. PG&E personnel must be on site while working near this facility.

CONSTRUCTION STANDARDS

7. All work and activities shall be in accordance with the California Building Standards code, City Standard Specifications and Drawings approved by the City Engineer, Greenbook Standard Specifications for Public Works Construction, Albany Municipal Code, and application Federal, State and regional government agency regulations.
8. No change may be made in the location, dimensions, character, or duration of approved activity without written approval of the City.
9. Unless expressly waived in writing, all work in the City right-of-way shall be inspected by the City. Inspections by the City must be requested in advance of the work to be performed.
10. Permits shall only be issued only to the permittee making application and may not be assigned to person or contractor.

PROVISIONS OF PERMIT

11. The permittee shall begin the work or use authorized by a permit issued pursuant to this chapter within 180 days from the date of the issuance unless a different period is stated in the permit, or an extension of time is granted by the City. If the work or use is not begun accordingly, the permit shall become void.
12. This encroachment permit may be revoked at any time whenever: (1) the permitted work, whether because of changed conditions or otherwise, interferes with adequate or safe public use of the right-of-way involved; or (2) The permittee fails to comply with or violates any applicable government standard or condition of the issuance of the permit.
13. Upon revocation of the permit, the permittee shall immediately restore the public right-of-way to a condition as required by City. If the restoration is not completed within the time specified by the City, City may take any and all necessary enforcement action so required to restore the right-of-way. Any and all costs incurred by the City will be deducted from any deposits posted by the permittee and if necessary, recovered by legal action.
14. If the Enforcement Official of the City of Albany has determined there exists condition(s) or activities, which constitutes an imminent threat of serious injury or harm to any persons or property, the City will describe actions required to correct the violation. If permittee does not take action within the prescribed time, the City will take all actions deemed necessary to remove, repair, or isolate such dangerous conditions, utilizing the City's own forces or private contract, or any combination thereof. The costs incurred by the City may be recovered by the City pursuant to applicable provisions of City Codes.

CONSTRUCTION HOURS AND LANE CLOSURE LIMITATIONS

15. Construction hours on the City of Albany are 8:00AM to 6:00PM Monday through Saturday; and 10:00AM to 5:00PM Sunday and Holidays. No startup of heavy equipment is allowed prior to 8:00 AM. No exceptions without express prior permission by the Director of Public Works.
16. Lane closures limited to 9:00 am to 3:00 pm on San Pablo Avenue, Buchanan Street, Marin Avenue and Solano Avenue. Permittee is required to consult with AC Transit if transit service will be impacted by construction.



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PUBLIC ACCESS

17. Permittee shall maintain public access to all areas in the vicinity of the of work in the public right-of-way and provide necessary temporary accessible sidewalks and bicycle access.
18. Permittee is responsible for maintaining access to public transit stops. Permittee is required to contact relevant transit agencies (e.g., AC Transit, Golden Gate Transit) in advance of any limitations to their normal operations.
19. Permittee shall maintain at all times access to private property, driveways, and businesses. If necessary, provide alternate/temporary access. Permittee shall notify property owners and occupants of all properties subject to service interruption and/or disruption.
20. Permittee shall take all necessary steps to allow Waste Management of Alameda County access for scheduled pick-up. Contact Waste Management in the event access to property will be restricted.
21. Permittee shall contact the City of Albany Public Works Department at 510-524-5700 in the event permitted work will conflict with posted street cleaning days.

PUBLIC STREET PARKING

22. "No Parking" restriction signs must be obtained from the City a minimum of 48 hours in advance of work.
23. Please note that street parking is in high demand. Minimize use of street parking and release parking restrictions once work is completed in order to allow access to public street parking.

STREET TREES

24. Permit does not authorize tree removal or trimming without express prior permission by the Public Works Director.
25. For all street trees that have a drip line within the area of construction
 - a. No excavation shall be permitted on site until arborist has approved the proposed staging area(s). No tree pruning, removal of root-cutting shall occur without the arborist direction, recommendation, or approval. All trenching within the dripping line of existing trees shall be by hand with care taken not to damage roots over 2" diameter.
 - b. For trees located on a neighboring property that have roots or branches that cross construction area, the permittee has a responsibility for reasonable care of the tree and for providing the neighboring property owner adequate notice of the start of construction.
 - c. During construction, the permittee shall be responsible for management of drainage and irrigation systems, avoidance of vehicle movements near tree roots, and avoidance of stockpiling of materials near tree roots.
 - d. In the event of unexpected damage, the permittee shall contact the City's arborist (510-559-4275) for consultation.



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SITE RESTORATION

26. Permittee is responsible for any damage or disruption to existing facilities and/or utilities. Construction must conform to City Standard Details for curb, gutter, sidewalk, and street repairs (<http://www.albanysca.org/index.aspx?page=1400>). Exceptions must be approved by the City Engineer.
27. Survey monuments destroyed or displaced during the progress of the work shall be replaced by the permittee at no expense to the City of Albany.
28. Permittee will be responsible for repairing any irrigation and landscaping at public right of way in kind.
29. Permittee is required to spray clean all the utility location pavement markings after completion of work.
30. Permittee is required to restore street lights. If change in location of type of street light is required, contact the Public Works Department at 510-524-5700.
31. Permittee is required to restore all damaged street stripping & signage to conform to current State and Federal requirements.
32. Restoration of concrete curb ramps shall conform to current State and Federal accessibility requirements. Separate permit required may be required if restoration is not detailed on approved plans.
33. Permittee is required to provide certification of compaction testing to City's Inspector before paving.
34. Permittee is required to replace slurry seal or any newly sealed streets with black aggregate slurry as directed by the City Engineer.

INSPECTIONS

35. Contact the City's Inspector at 510-528-5760 to schedule inspection a minimum of 48 hours in advance of excavating.

ENVIRONMENTAL REGULATIONS

36. Dust shall be controlled at all times and adjoining street and private drives shall be kept clean of project dirt, mud, materials and debris.
37. Erosion and sediment control measures shall be in place on or before October 15 and maintained continuously through April 15.
38. Permittee shall be responsible for full compliance with the City's Storm Water program and the Alameda County NPDES permit requirements. For additional information, visit the Alameda Countywide Clean Water Program at <http://www.cleanwaterprogram.org>
39. Permittee is required to collect and remove all trash and materials generated by permitted work. No stockpiling of soil, materials, or equipment is allowed on City right-of-way without express City permission.