



October 9, 2019

To: City Commission of Oregon City
From: John Lewis, Public Works Director
Laura Terway, AICP, Community Development Director
Re: Obstructions within the Right-of-Way in Canemah

The Public Works Department recently prepared a map of possible obstructions in the right-of-way in the Canemah Historic District, many of which likely do not have a right-of-way permit¹. Approximately 78 obstructions were identified ranging from fences to buildings, varying in age. In response, the City Commission asked staff to prepare options to address the right-of-way obstructions in a comprehensive manner. This memorandum is intended to layout a menu of options for Commission consideration. Staff will further research the option(s) identified by the Commission before presenting a more detailed approach at a future meeting.

- **Code Enforcement on Each Structure in the Right-of-Way.** Staff could conduct an analysis on each encroachment within the right-of-way to determine if a right-of-way permit has been obtained. Encroaching structures may be within a variety of overlay districts such as the Historic Overlay District, Geologic Hazards Overlay District, Willamette River Greenway Overlay District, Flood Management Overlay District, and/or the Natural Resources Overlay District. During this individualized enforcement process, staff could also determine if the proper land use review processes were followed or permits obtained when the structure was constructed.

Initiating enforcement on each obstruction in Canemah is likely to take a significant amount of time and may result in many unanswered questions. For example, property ownership changes over time may make it difficult to determine when obstructions were constructed, which is necessary to determine if land use approvals were obtained and identify the regulations in place at time of construction. In addition, much of the boundary surveying in the Canemah neighborhood is complicated by aged or lacking monumentation and disputable records of survey. Although this process would allow each obstruction to be analyzed individually, it may create property owner frustration because the owners may not have built the structure or be aware of the encroachment. The process may force owners to submit additional applications to confirm the legality of a structure, or go through approval processes, and if land use approval could not be obtained, potentially remove or relocate the structure. The cost for an individual to pursue a permit for a revocable obstruction in the ROW is \$542 (2019 rates), and in most cases includes an indemnification and liability insurance coverage requirement. The costs for land use review ranges significantly based on the applications submitted.

¹ The map identifying such potential obstructions was created using a Google, Streetview (an internal program), and aerial photos and thus errors or omissions may exist. Depending on the option identified by the City Commission, it may make sense for additional work to identify the encroachments with greater certainty.

- **Grant a Right-of-Way Permit to All Obstructions in Canemah.** The City Commission could grant a single temporary right-of-way permit which authorizes all right-of-way obstructions in Canemah as of a certain date to remain within the right-of-way. Since right-of-way permits are revocable, the Commission would retain the ability to require obstructions to be removed or modified at any time in the future if they are determined to be problematic.

Though this option provides a global approach, it does not include analyzation of each individual obstruction or address compliance of the structures with any applicable land use requirements, such as the Historic Overlay District, Geologic Hazards Overlay District, Willamette River Greenway Overlay District, Flood Management Overlay District, and/or the Natural Resources Overlay District. The obstructions would be subject to Code Enforcement in the future to analyze compliance with the overlay districts. The City could also establish a property line evaluation using GIS mapping rather than record survey in determining and pursuing only those encroachments that are obviously within the ROW. The approach would not take significant staff resources and may have greater support by property owners, but does not address compliance with the overlay districts.

- **Grant a Right-of-Way Permit to All Obstructions in Canemah and Change the Code to Allow All Obstructions.** The City Commission could grant a single temporary right-of-way permit which authorizes all right-of-way obstructions in Canemah as of a certain date to remain within the right-of-way as identified above and amend the Oregon City Municipal Code through a Legislative process grant land use approval to all right-of-way obstructions despite if they comply with the overlay district standards. This approach would be similar to how the City resolved concerns about the placement of membrane structures within required setbacks by legalizing the location of accessory structures if they were constructed before a certain date (though no overlay districts were exempted).

In order to limit the effects of exempting structures from various overlay districts, the exemptions could be tailored to exempt structures in place by a certain date that is relevant to the overlay district. For example, the National Parks Services last approved the Canemah Nomination on February 25, 2009 and thus the Commission could exempt obstructions installed prior to that date under the assumption that any unpermitted encroachments were considered and did not compromise the integrity of the Historic District. However, as stated before, it may be difficult to know when the structure was built making it more difficult to determine compliance if an early date is selected.

This approach requires a moderate amount of staff time and is likely to be supported by property owners, but would still require Code Enforcement action for those structures that are not exempted. Until some effort is made to identify the appropriate date the exemptions would apply to each overlay district, it is not clear how many structures would become legal as a result of this effort.

- **Adjourn the issue.** The City Commission may decide not to initiate any further action related to obstructions within the right-of-way at this time but continue to process property-specific temporary right-of-way permit requests. This approach does not solve any outstanding concerns, but also does not limit the City Commission's ability on future enforcement. It does not require additional staff time or topic-specific community notification/discussion.