



## Legislation Text

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**File #:** 19-460, **Version:** 1

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Resolution No. 19-29, Revocable Long-Term Obstruction in the Right-of-Way at 302 3rd Avenue

### **RECOMMENDED ACTION (Motion):**

Approve Resolution No. 19-29 for a Revocable Permanent Obstruction in the Right-of-Way Permit for the property at Tax Lot 2-2E-31CA-04800 (302 3rd Avenue).

### **BACKGROUND:**

The property owners at 302 3rd Avenue, John and Ann Addleman, have applied for a Revocable Permanent Obstruction in the Right-of-Way Permit for an existing fence that is located within the right-of-way of Ganong Street in the Canemah neighborhood. This existing fence was constructed approximately 32 years ago and has been maintained over its lifetime. The applicant is not proposing to replace the fence. The applicant only intends to keep maintaining the fence by replacing boards as they become in poor condition and/or painting the fence as needed. Due to complaints about the fence being located in the right of way by two area residents, the applicant has chosen to apply for a Revocable Permanent Obstruction in the Right-of-Way Permit in an effort to bring the longstanding fence into compliance with City Code as related to encroachments.

The complaints concerning the existing fence are as follows:

1. The fence is blocking the sight lines of drivers users of the right-of-way resulting in unsafe conditions for drivers, bikers and pedestrians.
2. The fence is not historically appropriate and does not meet Fence code requirements nor the Historic Review Board fence guidelines.
3. The fence is illegally located in the right-of-way.

Public Works has reviewed the complaints and found the following:

1. Over the two years since this sight line question has been brought up, several staff have reviewed the fence and the specific location, considering sight distance concerns.
  - a. Based on field evaluations and engineering judgment, a 2018 discussion and motion by the Transportation Advisory Committee, a third party opinion of a licensed transportation engineer (Replinger and Associates), and industry standards for sight line standards for uncontrolled intersections in a neighborhood, it is agreed that the fence while in the Ganong Street right of way, it is placed such that drivers have the sight distance needed to stop or navigate through the intersection in a manner that is safe.
  - b. Aside from the existing condition being safe for drivers and pedestrians, the McLoughlin-Canemah Trail Plan anticipates a future 3 way stop at 3<sup>rd</sup> Avenue and Ganong Street. This feature was published then submitted to and approved by the City Commission through the adoption of the trail plan. Neighborhood paving is on track for completion this summer including 3rd Avenue and Ganong Street and the plan is to incorporate the signage and street markings recommended by the plan including the three way stop at

3<sup>rd</sup> and Ganong Street. The decision for a 20 mph posting in the Canemah Neighborhood is slated to be presented to the City Commission for approval on August 7, 2019.

2. The existing 6 foot height fence was built 32 years ago and has proven to be a public benefit in that it screens Coffee Creek from the general public. Fence screening of Coffee Creek is common along much of Coffee Creek. Coffee Creek in this area flows through a hand built basalt channel built in the mid to late 1800's. The channel within this section of the ROW is approximately 5 feet deep and would otherwise require fall protection if exposed. This channel is a sensitive structure and on 302 3<sup>rd</sup> Avenue the hand built basalt open channel continues under the home and ends with a large metal grate to hold back debris. In most open channel drainage systems available to the public, the City tends to respond frequently to clear debris from the metal grates due to vandalism or trash. In this case the fence screens the creek limiting awareness of the open channel, reducing the accident risk and with the fence the vandalism and trash are a non-issue.

As far as the fence type, since it is not being replaced, maintenance or repair as described above is allowed and does not require a permit or historic review. This is based on OCMC 17.40.060 - Exterior alteration and new construction: Section J:

"Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which does not involve a change in design, material or the outward appearance of such feature which the building official shall certify is required for the public safety because of its unsafe or dangerous condition."

This fence is the same type of fence that exists across the street at 216 3<sup>rd</sup> Avenue. If the fence owner were requesting for the fence to be replaced, the fence would be required to follow all current City fence standards/guidelines.

3. Aside from fence being code compliant in terms of type, material make-up, or adherence to height requirements, the fence is located in the right-of-way without a permit or written agreement; therefore, this Revocable Permanent Obstruction in the Right-of-Way Permit is required.

For Public Works to recommend a permanent obstruction within the right-of-way, the obstruction must meet the criteria of having a public benefit. City Code 12.04.120 - Obstructions - Permit required states the following:

"It is unlawful for any person to place, put or maintain any obstruction, other than a temporary obstruction, as defined in subsection B. of this section, in any public street or alley in the city, without obtaining approval for a right-of-way permit from the commission by passage of a resolution."

"1. The city engineer shall provide applicants with an application form outlining the minimum submittal requirements."

"2. The applicant shall submit at least the following information in the permitting process in order to allow the commission to adequately consider whether to allow the placement of

an obstruction and whether any conditions may be attached:

- a. Site plan showing right-of-way, utilities, and driveways as directed by staff;
- b. Sight distance per Chapter 10.32, Traffic Sight Obstructions;
- c. Traffic control plan including parking per Manual on Uniform Traffic Control Devices (MUTCD);
- d. Alternative routes if necessary;
- e. Minimizing obstruction area; and
- f. Hold harmless/maintenance agreement.”

“3. If the commission adopts a resolution allowing the placement of a permanent obstruction in the right-of-way, the city engineer shall issue a right-of-way permit with any conditions deemed necessary by the commission.”

Response to #1 - The City Engineer and engineering staff have reviewed this request and an application has been provided; therefore, criteria 1 is met.

Response to #2 (a and b) - The site plan and sight distance (criteria 2a and 2b) have been provided and show no concerns to public safety which allows us to state that there is a public benefit because safety has been maintained. The sight distance was reviewed by Replinger and Associates, the City's traffic consultant, and the Public Works Transportation Division Manager, in addition to review by City Engineers.

Response to #2 (c and d) - The traffic control plan and alternative routes (criteria 2c and 2d) do not apply in this case.

Response to #2 (e) - The applicant has minimized the obstruction area by ensuring the fence is not obstructing views. This fence also has a benefit of protecting a Natural Resource which lies behind the fence in the ROW and continues on the applicant's property. The fence protects this natural feature rather than allowing trash, debris, and other potential hazards from entering the natural resource. This allows criteria 2e to be met.

Response to #2 (f) - The applicant has agreed to execute a hold harmless/maintenance agreement upon approval from the City Commission which allows criteria 2f to be met.

Response to #3 - If the City Commission approves the permanent obstruction, the applicant has agreed to pay for the permit for the property which will then meet criteria 3.