



Agenda Cover Memorandum

Meeting Date: August 4, 2014

Meeting Type: COW (Committee of the Whole) City Council Budget Workshop

Item Title: Final approval of an Ordinance amending Article 9, Chapters 1, 2, and 3 and Article 15, Chapters 1 and 14 of the Municipal Code and a Right-of-Way / Encroachment Agreement allowing for private structures on the public right-of-way

Action Requested:

- Approval
- For discussion
- Feedback requested
- For your information

Staff Contact: Wayne Zingsheim, Director of Public Works

Phone Number: 847/318-5247

Email Address: wzingshe@parkridge.us

Background:
At the May 12, 2014 Committee of the Whole meeting, staff was directed to prepare a draft ordinance regarding flood / sewer structures on the public right-of-way. City Attorney Henn has reviewed the Municipal Code, polices, and procedures and has made recommendations for the necessary changes. Attached are a redlined Ordinance and a proposed Right-of-Way / Easement Encroachment Agreement that reflects the code that allows such construction.

While staff still does not recommend the placement of parkway structures on the public right-of-way, these changes offer the City some protection

This item was presented for the first reading to the City Council on July 21, 2014, at which time the City Council approved the motion on a voice vote of 7/0.

Recommendation:
Final approval of an Ordinance amending Article 9, Chapters 1, 2, and 3 and Article 15, Chapters 1 and 14 of the Municipal Code and a Right-of-Way / Encroachment Agreement allowing for private structures on the public right-of-way.

Budget Implications:
Does Action Require an Expenditure of Funds: Yes No

If Yes, Total Cost: \$
If Yes, is this a Budgeted Item:
 Yes No Requires Budget Transfer

If Budgeted, Budget Code (Fund, Dept, Object)

- Attachments:
- Ordinance
 - Right-of-Way / Easement Encroachment Agreement

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PARK RIDGE
AMENDING ARTICLE 9, CHAPTERS 1, 2 AND 3, AND ARTICLE 15, CHAPTERS 1 AND 14 OF THE
MUNICIPAL CODE OF PARK RIDGE**

BE IT ORDAINED by the City Council of the City of Park Ridge, Cook County, Illinois, pursuant to its home rule authority provided under Article VII of the Illinois Constitution of 1970 as follows:

SECTION 1: That Article 9, "Public Ways," Chapter 1, "New Construction," Section 1, "Plans Specifications and Permit," of the Park Ridge Municipal Code is hereby amended to read in its entirety as follows:

9-1-1 PLANS, SPECIFICATIONS AND PERMIT

All plans and specifications for new street pavement, curb and gutter, sidewalk, parkways, water and sewer not regulated under the provisions of Article 11 or Article 6-2 (New Subdivisions) constructed in the public right-of-way shall be submitted to the Building Official for his review, recommendations and approval prior to the issuance of a permit for such construction.

All plans and specifications for flood control or sewer maintenance pursuant to Section 9-2-25 shall be submitted to the City Engineer for his review, recommendations and approval prior to the issuance of a permit for such construction.

It shall be unlawful to construct any new public improvement within the public right-of-way without having first obtained a permit therefor. Applications for such permits shall be in writing on the forms specified by the Building Official and shall be filed with the Building Official. The required review approved by the City Engineer shall be included in all permit applications before issuance.

The fee to be paid for such permit shall be one-fourth percent (.25%) of the cost of said improvements, except for permits issued for work pursuant to Section 9-2-25. The fee for work pursuant to Section 9-2-25 shall be set forth in Section 20-7-2.

All public improvements summarily described above shall be constructed in accordance with the current specifications of the Illinois Department of Transportation, the Standard Specifications for Water and Sewer Main Construction in Illinois, and the provisions of Article 6-2 of this Code entitled "New Subdivisions."

SECTION 2: That Article 9, "Public Ways," Chapter 1, "New Construction," Section 3, "Bond Required," of the Park Ridge Municipal Code is hereby amended to delete Section 9-1-3 in its entirety.

SECTION 3: That Article 9, "Public Ways," Chapter 2, "Construction in Public Rights-of-Way," Section 1, "Purpose and Scope," of the Park Ridge Municipal Code is hereby amended to read in its entirety as follows:

9-2-1 PURPOSE AND SCOPE

a) Purpose. The purpose of this Chapter is to establish policies and procedures for constructing facilities on rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the rights-of-way and the City as a whole.

b) Intent. In enacting this Chapter, the City intends to exercise its authority over the rights-of-way and, in particular, the use of the public ways and property by utilities, by establishing uniform standards to address issues presented by utility facilities, including without limitation:

- 1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- 2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- 3) prevent interference with the facilities and operations of the City's utilities and of other utilities lawfully located in rights-of-way or public property;
- 4) protect against environmental damage, including damage to trees, from the installation of utility facilities;
- 5) protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
- 6) preserve the character of the neighborhoods in which facilities are installed;
- 7) preserve open space, particularly the tree-lined parkways that characterize the City's residential neighborhoods;
- 8) prevent visual blight from the proliferation of facilities in the rights-of-way; and
- 9) assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

c) Facilities Subject to This Chapter. This Chapter applies to all facilities on, over, above, along, upon, under, across, or within rights-of-way within the jurisdiction of the City. A facility lawfully established prior to the effective date of this Chapter may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement. Facilities constructed pursuant to Section 9-2-25 are only subject to the provisions of that Section.

d) Franchises, Licenses, or Similar Agreements. The City, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the City enter into such an agreement. In such an agreement, the City may provide for terms and conditions inconsistent with this Chapter.

e) Effect of Franchises, Licenses, or Similar Agreements.

- 1) Utilities Other Than Telecommunications Providers. In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the City, such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof; provided however that the City may impose on such provider such competitively neutral and nondiscriminatory requirements, terms and conditions set forth in this Chapter (a) as are necessary to preserve, protect or to advance the public safety and welfare or to manage rights-of-way, and (b) do not conflict with the requirements, terms and conditions, set forth in such franchise, license or similar agreement with the City.

2) Telecommunications Providers. In the event of any conflict with, or inconsistency between, the provisions of this Chapter and the provisions of any franchise, license or similar agreement between the City and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof; provided however that the City may impose on such provider such competitively neutral and nondiscriminatory requirements, terms and conditions set forth in this Chapter (a) as are necessary to preserve, protect or to advance the public safety and welfare or to manage rights-of-way, and (b) do not conflict with the requirements, terms and conditions, set forth in such franchise, license or similar agreement with the City.

f) Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

g) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the utility shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or State laws or regulations.

h) Sound Engineering Judgment. The City shall use sound engineering judgment when administering this Chapter and may vary the standards, conditions, and requirements expressed in this Chapter when the City so determines. Nothing herein shall be construed to limit the ability of the City to regulate its rights-of-way for the protection of the public health, safety and welfare.

SECTION 4: That Article 9, "Public Ways," Chapter 2, "Construction in Public Rights-of-Way," Section 2, "Definitions," of the Park Ridge Municipal Code is hereby amended to revise the definition of "Facility" which shall read in its entirety as follows:

"Facility" - All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, drainage pop-ups, flood control devices, sewer maintenance devices, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this Chapter. For purposes of this Chapter, the term "facility" shall not include any facility owned or operated by the City.

SECTION 5: That Article 9, "Public Ways," Chapter 2, "Construction in Public Rights-of-Way," of the Park Ridge Municipal Code is hereby amended to add a new Section 25, "Construction of Flood Control and Sewer Maintenance Devices in Parkway," which shall read in its entirety as follows:

9-2-25 CONSTRUCTION OF FLOOD CONTROL AND SEWER MAINTENANCE DEVICES IN PARKWAY

a) Property owners may install drainage pop-ups and other facilities used to aid in sewer maintenance, flood control or improving stormwater drainage in the public parkway, subject to the requirements of this Section 9-2-25.

b) Property owners must obtain a permit pursuant to Article 15 prior to constructing or installing any facilities pursuant to this Section 9-2-25.

c) All such facilities must be no larger than eight inches (8") in diameter.

d) All such facilities and any related equipment must be installed at grade. No facilities may be placed in a location that will require relocation or displacement of any of the City's utility facilities or that will otherwise interfere with the operation or maintenance of any of the City's utility facilities.

e) All property owners must indemnify, defend and hold the City harmless from and against all claims arising out of the construction and/or installation of the facility. All property owners must sign a Right-of-Way Agreement, in a form to be provided by the City, which shall be recorded with the Cook County Recorder of Deeds, as part of the permit application submitted for the work.

SECTION 6: That Article 9, "Public Ways," Chapter 3, "Obstructions and Deposits," Section 4, "Encroachments," of the Park Ridge Municipal Code is hereby amended to read in its entirety as follows:

9-3-4 ENCROACHMENTS

It shall be unlawful to erect or maintain any building or structure which encroaches on any public right-of-way, except as permitted by Section 9-2-25.

SECTION 7: That Article 15, "Building Regulations," Chapter 1, "Administration and General Provisions," Section 6, "Building Permits," of the Park Ridge Municipal Code is hereby amended to add the following as item 20:

20. Drainage pop-ups and other facilities used to aid in sewer maintenance, flood control or improving stormwater drainage pursuant to Section 9-2-25.

SECTION 8: That Article 15, "Building Regulations," Chapter 14, "Driveways and Parking Facilities," Section 2, "Issuance of Permits," of the Park Ridge Municipal Code is hereby amended to read in its entirety as follows:

15-14-2 ISSUANCE OF PERMITS

A. The Building Official is hereby authorized to issue a permit to construct, resurface, replace, or widen a driveway provided that a copy of the plat of survey of the property is submitted indicating the location and all dimensions of the proposed work to be done along with a completed permit application

SECTION 9: That Article 15, "Building Regulations," Chapter 14, "Driveways and Parking Facilities," Section 5, "Driveway Approaches," of the Park Ridge Municipal Code is hereby amended to read in its entirety as follows:

15-14-5 DRIVEWAY APPROACHES

- A. All driveway approaches shall be designed in accordance with one or more of the following references as they apply:
 - 1. Policy on Permits for Access Driveways to State Highways, Illinois Department to State Highways, Illinois Department of Transportation, latest edition.
 - 2. Standard Specifications for Road and Bridge Construction, Illinois Department of Transportation, latest edition.
- B. All driveway approach construction must be approved by the Building Official.

SECTION 10: BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

SECTION 11: BE IT FURTHER ORDAINED that the City Clerk is hereby authorized and directed to publish said Ordinance in pamphlet form according to law.

Adopted by the City Council of the City of Park Ridge, Illinois this 28th day of July, 2014.

VOTE:

AYES: _____

NAYS: _____

ABSENT: _____

Approved by me this 28th day of July, 2014

David F. Schmidt, Mayor

Attest:

Betty W. Henneman, City Clerk

THIS DOCUMENT WAS PREPARED
BY:

AFTER RECORDING RETURN TO:

[The above space for recording purposes]

RIGHT-OF-WAY/EASEMENT ENCROACHMENT AGREEMENT

RE: Proposed Public Right-of-Way use for (brick paver/decorative concrete/lawn sprinkler heads / structures for sewer maintenance, flood control and improvement of stormwater drainage).

Owner, _____ and _____, ("OWNER") represent that we are the legal owners of real property commonly known as:

_____, Park Ridge, Illinois 60068.
(insert property address)

PIN(S): _____ (the "Property").

(A survey of the Property, containing its legal description, is attached and made a part hereof as "EXHIBIT A")

Owner is undertaking the following Project at the Property that will encroach on the public right-of-way or an easement:

Project: _____

Owner assumes any and all risks associated with its construction of the driveway in the public right-of-way at the Property out of brick paver/decorative concrete/embossed or colored asphalt, and further assumes full responsibility to maintain, repair, and replace said driveway, if necessary, in the event of any damage by the City of Park Ridge (the "City") or other public agencies, or due to normal wear and tear.

Owner understands that the City will allow the construction of a lawn sprinkler heads, or other structures for sewer maintenance, flood control and improvement of stormwater drainage encroaching upon an easement only upon the written permission of all utilities affected by said construction.

Owner also understands that any lawn sprinkler heads or other structures for sewer maintenance, flood control and improvement of stormwater drainage placed upon the public right-of-way will be allowed by the City at Owner's risk, and Owner is responsible to maintain, repair, and replace if necessary, in the event of any damage by the City or other public agencies, or due to normal wear and tear.

Owner covenants and agrees that all construction related to the Project will be performed in accordance with all applicable Codes and regulations of the City of Park Ridge.

Owner, in consideration of the City's allowing it to utilize the public right-of-way abutting the Property and/or easement encroachment for the aforesaid purposes, covenants and agrees to defend, indemnify and hold the City and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the aforesaid uses in the public right-of-way and/or easement encroachment and/or any acts or omissions by the Owner, its contractors, subcontractors, agents or employees in constructing, maintaining, or in any way related to Owner's use of the public right-of-way abutting the Property and/or easement encroachment.

Owner understands that the terms and conditions contained herein apply uniquely to the public right-of-way abutting the Property and the easements on or about the Property, and it is the intent of Owner and the City to have the terms and conditions of this instrument run with the land and be binding upon subsequent purchasers.

This document shall be notarized and recorded with the Cook County Recorder of Deeds.

NOTE: ALL OWNERS MUST SIGN

Owner Signature

Owner Signature (if more than one)

Date: _____

Date: _____

CITY OF PARK RIDGE

Building Official

Date: _____

NOTARY:
STATE OF ILLINOIS, COUNTY OF _____) SS

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, is/are personally known to me to be the same person(s) whose name(s) is/are here subscribed to the foregoing instrument, and appeared before me this day in person and acknowledged that he/she/they signed and delivered said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth. Given under my hand and notarial seal this ____ day of _____, 20____.

Notary Signature: _____

[SEAL]