

City Council Agenda Memo

From: Jackie Lanning, City Engineer

Council Meeting: February 25, 2020

Subject: Resolution Establishing Criteria to Build in the Public Right-of-Way

Person(s) Responsible: Jackie Lanning, City Engineer

Summary:

This resolution will amend the criteria for building in the public right-of-way.

Background:

The City Council adopted Resolution 68-04 on November 23, 2004, which established criteria for building in the public right-of-way (attached). The City Council also adopted an amendment to the City Ordinance to allow construction in the public right of way. The follow is an excerpt from Brookings City Ordinance Chapter 74-32:

Sec. 74-32. - Building upon public right-of-way prohibited; exceptions.

- (a) No person may erect or maintain any building in a location or position that the building shall stand, in whole or in part, upon any public street, road, alley or sidewalk in the city.*
- (b) No building may be constructed so that any part of the building shall project into or over any street, road, alley or sidewalk, except jut windows, cornices and other projections from a building above the first story may extend over an adjoining street, road, alley or sidewalk a distance not exceeding 18 inches.*
- (c) No person, without written authorization from the city council as provided in this section, may construct any improvement, including any step, deck, landing or other entrance to any building extending over or upon the sidewalk, nor shall any person erect in or upon any public street, alley or road any flight of stairs or steps leading to any floor of any building.*
- (d) Any building or improvement erected or maintained in violation of this section shall be deemed a public nuisance and may be abated.*
- (e) Any person seeking authorization to construct a step, deck, landing or other entrance to any building located within the B-1 central business district which will extend over or upon the sidewalk shall first file an application with the city engineer.*
- (f) The city engineer, upon receipt of an application for authorization which conforms to the criteria, standards and specifications established by resolution of the city council, shall issue a recommendation concerning a request to construct an*

improvement to extend upon or over the sidewalk within the B-1 central business district in the city; provided, however, that the erection of such constructed improvement shall not occur unless approved by the city council, and if approved, shall be in conformity with the criteria, standards and specifications approved by the city council and on file in the office of the city engineer.

- (g) *The city council, upon receiving the city engineer's recommendation, may issue a written authorization and easement to construct an improvement upon the public sidewalk within the B-1 central business district upon such terms and conditions as the city council determines appropriate in the circumstances.*

(Code 1996, § 33-34; Ord. No. 24-04, § I, 11-23-2004)

Item Details:

The City Engineering Department received a request to construct in the City right-of-way. Item No. 6 in Resolution 68-04 states the following:

6. The encroachment into the public right-of-way will not be granted for more than 30% of the width of the sidewalk measured from the property line to the back of curb of the adjacent street. In no case shall the encroachment into public right-of-way exceed a distance of 36 inches.

The Development Review Team (DRT) discussed the City ordinance and resolution at their February 6, 2020 meeting. The DRT discussed that the current criteria in Resolution 68-04 limit the right-of-way encroachment to 36" or 30% of the width of the sidewalk. A potential project would encroach greater than that dimension. The DRT discussed that maintaining four feet of width on the public sidewalk would maintain the width required by the American with Disabilities act and recommended that the City Council review Resolution 68-04 for a possible amendment.

Legal Consideration:

City Attorney Steve Britzman reviewed the amendment for compliance with the Americans with Disabilities Act.

Strategic Plan Consideration:

The agenda item allows flexibility for private property owners to meet the Americans with Disabilities Act while also assuring that the public right-of-way also meets the Americans with Disabilities Act.

Financial Consideration:

None.

Options and Recommendation:

The City Council has the following options:

1. Approve as presented
2. Deny
3. Amend

4. Move the item to a work session
5. Do nothing

Supporting Documentation:

1. Resolution 68-04
2. Resolution 20-017 marked
3. Resolution 20-017 clean