



Memorandum

TO: Marilyn DeRosa, Engineering and Transportation Director

FROM: Bill Greene, City Auditor

CC: Andrew Ching, City Manager
Keith Burke, Deputy City Manager
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DATE: August 22, 2022

SUBJECT: RIGHT OF WAY (ROW) ENCROACHMENT PROGRAM REVIEW

Purpose

The purpose of this consulting engagement was to determine if the City of Tempe (City) managed its ROW Encroachment Program in accordance with City ordinances and policies and to identify improvements in management controls.

Background

According to the City Code, a permit or license issued by the City Engineer must be obtained to perform any work in a public right-of-way. An encroachment permit may be issued for right-of-way encroachments of a temporary and removable nature.

A former City employee contacted the City Manager's Office to express concern that the City's ROW Encroachment Program was not being effectively managed. Specific concerns included a lack of procedures to ensure permit holders are billed for annual renewals, required insurance is maintained and City records are updated to reflect current permit status. The Internal Audit Office was asked to follow up on these assertions.

Scope and Methods

The objective of this consulting engagement was to provide information as described in the purpose statement above. The work performed does not constitute an audit in accordance with *Government Auditing Standards*.

To achieve our stated objectives, we conducted the following review steps:

- Identified relevant City ordinances and polices governing the City's ROW Encroachment Program;
- Interviewed City employees responsible for managing and supporting the ROW Encroachment Program and reviewed relevant procedures;
- Tested a sample of ROW Encroachment Permits (initially issued from 2008 to 2022) to verify if they were issued, renewed and monitored in accordance with City requirements;
- Identified potential improvements in management controls.

Results

- 1. Development of written procedures and criteria governing the City's ROW Encroachment Program are needed to help ensure consistent issuance of permits in accordance with City requirements.**

Rules and Regulations

The following provisions of the Tempe City Code represent the primary requirements of the City's ROW Encroachment Program:

City Code Chapter 29.19 Article II Streets and Sidewalks: Encroachments and other Activities in Public Rights-of Way:

- a) No work of any nature shall be performed in a public right-of-way, except under a permit or license issued by the City Engineer, unless otherwise allowed by this Code or any other ordinance of the City. The City Engineer shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits and approval of licenses.*
- (b) An encroachment permit may be issued for encroachments of a temporary and removable nature, including but not limited to, awnings and commercial signs. A license shall be issued for encroachments of a more permanent nature including, but not limited to, wireless facilities and buildings and underground parking facilities that impact the City's right-of-way. The regulations and procedures established by the City Engineer shall include procedures for evaluating which form is to be used.*

Initial Encroachment Permit and annual fees are listed in Fees from Schedule A of Code.

Policies and Procedures

Engineering and Transportation Department (E&T) does not have current, written policies and procedures governing the ROW permit/license issuance process or for evaluating which form (i.e., permit or license) should be used. Community Development Department staff provided several desk procedures, some of which were outdated. Our search of the City's website did not yield ROW Encroachment information or directions for applicants other than a fillable pdf version of the ROW Encroachment Permit (with no instructions).

The lack of current policies makes it challenging to clearly identify the City's standard business process for issuing ROW Encroachment Permits including which staff are responsible for key elements. We identified the following steps in the process based on interviews with City staff:



ROW Encroachment Evaluation Criteria

According to CD and the City Attorney’s Office staff, decisions on which type of encroachment authorization form to use (permit, license, other) are generally based on historical practice. No formal criteria exist to define terms such as “temporary” or “more permanent” as stated in the code. Lack of criteria can lead to inconsistent application of code requirements.

We reviewed a listing of ROW Encroachment Permits extracted from Accela. Accela is a relational database management system used by City staff to issue permits, store relevant documents, issue invoices and record payments received for ROW permit and other activities. The Accela report showed that many of the ROW encroachment permits were issued ten or more years ago. We also noted a wide variety of project descriptions, some of which appear more “temporary” and others “more permanent” in nature:

- Sidewalk/patio cafes
- Commercial signs
- Awnings
- Communication cable crossing
- Well monitoring
- Grease traps
- Billboards

2. Controls are not adequate to ensure ROW permits are managed in accordance with City requirements. As a result, permit holders were not invoiced for annual renewals, proof of insurance was not current and City records often did not reflect accurate permit status.

ROW Permit Testing

Tempe City Code requires the City Engineer to charge fees for use of the right-of-way. ROW permit and license fees are established by the City Council by resolution. In addition, ROW permit applications and agreements require that applicants provide proof of insurance at coverage limits established by the City and permits be renewed annually.

We reviewed a sample of 10 Encroachment Permits to determine if:

- The ROW encroachment permit was still active;
- Current certificates of insurance (COI) were on file;
- Initial and renewal invoices were issued;
- Permit payments were current.

We noted that current COIs were not on file for 9 of the 10 permits reviewed. For three active permits, we could not locate evidence that any payments were collected. In addition, 5 of the active permit holders reviewed have not submitted payments since 2014 (See following Table):

ROW Permit Test Results						
Business	Purpose	Active?	Insurance Certificate?	Most Recent Invoice Date	Most Recent Payment Date	Payment Amount
Med Fresh Grill	Sidewalk cafe	Yes	No	3/7/2013	None	None
Residence Inn	Attached metal awnings	Yes	No	3/5/2013	1/5/2012	\$1,368.27
Rusty Taco	Outside patio	Yes	Yes	4/4/2022	4/4/2022	\$834.45
World of Beer	Sidewalk cafe	No	No	None	None	None
Two Brothers	Two signs	Yes	No	None	None	None
Gen Dynamics	Comm. cable	Yes	No	3/6/2013	1/27/2012	\$684.14
Fuzzy's Tacos	Sidewalk cafe	Yes	No	4/4/2013	None	None
Monti's	Sidewalk café	No	No	4/4/2013	3/18/2013	\$703.30
ASU Foundation	Outside patio	Yes	No	7/10/2014	6/1/2014	\$715.26
Starbucks	Sidewalk cafe	Yes	No	12/8/2010	4/2/2008	\$620.40

We confirmed with Risk Management that insurance requirements contained in current ROW Permit templates are appropriate.

ROW Records

According to staff, all ROW Encroachment permits issued should be initially recorded in Accela, along with supporting documents such as certificates of insurance. Subsequent updates to permit status, annual renewal invoices and payments should also be input into Accela.

During our review, we noted that ROW permit records were not consistently input or updated within Accela. In many cases, hard copy files that included copies of permits, certificates of insurance, invoices and payment receipt documents were maintained separately from Accela. As a result, ROW permit records are not reliably complete or accurate.

3. **E&T management is aware of the lack of effective controls and processes over the ROW Encroachment program. City Council recently approved an E&T supplemental budget request for an additional staff position (ROW Code Inspector) to improve program administration. When hired, this position will be tasked to resolve outstanding issues, develop new policies and procedures, and administer ongoing ROW encroachment work.**

During interviews, E&T management staff indicated that they were already aware of issues surrounding the ROW permit program. The City Engineer further noted that the former employee helped develop a ROW Code Inspector job description that was submitted as a FY 22/23 supplemental budget request.

We reviewed the supplemental request form for this position and noted the following explanation included with this request,

This position will be responsible for the review, processing, issuance, and enforcement of permits that allow for encroachments within the public right of way (ROW). The Land Services division of the Engineering and Transportation Department is responsible for issuing permits that allow encroachments in public right of way. Due to limited staff, fees have not been collected for active permits in many years, some as long as 10 years, and the certificates of insurance (COI) on file are out of date. Additionally, there are active encroachments for businesses no longer in existence which are not being properly maintained by the property owner and need to be removed. This position will develop a system for tracking and invoice of existing permits on an appropriate calendar as they become due and/or expire and making sure the COI is current.

This supplemental request was subsequently approved by City Council. The City Engineer indicated the position has not yet been filled as they would like to fill the related manager position first.

Recommendations

1. Engineering and Transportation, in cooperation with representatives from the Community Development and Law Departments, develop written policies governing the City's process for issuing ROW licenses and permits. At a minimum, the policy should designate responsible parties for key steps in the process and the criteria used to evaluate which form (e.g., license, permit, other) is to be used.
2. Engineering and Transportation ensure Accela is used as the primary ROW Encroachment Permit recordkeeping and invoicing system and responsible staff receive appropriate training. If possible, certificates of insurance should be scanned into Accela and kept with matching permit records.
3. Engineering and Transportation hire the recently approved ROW Code Inspector and ensure the duties described in the supplemental request are performed.