



CITY COUNCIL AGENDA ITEM

Date: 09/05/12

To: Michael Culpepper, Acting City Manager

From: Mark F. Miller, Director of Economic and Community Development
Steven Vandette, City Engineer
William J. Huotari, Assistant City Engineer/Traffic Engineer
Justin Breyer, Intern to the City Manager

Subject: Right-Of-Way Boulders and Other Improvements

Background

For several years the Engineering Department has enforced a provision of the City of Troy's Code of Ordinances pertaining to the placement of things in the right-of-way (ROW) when notified. The right-of-way is defined by the Troy City Charter as "the land owned by the City, or other governmental agency or entity that has been designated for public use which shall include but not be limited to streets, curbs, sidewalks, shoulders, utilities, landscape areas and other public uses" (Ch. 33). In general, residents place rocks, boulders, or other barriers in the ROW adjacent to roadways because they seek to protect the ROW property against recurring damage. This damage, whether intentional or unintentional, typically results from motorists driving their vehicle over the curb or edge of the roadway and onto the grassy areas of the ROW property. Vehicular vandalism most frequently occurs on roadways with a mountable curb; one that is rounded or less than four inches in height, which can be readily climbed by a moving vehicle. Mountable curbs offer noticeably less protection than a vertically raised curb of four to six inches, which is found on most major roadways with speed limits of 40 or 45 miles per hour.

Some residents that have placed boulders and other obstructions in the right-of way have contacted the City Manager's Office to indicate that they care for their property and that they have become irritated by reoccurring damage to their yards. The placement of boulders or other items can be costly to residents, but it does protect their property. City management investigated the policies and practices of other communities and found that the placement of boulders in the right-of-way is common and permitted in most communities with some restrictions.



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Costs and Enforcement

This matter is regulated by the Troy City Code of Ordinances Chapter 33, specifically provisions 4.2, 4.17, and 4.23. According to the Code, the City has an obligation to require removal of all un-exempted “obstructions” in the right-of-way at the expense of the adjacent property owner. If compliance is not obtained, City staff will remove the boulders and charge the adjacent property owner for the work, which can cost as much as \$100 to \$500. This type of work is expensive due to the heavy equipment needed to remove and haul boulders. Furthermore, residents and property owners dislike being charged for the repair or filling of holes that follows the removal of the objects.

The Engineering and Public Works Departments spend considerable time and effort notifying residents and following through on boulder removal. This effort is also a departure from the core mission of the Streets Division, which is “to ensure a safe environment for Troy residents by...maintaining, repairing and replacing a network of 364 miles of roads and 500 miles of sidewalks” (troy.mi.gov). Because of the questions related to the boulder removal effort, enforcement has been suspended until City administration can obtain direction from City Council on how to proceed.

Code Exemptions

The Troy City Code of Ordinances exempts some improvements and structures from the prohibition of obstacles in the right-of-way. The following are other typical miscellaneous objects allowed in the right-of-way: fire hydrants, trees, sign posts, utility boxes, sprinkler controls, lighting control boxes, signal control boxes, street lights, traffic signal poles, electrical poles, telephone poles, mail deposit boxes, parking meters (not Troy). Some of these exemptions are specifically outlined in the City Code: tree provisions in Chapter 28; mailboxes and utility equipment in Chapter 33 (4.8 and 4.8a); and traffic signs in Chapter 85, Section 01.04. Masonry mailboxes are exempted from the prohibition, but are limited in size. The size and mass of these improvements exceeds most boulders used to protect lawns. These exempted items are often larger in size than most of the natural landscape boulders that residents use to protect their lawns.

Recommendation

The Interim City Manager wishes to bring forward this as a request for City Council to direct City administration to pursue additional information for further consideration and debate in order to decide whether to exempt certain types of rocks and boulders from the restrictions contained within Section 33 of the Troy City Code of Ordinances.

Based upon an analysis of the ordinances and processes of surrounding cities, a consideration of Troy’s current exemptions, and the cost of enforcement, it is the recommendation of City staff to examine internal processes and amend Chapter 33 section 4.2, of the City Code of Ordinances to permit the placement of boulders in the ROW. The following outline contains the changes to section 4.2 of Chapter 33 necessary to permit boulders in the City right-of-way:

4.2 Damage and Obstruction Prohibited. No person shall make any excavation or fill in, or cause any damage to any R.O.W. in the City, except under the conditions and in the manner permitted in this Chapter. No person shall place any article, thing or obstruction in the R.O.W., except under the conditions used in the manner permitted in this Chapter, but this provision shall not prohibit:

(a) Temporary obstructions as incidental to the expeditious movement of articles and things to and from abutting premises, nor to the lawful parking of vehicles within the part of the street reserved for vehicular traffic.

(b) Natural or artificial rocks, stones or boulders placed in public right-of-way. Rocks, stones or boulders may be placed within a public right-of-way under the following terms and conditions:

1) Rocks, stones or minerals placed within a right-of-way shall not exceed 30 inches in total diameter;

2) Rocks, stones or boulders shall not be placed closer than three (3) feet from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street. However, if placement of the rocks, stones or boulders, at the minimum distance set forth in this subsection would locate them in or on a swale or ditch, the rocks, stones or minerals, may be placed so that they are no closer than 18 inches from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street;

3) Placement of rocks, stones or minerals within a public right-of-way pursuant to this subsection shall be allowed only on residential streets having a speed limit of 25 miles per hour or less;

4) Placement of rocks, stones or boulders shall not obstruct or interfere with drainage;

5) Rocks, stones or boulders placed in the public right-of-way shall not be placed closer than three (3) feet from a bicycle path or sidewalk;

6) Rocks, stones or boulders shall not be placed closer than three (3) feet to any public utility poles and structures, including fire hydrants, or any signs placed by a governmental agency or entity;

7) The terms rocks, stones or boulders shall not be broadly interpreted to include aesthetic obstructions not specifically listed herein.



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Other Considerations

If City Council wishes to change the City Code to allow rocks and boulders in the right-of-way, there are several issues to consider.

- 1) Rocks and boulders should be stationed in such a manner as to not interfere with the access to public utilities and signs, namely fire hydrants.
- 2) Questions from the public may arise regarding other ornamental obstructions including fences, bollards, and statues and why these are not permitted whereas boulders are permitted.
- 3) Placement of rocks and boulders should not interfere with neighbors' properties, and their enjoyment of their property.
- 4) Placement of rocks and boulders should not interfere with legal parking of vehicles or the ability of vehicle owners to open their car doors.
- 5) Placement of rocks and boulders should be ornamental in nature and thus should be attractive, not contributing to a blighted aesthetic.

Attachments

- 1) Example Photographs
- 2) Summary of Neighboring Communities' Policies

Attachment #1

Pictorial Examples of Right-Of-Way Obstructions



Troy Residential- Mountable Curb with Boulder



Troy Residential- Mountable Curb with Boulder



Residential Sign with Rocks



Boulder Next to Residential Mailbox



Artisan Mailbox on Big Beaver (exemption)



Rocks Surrounding ROW Tree



Birmingham Residential



Birmingham Residential



Birmingham Residential



Birmingham Park ROW



Rocks Blocking Fire Hydrant



Troy Residential- Rock/Mountable Curb

Attachment #2

Summary of Neighboring Communities' Policies

A survey of the ordinances of municipal neighbors indicates a mix of regulations that are restrictive of objects in the right-of-way and are permissive of other certain specified objects at the same time. Although some municipalities have enacted strict ordinances against obstructions in the ROW, a windshield survey indicates that there is a general passive disregard for enforcement. Attached is a list of municipal ordinances identifying how Troy's neighbors deal with this issue:

1. Rochester- ROW boulders are subject to a permit, however there are a great number of such boulders lining local streets.

Sec. 48-42. - Obstructions.

No person shall occupy any public right-of-way with any tables, chairs, boxes or other items that obstruct the right-of-way or with any materials or machinery incidental to the construction, demolition or repair of any building adjacent to said street, or for any other purpose, without first obtaining a permit and posting a cash deposit and filing an insurance policy as required by section 48-33.

2. Birmingham- Boulders are permitted in the right-of-way. Based upon a windshield survey, it appears that boulders are indeed used extensively on local Birmingham roads. They are especially prevalent on roads constructed of chip seal pavement without curbs, which invites damage to the grassy edge. Boulders are generally less than two feet in diameter, composed of natural rock, with rounded smooth surface.

Sec. 98-27. - Damage and obstruction prohibited.

No person shall make any excavation in or cause any damage to any street in the city except under the conditions and in the manner permitted in this article. No person shall place any article, thing or obstruction in any street except under the conditions and in the manner permitted in this article; but this provision shall not be deemed to prohibit the following:

(5) On streets which have not been improved with permanent curb and gutter, the placing of stones, precast curbs, railroad ties, logs, concrete blocks, or other similar objects located at least two feet from the traveled portion of the highway; provided that the placing of stones, precast curbs, railroad ties, logs or concrete blocks as permitted in this section shall be deemed done subject to the right of the city commission to revoke the authority granted in this section at will, and upon such revocation the owner of the abutting property shall forthwith remove any such objects located in the street right-of-way at his own expense.

3. Rochester Hills- Boulders are permitted.

Sec. 94-35. - Property adjacent to street.

(d) *Rocks, stones or minerals placed in public right-of-way.* Rocks, stones or minerals may be placed within a public right-of-way under the following terms and conditions:

(1) Rocks, stones or minerals placed within a right-of-way shall not exceed 30 inches in total height;

(2) Rocks, stones or minerals shall not be placed closer than three feet from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street. However, if placement of the rocks, stones or minerals, at the minimum distance set forth in this subsection would locate them in or on a swale or ditch, the rocks, stones or minerals, may be placed so that they are no closer than 18 inches from the curb or shoulder of the paved surface of a street or the traveled portion of an unpaved street;

(3) Placement of rocks, stones or minerals within a public right-of-way pursuant to this subsection shall be allowed only on residential streets having a speed limit of 25 miles per hour or less;

(4) Placement of rocks, stones or minerals shall not obstruct or interfere with drainage;

(5) Rocks, stones or minerals placed in the public right-of-way shall not be placed closer than three feet from a bicycle path or sidewalk;

(6) If placement of rocks, stones or minerals within a public right-of-way pursuant to this subsection would be inconsistent with or contrary to the corner clearance requirements of other sections of this Code or any city ordinance, the corner clearance requirements shall control; and

(7) Except as otherwise provided in this article, restrictions on rocks, stones and minerals placed in the right-of-way shall not apply to or include rocks, stones or minerals being used as mailbox support structures.

4. Sterling Heights- The City of Sterling Heights' ordinance does not permit boulders in the ROW. Still, City's staff has indicated that violations are only written if they are complaint driven.

48-4. GENERAL PERMIT REQUIREMENTS.

(C) It shall be unlawful to install, construct or place any earthen mound with a grade variance of more than six inches, boulders, shrubs, mailboxes that do not conform with applicable federal standards, landscape forms or sculptures exceeding six inches in height within the right-of-way.

5. Royal Oak- Must obtain permit from City Commission.

Generally. Except as otherwise provided in this article, no person, including persons who have a use permit or may be exempt from the use permit requirements in § 650-34, shall direct or perform any activity which causes or results in any disruption to any City right-of-way unless the consent of the City Commission is first obtained, as evidenced by a disruption permit issued by the City Engineer pursuant to this article. Activity shall be performed in accordance with the disruption permit and in the manner provided for in this article.