



# COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

**TO:** City Council Members

**FROM:** Brian Fullmer, Policy Analyst

**DATE:** March 22, 2022

**RE: STREET VACATION AT 601 SOUTH 900 EAST  
(PLNPCM2021-00614)**

Item Schedule:

Briefing: March 1, 2022

Set Date: March 1, 2022

Public Hearing: March 22, 2022

Potential Action: April 5, 2022

## BRIEFING UPDATE

At the March 1 briefing, the Council voiced some concerns about the proposal due to the impacts to the streetscape, vacating public right-of-way, and the Engineering Division's opposition to the vacation. During the discussion, Planning staff stated they followed previous Council decisions on street vacations, however the Council indicated that previous Council decisions were not necessarily a standing precedent or reason to approve future applications with unique facts. Planning reviewed ways the application generally meets standards that are in place.

Planning staff noted uneven block faces would be created on both streets if the request is approved. It is unknown if other properties on the block have similar encroachments. A survey of the properties would be required to determine that.

Council staff asked whether a lease program is still available to property owners in situations such as this, noting it is in the City's best interest to preserve its options by leasing rather than selling property. Planning staff said leases are still an option, but residents often prefer to go through the street vacation process as it is perceived as a better long-term solution for them. Planning also said the Administration is working on updates to policies of what is allowed in City rights-of-way.

During the briefing, Planning staff mentioned that currently new fences cannot be constructed within the City's right-of-way (for example, if the property owner needed to re-build or repair the fence), which may also affect the property if leased. Staff asked to confirm the details pertaining to lease options with the City Attorney's Office. The options for leasing the property prove to be complicated, and a clear definition was not available at the time staff reports were completed.



The applicant would need to apply and be approved for a building permit to construct a new fence. The analysis of whether that would be allowed would be completed under that application. The City has not conducted that analysis yet because the applicant has not applied. If the Council would like to ask for more information about impacts of the leasing option, the Attorney's Office could do additional research. The information may not be readily available and could take additional time.

The Council may wish to have a policy discussion on whether to continue vacating City rights-of-way.

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***The following information was provided for the March 1, briefing. It is provided again for background purposes.***

### **ISSUE AT-A-GLANCE**

The Council will be briefed about a proposal to vacate the public right-of-way between the sidewalk and property line at 601 South 900 East. The subject parcel is on the southeast corner of 600 South and 900 East. The property in question is a strip approximately 5.5' wide which runs along the 120-foot 600 South side, and 50-foot 900 East side of the parcel (approximately 985 square feet total) as shown in the image below. If approved by the City Council, the property would be sold to the homeowners at market value (amount TBD). It should be noted no physical changes to the sidewalk or street are included in this proposal. Pedestrian and vehicular traffic on the sidewalk and streets would not be impacted if the property is vacated and sold.

Owners of the subject parcel received notice from City Civil Enforcement stating their fence encroaches on the public right-of-way. Three options were presented to resolve the encroachment:

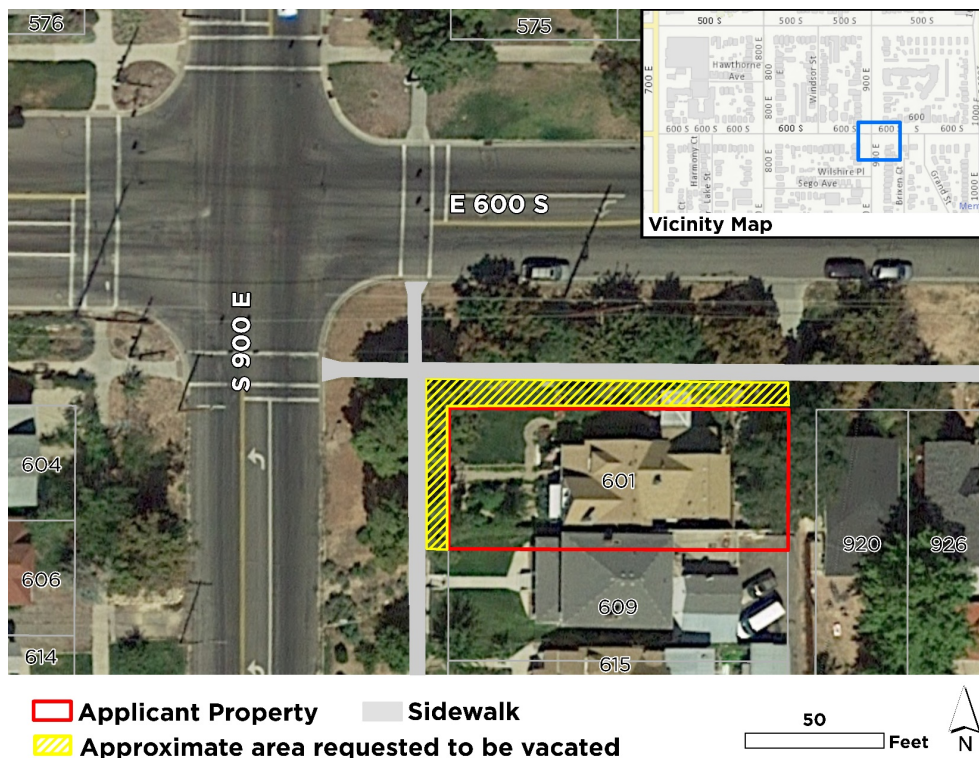
- Remove the fence
- Enter a lease with the City for the area
- Apply for a vacation of the subject property and purchase if approved by the City Council

The property owners opted to pursue purchasing the property being encroached upon. A wood fence on the north property line is in poor condition and needs to be replaced. The owners are unable to do so until the encroachment is resolved.

It is Planning staff's belief if the proposed street vacation is approved by the Council, vacating the section of right-of-way would likely create an irregular right-of-way pattern on both block faces. In other words, the subject property lines would approximately 5.5 feet closer to the sidewalks compared to other properties on the block.

In the department review process, Engineering expressed opposition to the proposed street vacation because they believe it would not be in the City's best interest to set a precedent of vacating rights-of-way "to match fence lines or backs of sidewalk."

The Planning Commission reviewed this at its December 15, 2021 meeting. The applicant spoke saying he believes a survey error was made many years ago resulting in the lot lines approximately six feet from the sidewalk. No one spoke at the Planning Commission public hearing. Planning staff recommended and the Planning Commission voted unanimously to forward a positive recommendation to the City Council.



*Aerial view of subject parcel outlined in red, and encroachment area shaded in yellow.  
 (Note: map is for informational purposes and is not exact. Property lines and aerial images do not align precisely.)  
 Image courtesy Salt Lake City Planning Division*

**Goal of the briefing:** To review the proposed street closure, address questions Council Members may have and prepare for a public hearing.

## POLICY QUESTIONS

1. The Council may wish to ask the Administration if other properties on the block have similar encroachments. The Council may also wish to ask planning if this would create an uneven block face appearance and if that would be counter to general City urban design goals.
2. Is the Council supportive of closing and vacating the subject property?

## ADDITIONAL INFORMATION

Planning staff identified four key considerations during analysis of this proposal. They are summarized below. Please refer to pages 3-4 of the Administration's Planning Commission staff report for the full analysis.

### Consideration 1-Utah State Code

Section 10-9a-609.5 *Utah State Code Annotated* (included on pages 4-5 of this report) allows municipal legislative bodies to vacate streets. The Council must determine good cause exists for the vacation, and neither public interest nor any person will be materially injured by the vacation. Planning staff found the proposed vacation would not be detrimental to the public interest, especially since the City would be compensated for the property.

### Consideration 2-City Council Policies

Planning staff found the proposed street vacation meets City Council policies for street vacations discussed in Consideration 4 below.

### Consideration 3-Master Plan Considerations

Planning staff determined the proposed street vacation is not in conflict with the *Central Community Master*

*Plan, Salt Lake City Urban Design Element, or Major Street Plan.* They found the proposed street closure does not have a stated public benefit, but the property is not needed for a public purpose and the City will benefit from selling the land, the proceeds of which would go to the General Fund.

#### **Consideration 4-Street Design Standards**

Planning staff found the proposed street vacation does not violate the City's street design standards found in section 20.12 of the City's Subdivision Ordinance. However, they noted the yet-to-be-adopted update to the *Streets and Intersection Typologies Design Guide* may impact future street vacation requests.

Attachment D to the Administration's Planning Commission staff report (pages 13-14) is an analysis of factors related to the City's street closure policy. A summary is provided below. For the complete analysis, please refer to the Planning Commission staff report.

- **It is the policy of the City Council to close public streets and sell the underlying property. The Council does not close streets when the action would deny all access to other property.**
  - **Finding:** The proposed vacation would not deny vehicular or pedestrian access to any adjacent properties.
- **The general policy when closing a street is to obtain fair market value for the land, whether the abutting property is residential, commercial or industrial.**
  - **Finding:** The City would give up ownership of this property and obtain fair market value for the sale of the right-of-way to the abutting property owners.
- **There should be sufficient public policy reason that justify the sale and/or closure of a public street and it should be sufficiently demonstrated by the applicant that the sale and/or closure of the street will accomplish the stated public policy reasons.**
  - **Finding:** The proposed right-of-way vacation does not conflict with the *Central City Master Plan* but does not result in a direct public benefit as outlined in the *Salt Lake City Urban Design Element*. However, the Administration stated the property isn't needed for a public purpose and the City would benefit from the land sale, with proceeds going to the General Fund.
- **The City Council should determine whether the stated public policy reasons outweigh alternatives to the closure of the street.**
  - **Finding:** Alternatives to the requested vacation maintain City ownership of the 985 square foot portion of public right-of-way and require the applicant to enter into a lease agreement for the encroachment or relocate the fence and re-landscape the park strip. From a Planning perspective, staff finds that the right-of-way is wider than what is needed for the relevant street design standard. Aerial imagery shows that the improvements have encroached onto the public right-of-way for at least 15 years. The City now has an opportunity to benefit financially from this occupation.

#### **PROJECT CHRONOLOGY**

- June 11, 2021-Petition submitted.
- July 1, 2021-Petition assigned to Aaron Barlow, Principal Planner.
- October 7, 2021-notice of the petition and request for review was provided to the East Central Community Council Chair. The Chair shared the request with the Council and indicated they are in favor of Planning staff's recommendation.
- October 7, 2021-Letters were mailed to property owners and residents within a 300' radius of the site.
- December 3, 2021-Planning Commission public hearing notices mailed. Notice posted on City and State websites and emailed to the Planning Division listserv. Public hearing notice posted at the subject property.
- December 8, 2021-Planning staff report sent to Planning Commission.
- December 15, 2021-The Planning Commission was briefed on the proposal and a public hearing was held. No public comments were provided at the hearing and the Commission voted unanimously to forward a positive recommendation for the proposed street closure.

- January 27, 2022-Draft ordinance sent to Attorney's Office.
- February 11, 2022-Transmitted to City Council Office.

## STREET CLOSURE PROCESS

Street closure process is dictated by Section 10-9a-609.5 Utah State Code which is included below for reference.

### **10-9a-609.5. Petition to vacate a public street.**

- (1) In lieu of vacating some or all of a public street through a plat or amended plat in accordance with Sections 10-9a-603 through 10-9a-609, a legislative body may approve a petition to vacate a public street in accordance with this section.
- (2) A petition to vacate some or all of a public street or municipal utility easement shall include:
  - (a) the name and address of each owner of record of land that is:
    - (i) adjacent to the public street or municipal utility easement between the two nearest public street intersections; or
    - (ii) accessed exclusively by or within 300 feet of the public street or municipal utility easement;
  - (b) proof of written notice to operators of utilities located within the bounds of the public street or municipal utility easement sought to be vacated; and
  - (c) the signature of each owner under Subsection (2)(a) who consents to the vacation.
- (3) If a petition is submitted containing a request to vacate some or all of a public street or municipal utility easement, the legislative body shall hold a public hearing in accordance with Section 10-9a-208 and determine whether:
  - (a) good cause exists for the vacation; and
  - (b) the public interest or any person will be materially injured by the proposed vacation.
- (4) The legislative body may adopt an ordinance granting a petition to vacate some or all of a public street or municipal utility easement if the legislative body finds that:
  - (a) good cause exists for the vacation; and
  - (b) neither the public interest nor any person will be materially injured by the vacation.
- (5) If the legislative body adopts an ordinance vacating some or all of a public street or municipal utility easement, the legislative body shall ensure that one or both of the following is recorded in the office of the recorder of the county in which the land is located:
  - (a) a plat reflecting the vacation; or
  - (b) (i) an ordinance described in Subsection (4); and
    - (ii) a legal description of the public street to be vacated.
- (6) The action of the legislative body vacating some or all of a public street or municipal utility easement that has been dedicated to public use:
  - (a) operates to the extent to which it is vacated, upon the effective date of the recorded plat or ordinance, as a revocation of the acceptance of and the relinquishment of the municipality's fee in the vacated public street or municipal utility easement; and
  - (b) may not be construed to impair:
    - (i) any right-of-way or easement of any lot owner; or
    - (ii) the rights of any public utility.
- (7) (a) A municipality may submit a petition, in accordance with Subsection (2), and initiate and complete a process to vacate some or all of a public street.
- (b) If a municipality submits a petition and initiates a process under Subsection (7)(a):
  - (i) the legislative body shall hold a public hearing;
  - (ii) the petition and process may not apply to or affect a public utility easement, except to the extent:
    - (A) the easement is not a protected utility easement as defined in Section 54-3-27;
    - (B) the easement is included within the public street; and
    - (C) the notice to vacate the public street also contains a notice to vacate the easement; and
  - (iii) a recorded ordinance to vacate a public street has the same legal effect as vacating a public street through a recorded plat or amended plat.