



**TOWN OF FAIRFAX
STAFF REPORT
December 3, 2014**

TO: Mayor and Town Council
FROM: Garrett Toy, Town Manager *GT*
SUBJECT: Discussion/consideration of encroachments into pedestrian right-of-ways

RECOMMENDATION

Discuss/consider encroachments into pedestrian right-of-ways and direct staff as appropriate.

DISCUSSION

Councilmember Reed requested this item be placed on the agenda for discussion and consideration. Attached is his report on the subject. It should be noted that one of the Council goals for 2014 is to "Research and secure pedestrian right-of-ways "paths" throughout Town".

FISCAL IMPACTS

Depends on Council's direction.

ATTACHMENTS

Councilmember Reed's memorandum



Town of Fairfax Councilmember Memorandum

TO: Mayor and Town Council

FROM: Councilmember Reed

DATE: December 3, 2014

SUBJECT: Pedestrian Right-of-Way Encroachment Issues

Throughout most of Fairfax, there are over a hundred Pedestrian rights of way (ROWs), connecting various neighborhoods via what is often the most direct route. In the hill areas, these routes are often steep, necessitating steps to make them more usable, especially for the elderly. As we know, many of these have become dilapidated over the years.

Historically, these routes were laid out at the same time as the property lines and streets, and as such have the same legal status as streets or alleys, i.e. they are not easements, and are not subject to being extinguished due to disuse. Also historically, they have been used and maintained by children, often as routes to school or friends' houses. Being the most direct routes, they are potentially very useful for general pedestrian circulation, recreational use, and importantly, as a means of egress in case of fire or other emergency. To these ends, efforts have been made by volunteers and the Town to improve and maintain many of the routes, which are listed in an appendix of the Town's General Plan. The appendix includes details such as whether the ROW is blocked by encroachments, or needs steps, etc., as of about 2004.

In several instances, encroachment of these public assets has occurred, through the building of fences, garden plantings, parking, retaining walls, decks, or other structures. Sometimes, the rights-of-way have been improved by an adjacent homeowner up to the point where a door to their residence opens onto the ROW, leading a member of the public to be unclear on whether they are crossing private property while using the improved portion, especially if there are plantings or the pathway becomes significantly dilapidated where the right-of-way continues past the turn to the resident's door.

Per Town Code, where an encroachment of these ROWs exists or is contemplated, an encroachment permit is required. Enforcement is usually complaint based, with the result that many encroachments go on for years since no complaints are made due to the unclear nature of the property boundaries. Since the Town currently is attempting to revive these ROWs, and the trail network of ROWs is blocked by many of these encroachments, an effective strategy to remove the blockages is needed. Ideally,

where an encroachment blocks the public ROW, the encroacher would make alternative means for travel along the ROW or as close as is practical, and provide signage for way-finding by the public. In this way, the historic and useful legacy of this pedestrian circulation system can be maintained, along with the benefits to the private individuals who are encroaching on this public amenity.

Especially as the network of ROWs is improved, relying on citizen complaints to drive the mitigation of encroachments is inadequate. I propose that letters be sent to residents adjacent to an encroachment, advising them of the possible improvement to ROWs in Town, and the need for mitigation (e.g., encroachment permit) or removal of the encroachments. As a basis, the General Plan listing (Appendix C-A: Inventory of Recreational Trails, Paths, and Rights-of-Way in the Fairfax Planning Area) can be used, with an evaluation of conditions on the ground made beforehand. Prioritization of areas noticed in this way can be made in conjunction with efforts to prioritize trail projects.