BUILDING & PLANNING DEPARTMENT
Structures, Fences and Easements

What is an easement?

An easement is a right that an owner of real property grants to others allowing them the use of a portion of their real property for a specific purpose. Easements can be public or private. Public easements are typically for utilities (electric, waterline, sanitary and storm sewer) that run across a property or for access to public land, such as a walkway to a park, whereas a private easement is typically an arrangement between two adjacent properties allowing one property to use a portion of the neighboring property for a specific purpose. A shared driveway that is used by two adjacent properties is an example of a situation that should typically be documented by an easement.

Most public easements are created at the time a subdivision is platted, so many times a property owner may not even be aware of their existence. It is not unusual to find easements on lots in subdivisions that were platted since the mid-1980s.

Why is it important to know about easements?

It is important for property owners to be aware of easements on their lots because easements do give other parties the legal right to use and potentially access a portion of your property (e.g., the area “encumbered by” or within the easement boundaries).

Where can I get additional information about easements?

For additional information about easements in general and how they may affect you as a property owner, the City recommends that you contact your legal representative.

For more information about easements that may be specific to your property, the City has copies of recently platted subdivisions that may show easements on your lot. However, it may be best to contact the Medina County Recorder’s Office to find out what specifically known easements encumber your property. This is where all legal documentation regarding your property is kept.

What can be built in an easement?

For questions regarding what can be placed in private easements, the City recommends that you contact your legal representative for advice about your rights with respect to the specific easement.

Regarding public easements, these must typically be kept “free and clear of all encumbrances”. This means that no building addition, deck, garage, storage shed, swimming pool or fence can be constructed within an easement area. The reason for this is that if these structures were located in an easement, they could obstruct utility crews from accessing the easement area. Furthermore, the type, size and location of a proposed structure may prevent the utility from working properly.

For instance, a detached garage, storage shed or privacy fence located in an overland drainage swale easement could impede the flow of water during a storm and cause water backup and damage to your and
neighboring properties while the drilling of fencepost holes within an easement could damage underground water, sewer or electric lines.

**Are there exceptions to the rule about no structures within easements?**

Because of the potential concerns noted above, structures on permanent foundations (room additions, detached garages) would typically not be allowed within an easement. However, some structures that do not require permanent foundations may be permitted to encroach into an easement if it is determined that type, size and location of the structure or fence will not impede, damage or prevent access to the public utility within the easement. The determination of whether an encroachment will be permitted will be made by the Director of Public Service, after reviewing the specific facts, on a case-by-case basis.

**How do I go about asking for permission to encroach into an easement?**

Since such things as fences, accessory buildings, swimming pools require at least a zoning permit prior to installation, the following process should be followed:

1. Submit the zoning permit application and site plan to the Building & Planning Department. The site plan should show all property lines, lot dimensions, easements, location of existing and proposed buildings and structures as well as existing and proposed setbacks.
   a) If you do not know if there are easements on your property, staff will check this out and notify you.
   b) If a structure is proposed within a known easement, the application should include a brief letter explaining the need for the encroachment.

2. The Building & Planning Department will forward your application packet to the Director of Public Service for review, who will review your request with the City Engineer and return your application to the Building & Planning Department (typically within 24 to 48 hours).
   a) If the request for an encroachment is denied, your permit application will also be denied and returned to you along with an explanation as to why the permit could not be issued.
   b) If the request for an encroachment is approved, the Service Director will execute an agreement for the encroachment along with any specific conditions associated with the approval. If you are in agreement with this approval and associated conditions, you will need to sign the agreement and have it recorded at the Medina County Recorder’s Office.

3. Upon returning a copy of the recorded agreement to the Building & Planning Department, your permit application will be processed and the appropriate permit issued.