



City of Billings

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
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November 8, 2018

Mr. Michael Sanderson
Sanderson Stewart
1300 N. Transtech Way
Billings, MT 59102

Re: Alberta Bair Encroachment Permit

Dear Michael:

We received the encroachment permit application for the Alberta Bair on October 30, 2018. After review, city staff is denying the application for a couple of reasons. First, when the public right of way was vacated in April 2016, the City Council was presented with a plan for what the site would look like upon completion and this request utilizes right of way beyond that plan. City staff is hesitant to approve additional use of the right of way that was not part of the vacation discussion with City Council.

More generally, when we review encroachment permits, we weigh the request to use the public right of way for a private use against the public's need for the right of way. The encroachment that was requested in the application was for sidewalk/plaza improvements adjacent to the Alberta Bair Theater. The improvements would extend into one of the driving lanes thereby requiring the road to be "skewed" through the intersection and for approximately one block before moving back into its alignment. An alignment as requested is not in the best interests of the public as it makes for an unexpected driving situation. The skew of the road would also create maintenance challenges for striping, plowing, and sweeping. In addition, there would be a loss of several parking spaces for that block.

In short, city staff determined that the encroachment could not be justified from a technical standpoint when using the private use versus the public need basis.

The appeal process is lined out in city code and I've included it below.

Sec. 22-407. - Encroachment permit required.

(a) No encroachment on any public right-of-way or public property shall be allowed except by authority of an encroachment permit issued by the city administrator or his designee. Application for an encroachment permit shall be made on the forms and in accordance with the procedure prescribed by the city administrator. A fee for the permit application shall be charged to cover the administrative costs of

processing as prescribed by council resolution. If the issuance of the permit is approved, the city administrator or his designee shall issue the permit. If the permit is denied, the applicant shall be provided with a statement of the reasons therefore, which reasons shall be entered in writing on the application. The applicant shall be entitled to appeal the denial of the permit to the city council as provided in subsection (b) below.

(b) From the date of denial of the permit, the applicant shall have ten (10) days in which to submit a written notice appealing such denial to the city council. The notice of appeal shall be filed with the city clerk and shall state reasons supporting the grant of the encroachment permit, the applicant's correct mailing address and telephone number, shall be signed by the applicant and shall be accompanied by the processing fee as prescribed by council resolution. The appeal shall be placed on a city council agenda not more than twenty-one (21) days after receipt of notice. The applicant shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. In addition, notice of the hearing shall be published once in the official city legal newspaper prior to the hearing. The notice shall include the proposed encroachment encroaches, the extent of the encroachment and the duration. The applicant and all other interested persons may appear at the time and place and be heard either for or against.

(Code 1967, §§ 3.20.001, 3.20.050; Ord. No. 85-4671, § 3, 10-21-85)

You can consider this the statement of reasons which you need in order to appeal the decision. This letter will start the 10 day period for the city to receive the appeal. In anticipation of this denial, you did include a request for appeal of the decision so I delivered this letter along with the encroachment application to the City Clerk to start the appeal process. If you would like to discuss this further, you can call me at (406) 657-3097 or email me at melingd@ci.billings.mt.us. City staff will keep you updated on the status of the appeal and when it will be heard by the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debi Meling', written in a cursive style.

Debi Meling, P.E.

City Engineer