



# COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

**TO:** City Council Members

**FROM:** Nick Tarbet, Policy Analyst

**DATE:** March 1, 2022

**RE: Text Amendment:  
Public Notice for Permits to Work in the  
Public Right of Way**

## PROJECT TIMELINE:

Written Briefing: Jan 12, 2021  
Briefing 1: Feb 9, 2021  
Briefing 2 January 11, 2022  
Briefing 3; March 1, 2022  
Set Date: December 8, 2020  
Public Hearing 1: Jan 19, 2021  
Public Hearing 2: Feb 1, 2022  
Potential Action: TBD

## New Information

At the February 1<sup>st</sup> public hearing, many expressed support for the changes because it will notify residents when work will be done adjacent to their properties.

Others expressed concerns about the timing of the notice and confusion it may cause if it is delivered too soon. The Council received written feedback in addition to the public hearing comments. *All the feedback and concerns are addressed in the section below.*

The Council closed the public hearing and deferred action to a future Council meeting.

Based on public comments heard at the hearing and received in writing, staff drafted a summary of requested changes below for the Council to consider. Staff proposes the Council review each item and determine whether or not the changes should be included in the final ordinance. Based on the Council's direction, staff will work with the Attorney's Office to update the ordinance and bring it back for potential adoption at a future Council meeting.

## Potential Changes for Consideration

- **Clarifying – the definition of adjacent property owners.**
  - Some comments requested the City clarify the definition of "Adjacent." The concern is it could be too broad. An example has been given that when a contractor is pulling fiber through conduit, the only impact to property owners is to those properties adjacent to

the locations where the fiber goes in and comes out of the conduit. The properties along the route (other than the beginning and end) would not be impacted at all by the work. However, they are concerned that every property along the route would have to be notified.

- On the other hand, the Council could clarify that any property who is impacted by parking restrictions, construction equipment, or traffic detours could be considered “adjacent”.

*Does the Council wish to clarify the definition of “Adjacent?” Does it mean the properties adjacent to the location where the applicant is either installing an aboveground facility or breaking the ground to place an underground facility? Or does it mean properties that are near to or affected by impacts?*

- **Questions have been raised about who is responsible for providing and paying for the notification.**

- The current ordinance states:
  - Prior to the city issuing a Work in the ROW permit, notice of the proposed work shall be delivered to the occupant at the adjacent properties except as otherwise provided herein. Notice will be delivered by applicant unless otherwise determined by the City Engineer.
- Potential changes for greater clarity:
  - Prior to the city issuing a Work in the ROW permit, notice of the proposed work shall be delivered **by the applicant** to the occupant at the adjacent properties except as otherwise provided herein. Notice will be **paid for and** delivered by applicant unless otherwise determined by the City Engineer

*Does the Council support this change?*

- **Lumen/Century Link Comments**

- Lumen requested the following exemption be included from the notification requirement.
  - The installation of fiber optic cables to existing utility infrastructure, including existing poles, wires or conduit.

Staff was concerned this was too broad and many projects would not be required to provide the public notice. Based on this concern, staff is proposing the following change:

*The installation of overhead fiber optic cables to existing poles and wires or installation of buried fiber optic cables in existing conduit where excavation is not required.*

*Does the Council support this change?*

- **Verizon's Comments**

- **A1 – Request for clarification on who is responsible to do the notification and recommended City staff handle the notification process.**
  - The intent of the council was for the franchise holder/applicant to be responsible for notifying property owners about the work that will be done.
  - Staff recommends keeping this language in the ordinance
- **A2 – Concerns about requiring additional permits**
  - This is existing language currently in the ordinance. No changes from staff have been proposed.
  - The Attorney's Office said this is a generally applicable provision that is included to make sure all related permits and approvals are secured by the applicant so that the City knows the applicant has the right to install the facility related to the permit request.
  - Staff recommends keeping this language in the ordinance
- **A3 – Amend section that allows City Engineer to require any other reasonable information**
  - This is existing language currently in the ordinance. No changes from staff have been proposed.
  - This existing language gives Administrative staff flexibility to require additional information for the application if it becomes apparent it is needed to help process the application.
  - Staff recommends keeping this language in the ordinance
- **B1 - Request to change the timing of when public notice must be provided.**
  - The proposed ordinance would require public notice be provided before the permit is issued, so that staff can confirm delivery of the notice. If notice is provided after the permit is issued, there is no way for the City to verify and ensure it has been provided.
  - Staff recommends keeping this language in the ordinance as is currently drafted.
  - The Council may wish to discuss adding a requirement to require a second notice 48-72 hours before construction starts
- **B2 - Request to not require notice for work located below ground.**
  - The Council specifically requested changes to the ordinance that would require notice for work below ground in the public right of way.
  - Staff recommends keeping this language in the ordinance as is currently drafted.

***The following information was provided for the February 1, 2022 public hearing. It is provided again for background purposes.***

**January 11 Work Session Summary**

During the January 11, 2022 work session briefing, the Council didn't raise any significant concerns or questions about the updated draft ordinance. Staff said they would reach out to stakeholders and residents who have expressed interested in these changes.

Additionally, staff met with some stake holders who wanted to better understand the proposed changes. They expressed concerns about the following:

- Would this exclude work that is being done on existing infrastructure?
  - An example is hanging wires on existing poles
- Does notice only have to go to the adjacent property owners where the work is being done, i.e. the ground is being disturbed?
  - An example is if fiber is being pushed through existing conduit, does everyone along the route have to be notified, or only the adjacent properties where the work is disturbing the ground.

In order to address these concerns, they submitted the following change for consideration to the exemption list:

14.32.036(4)(f):

- f. The installation of fiber optic cables to existing utility infrastructure, including existing poles, wires or conduit.**

If this Council is supportive of this change, staff will include in the final draft.

The public hearing will be held on February 1, 2022.

***The following information was provide for the January 11, 2022 work session briefing. It is provided again for background purposes.***

The Council will be briefed on proposed amendments to City Code requiring permit applicants for construction work in the public right of way to provide notice to property owners whose properties are adjacent to the work that will be performed.

The proposed changes were requested in response to numerous constituent inquiries about the lack of notice on certain nearby utility construction projects. Much of the right-of-way work that is performed is governed by State statute and limits the amount of interaction the City has with the work. However, in balancing the work that is performed and the impact to residents, some additional noticing steps are proposed to be added to the ordinance.

Originally, the petition was intended to only apply to above-ground work in the public right of way. However, based on a public hearing on January 12, 2021 and a follow-up work session on February 9, 2021, the Council directed staff to work with the Administration to make the following changes to the draft ordinance:

- Include under-ground work as part of the notification requirements
- Notification should be provided before obtaining the permit
  - Proof must be part of the permit application
- The applicant is responsible to give proof that notice was provided
- Outline specific requirements that should be included in notice
  - Purpose of construction, contact info, date of construction, etc.

The Administration has forwarded the attached ordinance for the Council to consider. The following table shows where the requested changes are included in the draft ordinance. *Please see the legislative draft.*

<b>Requested Change</b>	<b>Page and Line(s)</b>
Include underground work as part of the notification requirements	Page 4, lines 148-150
Notification should be provided before obtaining the permit. <i>Proof must be part of the permit application</i>	Page 4, lines 141-143
The applicant is responsible to give proof that notice was provided	Page 4, lines 141-143
Specific requirements that should be included in notice: <i>purpose of construction, contact info, date of construction, etc.</i>	Page 5, lines 159-175

During the February 9 public hearing, representatives from Verizon spoke, in addition to submitting a letter outlining their concerns. They stated the current process is efficient and they would prefer to provide notice to property owners after the permit has been received. The new ordinance would require them to provide notice before they obtain a permit. *Their concerns are outlined below on pages 3-4.*

The revised draft has not been distributed for public comment yet. Staff wanted to check in with the Council Members to make sure the updated version meets the Council's intent. If it does, staff recommends setting a public hearing for February. Staff will then send the revised ordinance to stakeholders for comment.

### **Policy Questions**

1. The draft ordinance requires notification for work located below ground and behind the curb to adjacent properties on the same side of the public right of way, while notice for work below ground and in the paved section of the public way will be required for both sides of the public right of way.

***The Council may wish to ask the administration why this difference is needed. Would it be appropriate to notice both sides of the street, even when work is done behind the curb and gutter?***

2. The draft ordinance says the applicant is responsible for delivering the public notice unless otherwise determined by the City Engineer.

***The Council may wish to ask the Administration what situation are envisioned that the applicant may not be the one responsible for delivering the public notice.***

***The following information was provide for the February 9, 2021 work session briefing. It is provided again for background purposes.***

## **PUBLIC HEARING SUMMARY**

During the public hearing members of the public spoke about the proposed changes and asked some questions, Additionally, a letter from Verizon was submitted pertaining to the proposed change.

A few individuals requested the Council require public notice for below ground work as well. Some also said current contractors are not doing a good job of restoring property to the way it was before the work happened.

Verizon representatives spoke during the public hearing and also submitted a letter, outlining their concerns. They stated the current process is efficient and they would prefer to provide notice to property owners after the permit has been received. The new ordinance would require them to provide notice before they obtain a permit.

Council staff met with staff from CAN and the Attorney's Office to go over the comments and formulate the following responses.

### **1. Request to apply the notification requirement to work “below ground” as well.**

- Administrative staff said this is obviously possible, but it will likely require an increase in staff and costs for the city to monitor and / or respond to concerns about projects.
- The proposed change before the Council would only require public notice to adjacent property owners for above ground work – typically, this type of work is limited to a few properties that are near the above ground poles/facilities.
- Underground work can go for hundreds of yards (larger/longer projects would be miles). It would take more staff to verify and ensure the public notices were properly provided.
- Administrative staff have prepared some very preliminary estimates for cost/staffing impact to the City.
- They will be available during the briefing to respond to questions the Council may have about potential cost of notifying for below ground work.

### **2. Reponeses to Verizon's Letter**

- **Verizon's request:** Allow permit holders to post notice after the permit is obtained. Prefer to submit template with permit application and actual notice is provided 48-72 hours before work commences.
- **Administration response:**
  - CAN staff said the current process has not been working and that is the reason for the proposed changes. The goal is to get the notifications out sooner, so the public is aware of the work before the permit is issued.
  - The new process would require the permit holder to submit evidence that the notice was provided to adjacent property owners. They then submit that as part of their permit application. The work would typically commence about 2-3 weeks later.

- **Verizon's request:** Clarify type of evidence that is required to demonstrate applicant has satisfied notification requirement.
- **Administration response:**
  - CAN staff said notice such as a door hangar, with timestamped photos is one way to satisfy this requirement.
  - The goal is to avoid situations where a piece of paper is placed on a doorstep that can easily be blown away.
- **Verizon's request:** Adopt definition of adjacent owner currently in notification process.
- **Administration response:**
  - CAN staff stated this could be clarified.
- **Verizon's request:** Clarify purpose of the notice and what is to be included in the description of the purpose of construction.
- **Administration response:**
  - CAN staff has stated they can help provide examples of the type of language they that should be on the notice.
  - They can do this to help ensure consistency for all permit holders.
- **Verizon's request:** Clarify definition of above ground work; does it include excavation to run conduit or lay fiber.
- **Administration response:**
  - CAN staff has stated this type of work applies to facilities that are permanently above ground or on poles or anything that would fall under the master license agreement for small cells.
  - Typically, this type of work would also include trenching for conduit.
- **Verizon's request:** Any other info reasonably required by City engineer is too broad
- **Administration response:**
  - CAN staff stated this is meant to be specific to notice requirements. They can provide some language to clarify that.

## POLICY QUESTIONS

1. Some Council Members have expressed interest to require more public notice for below ground work.
  - Does the Council want to adopt these proposed changes and also adopt a legislative action asking the Administration to come back with a proposal for increased public outreach for underground work in the public right of way?
    - This may include identifying options to require contractors to do the outreach and an option for the city to be responsible for providing the public notice
2. The Council may want to ask about the description of information that would be suggested / requested for the notice. For example, location, description, duration of type of work; contact information for the contractor and City, etc.?
3. The Council may wish to ask what the change in the timeline for permit holders would be and how the Administration can notify potential applicants of the changes.

***The following information was provide for the January 19 public hearing. It is provided again for background purposes.***

#### **WORK SESSION SUMMARY**

This item was on the January 12 agenda as a written briefing. Council Members did not raise any concerns or ask staff questions about the proposed changes.

The public hearing is scheduled for January 19.

***The following information was provide for the January 12 work session briefing. It is provided again for background purposes.***

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

The Council will be briefed on proposed amendments to City code requiring permit holders to provide notice to property owners whose properties are adjacent to the above groundwork that will be performed in the public way.

The proposed changes were requested in response to numerous constituent inquiries about the lack of notice to adjacent property owners. Much of the right-of-way work that is performed is governed by State statute and limits the amount of interaction the City has with the work. However, in balancing the work that is performed and the impact to residents, some additional noticing steps are being added to the ordinance.

The key changes would require the franchise holder/applicant to provide the following:

- Evidence that they provided notice to all property owners whose properties are adjacent to the portion of the public way where the work is being performed.
- Notice that includes the name of the permit holder performing the construction, the purpose of the construction, and a contact phone number and email for the permit holder.
- Evidence shall be satisfactory to the City Engineer that all adjacent property owners have received notice.
- Related text cleanups to match current practice.

Since work in the public right of way is overseen by the City's Engineering Division, they have reviewed the ordinance in collaboration with the Attorney's Office. Engineering has expressed their support for these proposed changes.

Administrative staff have noted the contractor will have to give notice of the construction prior to submitting an application for a permit to Engineering. Once Engineering approves the permit, the contractor may move forward with construction.

#### **PUBLIC PROCESS**

Engineering provided Council Staff a list of the companies who do much of the work in the public right of way. Council staff emailed this group to let them know about the proposed changes, and the dates of the briefing and public hearing.

#### **POLICY QUESTIONS**

1. For the properties that would be included in the notification, the Council may wish to consider expanding the requirement beyond the proposal of adjacent property owners.



2. If the Council has questions about the timing of the when the notice must be given to when the permit is granted, the Council may wish to ask the administration to explain the process for when the notice must be given before receiving the permit for construction.
3. If it would be helpful, the Council may wish to ask the Attorney's office or Administration representative to provide a quick review on the types of things the City is able to require or request versus items that are monitored or regulated by the State.
4. The Council may also ask Engineering to provide a description of their typical interaction with the permit holders.
5. The Council may wish to raise any other issues that have been raised by constituents.
6. The Council may wish to ask about options to address issues when the noticing requirements are not followed.