

The City of Colorado Springs' Guide to Easement Encroachments & Easement Vacations

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What is an easement?

An easement is a right to use or control land and is given by the property owner to another party. Easements can be permanent or temporary, but usually have a specific or limited purpose. This term may be used to describe either the right of use itself or the document conferring the right to use. Easements are typically granted to cities or utility companies to provide water, electric, gas, wastewater and/or stormwater service to a particular property or subdivision. These types of easements are usually called public utility, public improvement and/or public drainage easements. Easements are legal documents that should be recorded with the County Clerk and Recorder's office.

How are easements created?

- By Plat of your subdivision/neighborhood, and/or,
- By Separate Document/Agreement between parties.

How do you know if easements exist on your property?

Because easements are legal, recorded documents, the best way to find out if you have easements on your property is to retain a title company to perform a title search; and/or you can look through your original closing documents for a title policy. A title report, title commitment or title policy will show you all the various encumbrances on your property. These encumbrances will be listed in the "B-2 Exceptions" portion of the title report, commitment or policy.

Platted easements within a subdivision are depicted on the City or County approved plat document for the subdivision/neighborhood that you live in. For those subdivisions platted in the City of Colorado Springs:

1. Go to the El Paso County Property Assessor's website www.land.elpasoco.com, and enter the Tax Schedule Number (TSN) of your property, your address or your name in order to locate your parcel and find the name of your subdivision (under Legal Description).
2. With the subdivision name in hand, go to <http://www.springsgov.com/subdivview/>. Click on this link, and type in all or a portion of the name of your subdivision, change the document type to Plat, and click search. Find the exact name of your subdivision, and click on it. Your particular lot should be reflected on the plat. The easements should be listed as, "all lots are hereby platted with.....", unless specified on the lot itself.

Note: Since most structures cannot be built within an easement, it is important to understand the location and allowed use of recorded and/or platted easements on your property if you plan to alter the property in any way.

How long do easements stay on the property?

Easements do not go away when the property is sold or when the property is replatted. Easements remain with the property until the easement is vacated or terminated by the easement holder through a separate document.

What is not allowed on a City easement?

While this is not a complete list, here are examples of structures that ARE NOT allowed within an easement held by the City:

- *Fences over 6' high, poles, or posts that cannot be easily removed and erected again;*
- *Retaining walls, except for those up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property;*
- *Houses, garages, barns;*
- *Sheds, storage structures of any kind, lean-tos, outbuildings;*
- *Decks, concrete patios, except for garage-door porch stoops;*
- *Any edifice projections/overhang such as balconies, verandas, porches, building overhangs, cantilevers, or bay windows;*
- *Commercial signs.*

For more information on what the City does NOT allow in, on or over its public utility easements, you can look at an actual Easement Agreement on Colorado Springs Utilities' website. Go to www.csu.org, and click on the "Work With Us" link at the top of the page. Then pull down "Building/Development", then under "Easements", select "Forms". There you will find Easement Agreement templates (FO2A through FO2D) in MS Word format applicable to the type of property owner. Refer to Item #6 of the form.

What's the difference between an Easement Vacation and an Easement Encroachment?

While each project is unique and handled on a case-by-case basis, a general rule of thumb is that permanent structures within an easement are handled as Easement Vacations, and temporary structures, like commercial signs and sheds are handled as an Easement Encroachment.

How do you “vacate” (or terminate) an easement or obtain permission to “encroach” on an easement?

Complete the Real Estate Services [Public Request for Services Form](#) and follow the accompanying Instructions by visiting the [City's newest website at www/Coloradosprings.gov/Real Estate Services](http://www.Coloradosprings.gov/RealEstateServices). Your request should be specific as to which easement(s) needs to be vacated or encroached upon and where the easement(s) are located on the property. The form must be signed by at least one property owner. Once Real Estate Services receives all the completed items, as per the Request Form's Instructions, a project file is opened and Real Estate Services notifies a number of City departments, including Colorado Springs Utilities, to ask for comments on the formal request. Sometimes, various departments raise additional issues. Real Estate Services may contact you to advise you to contact another City department for additional information.

Who needs to approve (or disapprove) the Easement Encroachment or Easement Vacation request?

The request to vacate a public easement will be reviewed and approved or disapproved by the City department who manages the interest in that easement. For instance, if you are requesting to vacate a public utility easement, then the Project Manager in the Development Services Department at Colorado Springs Utilities will approve/disapprove the request. If it's a drainage easement, then an engineer from the Engineering Development Review Division of the City will review and comment on the request. In addition, the Airport, Land Use Review, Traffic, Subdivision & Roadway Engineering, Parks & Recreation, and Transit Services will also be given an opportunity to review the request to determine if they manage any interest in the easement.

What are some considerations of the City as to whether or not your request can be approved?

- Are you building a *permanent* structure (like a building) or *temporary* structure?
- Is the easement *currently* being used?
- Is there a *future* need for the easement?
- Do the *neighboring properties* use or need the easement now or in the future?

Following the comment period, a decision from Colorado Springs Utilities, and/or a City department other than Real Estate Services, could be:

- Approval without conditions. The project can proceed as requested.
- Approval with conditions. For instance, Colorado Springs Utilities may approve the request with the following terms and conditions, for which the property owner may need to sign and acknowledge:
 1. The Grantee (*the property owner*) shall be responsible for removing any abandoned utility facilities within the vacated easement area, as required, and shall indemnify the Grantor (*the City of Colorado Springs*) from any liability associated with such removal.
 2. If it is necessary to relocate any existing utility facilities, then such relocation shall be at the Grantee's expense, and if required, Grantee shall grant new easements for the relocated facilities.
- Denial until conditions are met. As an example, Colorado Springs Utilities may require the property owner to relocate infrastructure at the property owner's expense. Once that has been completed, then the request can be revisited.
- Denial. The City cannot honor your request.

Note: Denials are not appealable.

What happens when the Request for Services is APPROVED?

- For Easement Encroachments, an Easement Encroachment License is issued to the Property Owner(s) by the City of Colorado Springs. Easement Encroachment Licenses are valid for a period of twenty-five (25) years.
- For Easement Vacations, a Quitclaim Deed is executed by the Mayor and recorded with the El Paso County Clerk & Recorder's Office, essentially removing or deleting the easement from the property.

How long will the process take?

The process takes approximately **4-6 weeks for an Easement Vacation** and approximately **6-8 weeks for an Easement Encroachment**, barring any unforeseen circumstances. Every project is different and will be handled on a case-by-case basis. The following table shows the approximate best case/worst case scenario:

Once a fully completed Public Request for Services Form, a site plan, CSU locates, Fee are all received, we can begin the project.	Easement Vacations	Easement Encroachments
Obtain vesting deed proving <i>current</i> ownership of property	1-7 days	
Open file and research	1-5 days	
Notify City Departments and Colorado Springs Utilities and request their comments	2-3 weeks	
If Approved:		
Contact Requestor to obtain Statement of Authority, if applicable	Dependent on Requestor and/or Property Owner	
The applicable document:	Quitclaim Deed	Easement Encroachment License
If applicable, Requestor to obtain legal exhibits from a Colorado licensed surveyor (<u>Note</u> : Sample exhibits available from Real Estate Services)	Exhibits A & B needed for partial vacation of easements only	Exhibits B & C always needed. (Exhibit A is drafted by Real Estate Services)
Once project is approved, Real Estate Services will notify CenturyLink (f/k/a Qwest), Comcast & Falcon Broadband	15 calendar days	
Obtain approval of legal description(s)/exhibits	2 days – 1 week	
Obtain City Attorney “Approval As to Form”	2 – 15 business days	
Contact Requestor to obtain property owner(s) notarized signature(s)	Dependent on Requestor and/or Property Owner	
Contact Requestor to obtain recording fee	Dependent on Requestor and/or Property Owner	
Obtain Mayor’s signature	1 day - 1 week	Not applicable
Obtain the City Clerk’s signature	1-5 days	Not applicable
Obtain Colorado Springs Utilities Project Manager’s signature	Not applicable	1-2 weeks
Obtain Real Estate Services Manager signature	Not applicable	1-7 days
Electronic recordation with El Paso Clerk & Recorder	1-2 days	
Non-electronic recordation with El Paso Clerk & Recorder	2 weeks	
Mail or Email copy of recorded document to Requestor	1-5 days	

Depending on your plans to modify your property, Real Estate Services may refer you to the Land Use Review Department or to the Development Review Enterprise. If you are obtaining any of the items listed in the table below from Land Use Review/Development Review Enterprise, they might determine during the course of their project that you need an Easement Vacation/Encroachment, or vice versa. How does their process coincide with Real Estate Services’ process?

Item being Obtained from Land Use Review or the Development Review Enterprise	Real Estate Services
Development Plan	The projects may run concurrently, but any Easement Vacation needs to be completed with Real Estate Services <u>prior</u> to a Development Plan being approved by Land Use Review.
Building permit	Any Easement Vacation needs to be completed with Real Estate Services <u>prior</u> to a building permit being issued by the Development Review Enterprise.
Replatting Property	The projects may run concurrently, but any Easement Vacation needs to be completed with Real Estate Services prior to a Replat being completed by Land Use Review, and the two documents should be recorded at the same time.
Property Boundary Adjustment	Any Easement Vacation needs to be completed with Real Estate Services <u>prior</u> to a Property Boundary Adjustment being approved by Land Use Review, and the two documents should be recorded at the same time.

Waivers of Replat	The projects may run concurrently, but any Easement Vacation needs to be completed with Real Estate Services prior to a Waiver of Replat being completed by Land Use Review, and the documents should be recorded at the same time.
Non Use Variance	Land Use Review may refer you to Real Estate Services to obtain an Easement Vacation/Encroachment if they are unable to grant a Non Use Variance.
Commercial Sign on a City/CSU easement	An Easement Encroachment MUST be completed with Real Estate Services <u>prior</u> to a sign permit being issued by the Development Review Enterprise.
Commercial Sign in a City Right of Way	No Real Estate Services involvement. Contact Land Use Review directly to obtain a Revocable Permit.
New Permanent Easement Agreement, with old easement(s) to be vacated	For an Easement Vacation project in which a new Permanent Easement is required, the new Permanent Easement Agreement must be completed and ready to be recorded prior to an Easement Vacation project being approved and processed.

FREQUENTLY ASKED QUESTIONS

1. “What’s the big deal with vacating an easement? It’s not like I’m buying property.”

In a way, you are. Vacating an easement is a real property land transaction in which the City conveys the easement interests to another, and it will affect the title to the property.

2. “How much will this cost?”

- A. Initial Fee. \$160.00 for both Easement Vacations and Easement Encroachments, payable to the City of Colorado Springs by check or money order only. If your request pertains to multiple easements, it is Real Estate Services’ discretion as to whether a separate fee is required for each easement. Generally, requests submitted with the same property owner will be treated as one project, requiring one initial fee.
- B. Exhibits. If you’re vacating a portion of an easement or requesting an Easement Encroachment, a Colorado licensed surveyor must create the required exhibits. Prior to hiring a surveyor, you may want to talk with Real Estate Services or Colorado Springs Utilities as to whether or not they anticipate being able to approve your request. More complex projects, however, may require that you have the exhibits prepared at the beginning of your request. You can locate a Colorado licensed surveyor in the Yellow pages of the phone book, or by contacting the Pikes Peak Better Business Bureau. Real Estate Services has sample exhibits available, upon request.
- C. Recording Fees. The El Paso County Clerk & Recorder charges the City of Colorado Springs \$11 for the first page, \$5 for each page thereafter, and, if filing electronically, a \$2 per document administrative fee. Easement Vacations are usually 1-4 pages, and Encroachment Licenses are usually 10 pages, if Exhibits A, B and C are one page each. Once the exhibits have received necessary approvals, we’ll collect a check or money order, payable to the City of Colorado Springs, after the applicable document has been finalized and approved, usually at the time that signatures are obtained.
- D. Infrastructure. You could also be asked to enlist the help of a licensed surveyor to physically locate any underground facilities within the easement, or an engineer for extensive building projects before your request can be approved. This could also increase your costs.

3. “What’s the difference between the “Requestor” and the “Property Owner” on the Request for Services Form?”

A property owner and a Requestor can be one in the same, but a Requestor can also be a property owner’s representative, such as a homebuilder or an engineering consultant. The Request Form must be signed by the Requestor and at least one property owner. Real Estate Services will consider the Requestor as the primary contact person throughout the course of the project.

4. “How is the appropriate document finalized?”

When Real Estate Services has received approval of your request, we will contact the Requestor to arrange to obtain property owner’s signature(s) on the legal document(s). The document can be mailed to the Requestor, or picked up at the Real Estate Services office. If the property is jointly owned, both property owners must sign, and signature(s) must be notarized. Real Estate Services has Notaries Public available who can notarize signatures free of charge and with a current, government-issued picture ID. If you decide to go elsewhere to have signatures notarized, please return the original, notarized signature page to Real Estate Services.

5. “What is a Statement of Authority, and why is it important?”

If the property is owned by an entity, the City needs to ensure that the person signing has legal authority to sign for a real property transaction on behalf of the entity. A Statement of Authority is a sworn statement that identifies the proper name, title and legal address of the person(s) who is authorized to sign the document. An improper signature could invalidate the transaction. For corporations, the authorized person is typically the President, VP, Secretary, or Treasurer. For a limited liability company, the authorized person is typically a Member and/or Manager.

6. “Why does the City have to notify CenturyLink (f/k/a Qwest), Comcast and Falcon Broadband when easements are being vacated or encroached upon?”

The City allows these cable franchisees of the City to use City easements for their infrastructure, but if we approve an Easement Vacation of or Encroachment upon a public easement, we must allow fifteen (15) calendar days for the franchisees to either remove their equipment from the easement, or request a new easement of their own directly from the property owner.

7. “What if I don’t know where my property line is exactly, and thus, where the easement(s) might be?”

Any Colorado licensed surveyor will be able to locate your property lines. You can find a surveyor in the Yellow Pages of the phone book or through the Pikes Peak Better Business Bureau.

<p><u>Real Estate Services</u> City of Colorado Springs City Administration Building Northwest Corner of Nevada and Colorado Avenues 30 South Nevada Avenue, Suite 502 Colorado Springs, Colorado 80903 Phone: (719) 385-5920 www.coloradosprings.gov/Real Estate Services</p>

Other contact information:

<p><u>Land Use Review</u> City of Colorado Springs City Administration Building Northwest corner of Nevada and Colorado Avenues 30 South Nevada Avenue, Suite 105 Colorado Springs, Colorado 80903 Phone: (719) 385-5905</p>	<p><u>Development Review Enterprise</u> City of Colorado Springs & El Paso County Pikes Peak Regional Development Center Southeast of Printer’s Parkway and S. Parkside Drive 2880 International Circle, Suite 200 Colorado Springs, Colorado 80910 Phone: (719) 385-5982</p>
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