



STAFF REPORT

Resolution Approving a Permanent Encroachment Agreement for Construction of a Retaining Wall within the Public Right-of-Way at 1572 Sixth Avenue

Honorable Mayor and City Council:

Summary

The property owner at 1572 Sixth Avenue wishes to enter into a Permanent Encroachment Agreement with the City to replace a retaining wall within the public right-of-way. The work proposed under the agreement will improve slope stability and reduce slope erosion. A resolution is provided for Council consideration approving the encroachment with conditions.

Background and Discussion

A stop work notice at 1572 Sixth Avenue was issued when staff noticed a contractor performing work within the public right-of-way without the required encroachment permits. The work involved construction of a keystone retaining wall. The respective property owner is now pursuing the required permits to construct a retaining wall within the public right-of-way. The purpose for the construction of the proposed keystone retaining wall is to replace an old structurally unstable retaining wall.

Upon approaching the Department of Public Works the property owner was advised that if he relocated his retaining wall to his property, he would not have to go through the permanent encroachment agreement process. The property owner consulted with the civil engineering company, which designed the new wall and he was informed that if the retaining wall was to be relocated back behind the property line, it would not meet the structural design requirements. The property owner decided to obtain the permanent encroachment agreement. The new keystone retaining wall will encroach approximately 11 feet into the public right-of-way. The height of this retaining wall will vary from 3 to 4 feet.

The Belmont Municipal Code, Chapter 22, Article 1, describes the process and requirements for obtaining approval to encroach upon the public right-of-way. Section 22-6(1) defines the City

Council as the sole authority allowed to issue written permits for major encroachments including a retaining wall within the public right-of-way. Section 22-7(C) requires the Director of Public Works to review all major encroachment applications and if he finds the applications in accordance with the code, recommend approval with such conditions as he deems necessary to protect the health and safety of the public and protect the City.

The City Council may choose to approve or to conditionally approve the application if it finds that there is some public benefit for the encroachment. Section 22-7(C)(1) provides examples of acceptable public benefit, which are included, but not limited to the following:

1. A retaining wall that allows added on-street parking, sidewalk, or safer sight distance.
2. Retaining wall that reduce the amount of grading.
3. Encroachments that replace or improve an existing undesirable physical condition.

Staff has reviewed the encroachment application for the 1572 Sixth Avenue retaining wall and found it to be in compliance with the City Code. The public right-of-way in front of 1572 Sixth Avenue extends approximately 14 feet beyond the edge of street pavement (Exhibit A). However, the area behind the edge of pavement steeply slopes towards the roadway and does not allow for construction of a parking pad or a sidewalk. Staff believes that the wall will fulfill the obligation to provide the required public benefit. The public benefit is that it will replace structurally unstable retaining wall, improve slope stability and prevent erosion of soil.

A notice was sent to all affected properties within 300 feet of the project location that the City Council will be considering the item on December 14th per the City's requirements.

Fiscal Impact

There is no fiscal impact to the City. All costs are the property owner's responsibility.

Recommendation

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for a Retaining Wall within the public right-of-way at 1572 Sixth Avenue.

Alternatives

1. Reject the application
2. Continue to the next Council meeting

Permanent Encroachment 1572 Sixth Avenue
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Attachments

1. Resolution
2. Exhibit A – Aerial of Location

Respectfully submitted,

Bozhena Palatnik
Assistant Civil Engineer

Raymond E. Davis III, PE, PTOE
Director of Public Works

Daniel Rich
Interim City Manager

RESOLUTION NO. _____

**CITY OF BELMONT
San Mateo County, California**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING A
PERMANENT ENCROACHMENT AGREEMENT FOR CONSTRUCTION OF A RETAINING
WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 1572 SIXTH AVENUE – APN 045-272-030**

WHEREAS, the City of Belmont is authorized by Municipal Code Sec. 22-5 to issue encroachment permits for construction of structures in the public right-of-way; and,

WHEREAS, the property owner of 1572 Sixth Avenue has applied for a Permanent Encroachment Agreement; and,

WHEREAS, the Belmont City Council has made the following findings required by Municipal Code Sec. 22-6 for approval of a permanent encroachment agreement:

- (1) There is a public benefit to the encroachment as it will replace the structurally unstable retaining wall, improve slope stability and prevent erosion of soil; and,
- (2) The encroachment will not unduly restrict the public right-of-way or public water course for other typical uses; and,
- (3) The City will be duly protected from liability for injury to persons and property; and,
- (4) The required bonds will guarantee the faithful performance of all conditions and requirements specified in the encroachment agreement.

WHEREAS, approval of this permanent encroachment agreement is subject to the following conditions:

- (1) The retaining wall shall be constructed according to the approved plans unless otherwise approved by the Director of Public Works and be included as part of the project; and,
- (2) The retaining wall shall be constructed in accordance with Municipal Code Section 9-47, “Retaining wall design”; and,
- (3) The property owner shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall. This is required for periodic maintenance or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The property owner shall be responsible for any restoration required as a consequence of work authorized by the City of Belmont within the public right-of-way; and,

The applicant agrees to begin and complete said improvements to the City’s satisfaction within 180 calendar days from and after the passage date of this Council Resolution approving this agreement; and,

WHEREAS, the structures built in connection with this agreement shall be constructed in accordance with City standards and with the benefit of a Construction Inspection Permit to provide for inspection of said construction, issuance of which is hereby conditionally approved, subject to the payment of inspection fees and posting of required surety to the Department of Public Works.

NOW, THEREFORE, IT IS HEREBY RESOLVED that:

- (1) The Belmont City Council finds the Permanent Encroachment Agreements in compliance with the City code; and,
- (2) The Belmont City Council approves the Permanent Encroachment Agreement with George K. and Heinz P. Buerger, his heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the keystone retaining wall within the public right-of-way at 1572 Sixth Avenue as described above and as shown on the attached exhibits and its continuing maintenance by the property owner; and,
- (3) The Belmont City Council authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) The Belmont City Council authorizes the City Clerk to file said Agreement with the County Recorder.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on this 14th day of December, 2004.

AYES, COUNCILMEMBER(S): _____

NOES, COUNCILMEMBER(S): _____

ABSTAIN, COUNCILMEMBER(S): _____

ABSENT, COUNCILMEMBER(S): _____

Clerk of the City of Belmont

APPROVED:

Mayor of the City of Belmont



E STREET

PROPOSED IMPROVEMENTS

EDGE OF PAVEMENT

1572

SIXTH AVENUE

PROPERTY LINE



SCALE: 1" = 30'

EXHIBIT A

PERMANENT ENCROACHMENT AT 1572 SIXTH AVE

