

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
APPROVING A PERMANENT ENCROACHMENT AGREEMENT FOR REPLACING
AN EXISTING RETAINING WALL AND FENCE, WITHIN THE PUBLIC RIGHT-OF-
WAY AT 1570 WINDING WAY
APN 044-123-330**

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

WHEREAS, the property owners of 1570 Winding Way have applied for a Permanent Encroachment Agreement to replace an existing retaining wall and fence; 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 provide public safety and will stabilize the slope of the adjacent street right-of-way; 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 and fence shall be constructed according to plans approved by the City, unless otherwise approved by the Director of Public Works, and such plans shall 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". The fence shall be limited to 4'6" tall; and,
- (3) The property owners shall be responsible and bear all costs necessary to repair or replace the proposed retaining wall and fence. The owners shall complete periodic maintenance as necessary or in the event of an emergency as determined by the Director of Public Works; and,
- (4) The property owners 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,
- (5) The applicant agrees to begin and complete said improvements to the City's satisfaction within 180 calendar days of 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, BE IT RESOLVED that the City Council of the City of Belmont

- (1) Finds the Permanent Encroachment Agreement in compliance with the City code; and,
- (2) Approves the Permanent Encroachment Agreement with Robert C. Vinay, his heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for replacement of an existing fence (limited to 4'6" tall) and retaining wall within the public right-of-way at 1570 Winding Way as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
- (3) Authorizes the City Manager to execute the Permanent Encroachment Agreement on behalf of the City of Belmont; and,
- (4) 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 December 13, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont