



## **Staff Report**

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RESOLUTION APPROVING PERMANENT ENCROACHMENT AGREEMENTS FOR REPLACEMENT OF A RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT 3266 AND 3272 LORI DRIVE (APN 043-350-040 & 043-350-030)

Honorable Mayor and Council Members:

### **Summary**

The property owners at 3266 and 3272 Lori Drive wish to enter into a Permanent Encroachment Agreement with the City to replace a failed portion of an existing concrete retaining wall within the public right-of-way. The new retaining wall will be constructed in the same location as the existing failed wall. A resolution is provided for Council consideration approving the encroachments with conditions.

### **Background**

The City Council adopted Ordinance Number 994 regulating encroachments into the public right-of-way on December 9, 2003. As codified in Section 22-6 of the Municipal Code, this ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments including above ground structures such as retaining walls, fences, poles, and awnings. This class of encroachment is commonly known as “permanent encroachments,” although the City retains the right to revoke the permit and require removal if the structure is not being used or if it interferes with planned public improvements. Section 22-6(b) of the code 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.

In early January 2006, staff was notified that a landslide had developed behind a retaining wall along Lori Drive. Half of the roadway was closed and barricaded for safety reasons. The retaining wall failed after several days due to additional surcharge from the slide debris. Since then, the property owners have worked with their consultant to develop a design for the landslide repair and reconstruction of the retaining wall. The property owners have submitted a design application to the Building Department in mid-July to begin the landslide repair construction in mid-September.

### **Discussion**

The City Council may choose to approve or to conditionally approve the application only if it finds that there is some public benefit for the encroachment. Section 22-7(e)(1) provides examples of acceptable public benefits, such as added on-street parking, added sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

Staff has notified the owners that the unsafe landslide conditions must be corrected before the rainy season to avoid further property damage. The applicants have requested that all the fees be waived, citing Municipal Code Section 22-72(f): “*Encroachment permit fees shall be waived if property owners repair or remove the curbs, gutters and sidewalk in response to the notice required by this Section.*” However, this section of the Municipal Code pertains only to the repair and replacement of broken curbs, gutters, and sidewalks. Other sections in the City ordinance do not grant authority to waive fees before acceptance of the permit application.

Staff has reviewed the encroachment application for the retaining wall at 3266 and 3272 Lori Drive and found it to be in compliance with the City Code. The public right-of-way along Lori Drive extends approximately 10 feet beyond the edge of street pavement. The proposed new retaining wall would range in height from 10 to 12 feet and approximately 85 feet long. Staff believes that replacing a portion of the existing failing retaining wall will fulfill the obligation to provide the required public benefit by correcting an undesirable physical condition. The new concrete retaining wall will be installed at the same location as the existing wall.

In accordance with the Municipal Code 22-6(d), notice was sent to all affected properties within 300 feet of the project location that the City Council would be considering the item on September 12, 2006.

### **General Plan/Vision Statement**

There is no impact from this report.

### **Fiscal Impact**

There is no fiscal impact to the City. The applicants shall pay all applicable permit fees.

### **Public Contact**

Public contact included posting of City Council agenda and mailing notices to the properties within a 300-foot radius of 3266 and 3272 Lori Drive.

**Recommendation**

It is recommended that the City Council adopt the attached resolution approving, with conditions of approval, a Permanent Encroachment Agreement for replacement of a retaining wall within the public right-of-way at 3266 and 3272 Lori Drive.

**Alternatives**

1. Reject the application.
2. Refer back to staff for more information.

**Attachments**

- A. Resolution
- B. Exhibit A – Aerial Graphic of Location
- C. Site Photos – Council Only

Respectfully submitted,

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Gilbert Yau, PE  
Senior Civil Engineer

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

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Terrence L. Belanger  
Interim City Manager

Staff Contact:

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**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT APPROVING  
PERMANENT ENCROACHMENT AGREEMENTS FOR REPLACEMENT OF A  
RETAINING WALL WITHIN THE PUBLIC RIGHT-OF-WAY AT  
3266 AND 3272 LORI DRIVE (APN 043-350-040 & 043-350-030)**

**WHEREAS**, the City of Belmont is authorized by Municipal Code Sec. 22-6 to issue encroachment permits for construction of structures in the public right-of-way; and,

**WHEREAS**, the property owners at 3266 and 3272 Lori Drive have applied for Permanent Encroachment Agreements to replace an existing retaining wall within the public right-of-way; and,

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

- (1) There is a public benefit to the encroachment as the retaining wall will replace a failed concrete wall and will improve the existing undesirable physical condition; 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 owners 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 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 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, BE IT RESOLVED** that the City Council of the City of Belmont:

- (1) Finds the Permanent Encroachment Agreement applications in compliance with the City code; and,
- (2) Approves the two Permanent Encroachment Agreements with James Yigong and Grace Ge at 3266 Lori Drive, and Mary Profaca at 3272 Lori Drive, their heirs, successors, executors, administrators and assigns, jointly and severally, and with successors in interest of the real property for construction of the retaining wall within the public right-of-way at 3266 and 3272 Lori Drive as described above and as shown on the attached exhibits and its continuing maintenance by the property owners; and,
- (3) Authorizes the Interim City Manager to execute the Permanent Encroachment Agreements on behalf of the City of Belmont; and,
- (4) Authorizes the City Clerk to file said Agreements 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 September 12, 2006 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



1 inch equals 40 feet



## EXHIBIT A

3266 and 3272 Lori Drive

