



## **Staff Report**

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### RESOLUTION REGARDING TWIN PINES FENCE AND COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 33445 AND RELATED CEQA FINDINGS

Honorable Mayor and Council Members:

#### **Summary**

This report is a companion report to the Redevelopment Agency action regarding the replacement of a fence in front of Twin Pines Park (the "Twin Pines Fence"). As a result of the court case of *Dave Meaney v. Sacramento Housing and Redevelopment Agency* (13 Cal.App. 4th 566, 1993) has interpreted Section 33445 to mean that the City Council, as the owner of the park, must also make the finding that no other reasonable means of financing the Twin Pines Fence are available. That action has been included in this report. Such findings with factual support are made in this report and the accompanying resolution.

#### **Background**

On October 9, 2007 by Resolution Number 460, the Agency Board approved the Twin Pines Fence Replacement Project plans and specifications. The cost estimate for the Twin Pines Fence is Forty Thousand Dollars (\$40,000) with a Four Thousand Dollar (\$4,000) contingency. The fence will be designed with a pergola, which will be funded by the Belmont Park Boosters.

#### **Discussion**

Before the RDA can expend money for public improvements, the City must make the following findings with factual support: (1) the public improvements are of benefit to the project area or the immediate neighborhood of the project area; (2) no other reasonable means of financing such public improvements are available to the community; and (3) the agency's contribution to the cost of the public improvement or facility will assist in elimination of one or more blighting conditions in the project area. These findings are easily met as established below.

1. Facts Supporting the Finding That the Twin Pines Fence is of Benefit to the Project Area. The Twin Pines Fence will benefit the Project Area by replacing a dilapidated fence. The fence is needed for aesthetic reasons and to provide safety to park users and pedestrians. The improvement and rehabilitation of existing structures and the conservation and protection of the natural areas that contribute to the beauty and character of the Project Area are listed as goals of the 1991 Amended and Restated Redevelopment Plan. The replacement of the Twin Pines Fence will help achieve these goals by preserving the Twin Pines Park and

protecting residents who use the park as well as pedestrians walking near the park.

2. Facts Supporting the Finding That There Are No Other Reasonable Means of Financing the Twin Pines Fence. There are no reasonable means available to the community, including the City of Belmont (the "City") and the private sector, to fund the replacement of the Twin Pines Fence other than the proposed expenditure of the Agency's tax increment revenue out of its general tax increment funds. Because of the City's need to provide essential public health and safety services and reductions in available revenue resulting from the State's redirection of property taxes from cities and counties to schools, the City has a limited capital improvement fund and that fund is committed to other critical City projects. As a result, the City does not have funds available to pay for the Twin Pines Fence. In addition, Proposition 218 and other legal limits on the City's ability to raise revenue, make it extremely difficult or impossible to impose a tax or fee assessment on private property owners to pay for the Twin Pines Fence. While replacing the Twin Pines Fence will benefit the neighborhood in general by eliminating a blighting condition, no properties will be benefited to such a degree or in such a direct fashion as would allow the imposition of a property-based fee, assessment, special tax or other public exaction consistent with the applicable legal standards for such imposition set forth in the recently approved Proposition 218. Although the Belmont Park Boosters are paying for the Pergola, this contribution is the maximum financial contribution the Park Booster can make to the Twin Pines Fence, and there are no other private funds available.

3. Facts Supporting Finding That Funding the Twin Pines Fence Will Assist In Eliminating One or More Blighting Conditions in the Project Area. The existing fence is dilapidated and an eye sore and causes visual blight. By replacing the fence, this visual blight will be eliminated and the open space of the park will be preserved. Further, the existing fence is a substandard public infrastructure.

4. Facts Supporting Finding That Funding the Twin Pines Fence Is Consistent With the Agency's Implementation Plan. The Agency's Implementation Plan expressly provides for the construction and improvements of Twin Pines Park.

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

#### *Distinctive Community Character*

- Its small-town ambience sets it apart as a tranquil, safe and desirable place to live.

#### *Natural Beauty*

- Our natural surroundings inspire us to play, create, and contemplate.
- Our actions today preserve and enhance Belmont's beauty to make it even lovelier for our grandchildren.

### **Fiscal Impact**

No fiscal impact to City.

**Public Contact**

The publication and posting of the meeting agendas.

**Recommendation**

The City should pass the attached Resolution of the City Council of the City of Belmont Regarding Twin Pines Fence, Health & Safety Code Section 33445 and Related CEQA Findings.

**Alternatives**

1. Take no action.
2. Make recommendation for alternative action.

**Attachments**

- A. Resolution of the City Council of the Belmont Regarding Twin Pines Fence and Compliance With Health & Safety Code Section 33445 and Related CEQA Findings

Respectfully submitted,

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Thomas Fil  
Finance Director

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Jack Crist  
City Manager

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**RESOLUTION NO.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT REGARDING  
TWIN PINES FENCE AND COMPLIANCE WITH HEALTH & SAFETY CODE  
SECTION 33445 AND RELATED CEQA FINDINGS**

**WHEREAS**, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; the "Redevelopment Law"), the City Council (the "City Council") of the City of Belmont (the "City") has adopted and the Belmont Redevelopment Agency (the "Agency") is responsible for implementing the Los Costanos Community Development Plan, adopted by Ordinance No. 692 on November 24, 1981, as amended by Ordinance No. 849 on September 10, 1991, Ordinance No. 887 on November 8, 1994, and Ordinance No. 1000 on May 11, 2004, and as may be further amended from time to time (the "Redevelopment Plan"); and

**WHEREAS**, to assist in implementing the Redevelopment Plan, on September 11, 2007 the Agency adopted a five-year implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law; and

**WHEREAS**, in furtherance of the Redevelopment Plan and the Implementation Plan, the Agency desires to provide financial assistance to replace the fence that runs along Ralston Avenue in front of Twin Pines park (the "Twin Pines Fence"); and

**WHEREAS**, Health & Safety Code Section 33445 requires that before the Agency may provide financial assistance to replace the Twin Pines Fence certain findings must be made, including a finding by the City that there are no other reasonable means of financing the Twin Pines Fence:

**WHEREAS**, the following additional materials (collectively, the "Supporting Documents") have been presented to and considered by the City Council in support of the findings and approvals set forth in this Resolution: (1) the staff report of January 8, 2008 accompanying this Resolution; and (2) the Notice of Exemption (both as defined below). The Supporting Documents are hereby incorporated by reference in this Resolution and, together with the above recitals (the "Recitals"), form the evidentiary basis and establish the analytical route for reaching the ultimate findings and conclusions contained in this Resolution.

**WHEREAS**, in considering approval of this Resolution, the Agency and the City Council have complied with the requirements of the California Environmental Quality Action ("CEQA") in the manner found and determined below; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby finds that the above Recitals are true and correct and have served, together with the Supporting Documents, as the basis for the findings and approvals set forth below.

**BE IT FURTHER RESOLVED** that the City Council hereby finds and determines that

the approval of this Resolution and the Agency's funding of the replacement of the Twin Pines Fence are categorically exempt from the requirements of California Environmental Quality Act ("CEQA") pursuant to 14 California Code of Regulations Section 15301 (i)(4) (in that the existing fence will be demolished and removed), and 14 California Code of Regulations Section 15302 (in that the existing fence will be replaced), and 14 California Code of Regulations Section 15303 (e) (in that a new fence will be constructed).

**BE IT FURTHER RESOLVED** that, based on the foregoing CEQA considerations, Agency staff is authorized and directed to file the appropriate notice of exemption documents pursuant to CEQA in connection with the actions and approvals set forth in this Resolution ("Notice of Exemption").

**BE IT FURTHER RESOLVED** that, based on the information and analysis contained in the Recitals and the Supporting Documents, and in accordance with Section 33445 of the Redevelopment Law, the City Council hereby finds that: (1) the Twin Pines Fence is of benefit to the Project Area (as more fully identified and described in the Supporting Documents); (2) there is no other reasonable means of financing the Twin Pines Fence available to the community, including the City, the Agency, other public entities and the private sector; and (3) payment of the funds for the cost of the Twin Pines Fence will assist in the elimination of one or more blighting conditions inside the Project Area (as more fully identified and described in the Supporting Documents), and is consistent with the Agency's Implementation Plan. Based on the foregoing, the City Council hereby consents to the payment by the Agency of the costs of the Twin Pines Fence.

**BE IT FURTHER RESOLVED** that this Resolution shall become effective immediately upon its passage and adoption.

\* \* \* \* \*

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 January 22, 2008 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

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MAYOR of the City of Belmont