



Staff Report

PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING SECTION 22 OF THE BELMONT MUNICIPAL CODE REGARDING ISSUANCE OF PERMANENT ENCROACHMENT AGREEMENTS

Honorable Mayor and Council Members:

Summary

At the City Council meeting of April 8, 2008, staff received direction to amend the ordinance to reconfirm the current policies for issuing permanent encroachment agreements for structures that are constructed within the public right-of-way. This staff report presents an ordinance amendment for introduction, which incorporates the direction received from the Council.

Background

On December 9, 2003, the City Council adopted Ordinance Number 994 as codified in Section 22-6 of the Municipal Code regulating encroachments into the public right-of-way. This ordinance gives the City Council the sole authority to issue permits for major or unusual encroachments that include 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) requires the Director of Public Works to review all major encroachment applications. If the Director finds the application is in compliance with the Municipal Code, the Director will recommend approval with conditions necessary to protect the health and safety of the public and the City. 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 off-street parking, or sidewalk, safer sight distance, reduced amount of grading, and replacement or improvement of an existing undesirable physical condition.

After the adoption of Ordinance Number 994, the City Council gave staff direction that the Council would generally find public benefit in applications to replace existing retaining walls in the public right-of-way. Council indicated they would not find public benefit in applications for new retaining walls or fences when the sole purpose of these structures was to increase the usable yard area of a private residence or business. There are also many other existing retaining

walls that are already encroaching onto public right-of-way but do not create a hazardous condition. The current adopted ordinance allows only the City Council to issue agreements for these encroachments. However, the administrative process is lengthy. It is believed that this process can be streamlined if authority can be given to staff for issuing agreements for existing retaining walls that do not create a hazardous condition, and were installed prior to the adoption of Ordinance Number 994. As indicated above, the Council had found public benefits in the past for applications to replace existing retaining walls in the public right-of-way.

Discussion

As directed by the Council, staff has amended Section 22-6, “Authority to issue permits for major and unusual encroachments; City Council” of the ordinance to clarify the following:

- The Council would generally find public benefit in applications to replace existing retaining walls in the public right-of-way.
- The Council would generally not find public benefit in applications for new retaining walls or fences when the sole purpose of these structures was to increase the usable yard area of a private residence or business.

As also directed by the Council, staff has added Sections 22-13 (d), (e) & (f) summarized as follows:

- All major encroachments constructed after the adoption of Ordinance 994 must have a current permit approved by the City Council.
- Applicants with a major encroachment (except for replacing an existing retaining wall) that was constructed prior to the adoption of Ordinance 994 shall submit an application to the City before replacing the structure. The application is subject to the approval of the City Council.
- Applicants with a retaining wall on public right-of-way that is constructed prior to the adoption of Ordinance 994 shall submit an application to the Public Works Director before replacing the retaining wall. The application can be approved by the Public Works Director if all the findings required are satisfied.

Section 22-13 (d) is added to clarify the requirements for all applicants with existing structures that were constructed prior to the adoption of Ordinance 994 to obtain a permanent encroachment agreement at the time when the structures are to be replaced. The applicant has to demonstrate that all the findings listed for similar new structures are satisfied prior to the replacement of the encroachment. As indicated in the previous staff report, there are already many existing structures that were constructed in the public right-of-way without a permanent encroachment agreement. To allow the property owners to obtain a permit at the time of replacing the encroachment will provide the City with more reasonable time to process these applications based on the current staff level. Staff will continue to process those encroachments that are creating hazardous conditions to the public on a complaint basis. Most of these existing

structures require relocation and is a lengthy process to coordinate with the property owners. Because of the City's limited resources, only a few of such agreements can be processed each year.

Staff has also added Section 22-13 (e) to allow the Public Works Director to issue permanent encroachment agreements for replacing existing encroaching retaining walls that were constructed prior to the adoption of Ordinance 994, if the following findings are satisfied:

- That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.
- That the City will be duly protected from liability for injury to persons and property.
- That the faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.
- That the encroachment will not create a hazardous condition for the public.
- That the new retaining wall will occupy the same location and of the same height as the existing.

The process for issuing permanent encroachment agreement for existing retaining walls will be streamlined. The findings listed above follow the general direction given by the Council.

Section 22.13 (f) stated that any major encroachments constructed after the adoption of Ordinance No. 994 must have a current and valid permit from the City. The applicant shall submit an application to the Public Works Director which is subject to the approval by the City Council. Applicant shall remove any encroachments within 30 days of notification if their application is denied by the City.

General Plan/Vision Statement

The issuance of permanent encroachment agreement satisfies the following goal and policy in the General Plan:

Policy 2081.6 *“Street and road improvement standards, including rights-of-way, pavement width and grade, should provide for reasonable safety and recognize variations in local physical conditions.”* - The installation of a new structure within City right-of-way shall not pose an adverse physical condition to the public.

Fiscal Impact

There is no fiscal impact to the City. A permit fee is collected for each application.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Recommendation

It is recommended that the City Council adopt the amended ordinance for issuing permanent encroachment agreements for structures that are encroaching onto public right-of-way.

Alternatives

1. Refer back to staff for more information.
2. Deny the amendment.

Attachments

- A. Amended Ordinance (changes are shown underlined)

Respectfully submitted,

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Ordinance Amendment Changes

Sec. 22-6. Authority to issue permits for major and unusual encroachments; city council.

(a) The city council shall have the sole authority **(except as approved in Section 22-13 (e))** to issue written permits in accordance with this article authorizing the permittee to do any of the following acts:

(1) Construct, place or maintain all improvements in the public right-of-way or public watercourse which are not enumerated in section 22-4, including but not limited to, fences, decorative walls, retaining walls and awnings.

(2) Construct, place or maintain any improvement listed in section 22-4, a permit for which was denied by the public works director and appealed to the city council.

(3) Construct, place or maintain any structure above ground within any public right-of-way or public watercourse if installed by a public utility, including but not limited to poles, wires, guy anchors, hydrants, aboveground cabinets for housing splices, transformers or switches.

(4) Construct, place or maintain within any public right-of-way a bus bench or shelter of a design acceptable to the city council.

(5) Install, place or maintain within any public right-of-way mail collection boxes owned and maintained by the United States Postal Service.

(b) All applications for major and unusual encroachments shall be submitted to the public works director who shall review the application and determine whether the application is in accordance with the requirements of this article. If the application meets the requirements of this article including city standards as noted in section 22-23, the public works director shall recommend approval, attaching such conditions as the director may deem necessary for the health, safety and welfare of the public and for the protection of the city.

(c) When an application is proposed in conjunction with the development of adjacent private property, the public works director's recommendation shall be reviewed by the planning commission simultaneously with any required zoning entitlements. The planning commission's recommendation shall be forwarded to the city council for final review and action. All other applications for major and/or unusual encroachments shall be forwarded directly to the city council for review based on the public works director's recommendation.

(d) The owners of properties within three hundred (300) feet of the applicant's property on which the encroachment is proposed, shall be notified of the proposed encroachment, of the scheduled time and place when the item will be heard by the planning commission and/or city council, and of their right to express any concerns at the scheduled meeting prior to planning commission and/or city council taking action on the encroachment.

(e) The city council may approve the application with conditions deemed necessary for health, safety and welfare of the public and protection of the city if it finds:

(1) Some public benefit to the encroachment. Examples of public benefit include but are not limited to a retaining wall that allows an added off-street parking space, sidewalk or safer sight distance. Other examples include retaining walls that reduce grading onsite (without themselves becoming unsightly), **or new retaining walls to replace existing deteriorating retaining walls,** or fences that provide a safety handrail for pedestrians, or encroachments that replace or improve an existing undesirable physical condition or

provide other neighborhood betterment.

(2) That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.

(3) That the city will be duly protected from liability for injury to persons and property.

(4) That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.

(5) That the encroachment is not solely for increasing the usable area of a private residence or business without a public benefit.

(f) In issuing the permit, the city council shall delineate:

(1) The time and dates during which the encroachment may be constructed and maintained.

(2) Supervision and safety precautions to be employed, including the erection of barricades, warning lights, signals and signs, and/or the employment of personnel to direct traffic.

(g) If the city council determines that the findings enumerated in this section 22-6(e)(1)--(5) cannot be made, the permit shall be denied.

Sec. 22-13. Existing encroachments.

(a) Any existing encroachment in the public right-of-way or public watercourse which, in the opinion of the public works director, interferes with the safe sight distance of drivers or pedestrians, or blocks the free passage of pedestrians or vehicles, or constitutes a threat to health and safety shall be removed forthwith by the permittee or adjacent property owner upon written notification from the public works director. If the encroachment is not removed, then city forces may remove the encroachment, at the direction of the public works director; and the permittee or adjacent property owner shall be responsible to reimburse the city for the cost of this work.

(b) No existing encroachments shall be exempt from section 22-8, "continual maintenance," 22-9, "removal for public improvements," or 22-10, "removal for disuse." When no permit has been issued, the responsibilities of the permittee listed in these three (3) sections shall be the responsibilities of the current adjacent property owner.

(c) This section shall not be construed to prohibit the city from requiring upgrading or removal of existing encroachments as a condition of development on the adjacent property.

(d) Any existing major encroachment in the public right-of-way or public watercourse which was constructed prior to the adoption of Ordinance No. 994 and, in the opinion of the public works director, is not interfering with the safe sight distance of drivers or pedestrians, or blocks the free passage of pedestrians or vehicles, or otherwise constitutes a threat to health and safety, or interfere with the construction or maintenance of public improvements as noted in section 22-9, is required to have a permit agreement only at the time the encroachment is replaced. The applicant or adjacent property owner shall submit an application to the public works director, prior to the replacement of the existing encroachment, which is subject to the approval process as noted in section 22-6 or 22-13(e). The encroachment shall be removed by the applicant within 30 days after notification from the public works director in the event the permit application is denied.

(e) If the applicant is requesting only to replace an existing encroaching retaining wall that was constructed before the adoption of Ordinance No. 994, the public works director may issue a written permit, in accordance with this article.

(1) All applications for replacing an existing encroaching retaining wall that was constructed prior to the adoption of Ordinance No. 994, shall be submitted to the public works director who shall review the application and determine whether the application is in accordance with the requirements of this article. If the application meets the requirements of this article including city standards as noted in section 22-23, the public works director shall approve, attaching such conditions as the director may deem necessary for the health, safety and welfare of the public and for the protection of the city.

(2) When an application is proposed in conjunction with the development of adjacent private property, the public works director's recommendation shall be reviewed by the planning commission simultaneously with any required zoning entitlements.

(3) The public works director may approve the application with conditions deemed necessary for health, safety and welfare of the public and protection of the city if it finds:

a. That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.

b. That the city will be duly protected from liability for injury to persons and property.

c. That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.

d. That the encroachment will not create a hazardous condition for the public.

e. That the new retaining wall will occupy the same location and of the same height as the existing retaining wall.

(4) In issuing the permit, the public works director shall delineate:

a. The time and dates during which the encroachment may be constructed and maintained.

b. Supervision and safety precautions to be employed, including the erection of barricades, warning lights, signals and signs, and/or the employment of personnel to direct traffic.

(5) If the public works director determines that the findings enumerated in this section 22-13(e)(3) cannot be made, the permit shall be denied. Permit denial shall be in writing and may be appealed to the city council.

(6) Encroachment permits for retaining wall encroachment shall be recorded with the county recorder. Said recording shall constitute notice to all heirs, assigns and successors in interest of the permittee of their responsibility with respect to maintenance, liability and potential relocation of the encroachment.

(f) All major encroachments on public right-of-way and public watercourse that are constructed without a permit after the adoption of Ordinance No. 994 are required to have a current valid permit from the City, and the applicant shall submit an application to the public works director and shall follow the approval process as outlined in section 22-6. The encroachment shall be removed by the applicant within 30 days after notification from the public works director in the event of denial by the City Council.