



MEMORANDUM

Agenda Item #: 1
Meeting Date: 01/24/17 - SPECIAL
WORKSHOP

TO: HONORABLE MAYOR AND CITY COUNCIL

THRU: ANTON DAHLERBRUCH, CITY MANAGER /S/

**FROM: SHERI REPP-LOADSMAN, DEPUTY CITY MANAGER/
PLANNING AND BUILDING DIRECTOR /S/**

**SUBJECT: DISCUSSION OF PROPOSED UPDATES TO THE POLICY FOR THE
REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE
CITY'S PARKLANDS AND THE POLICY FOR THE PRIVATE
LANDSCAPING OF PARKLANDS**

DATE: JANUARY 24, 2017

The Issue

Should the City Council amend the City's existing policy for the removal of unauthorized encroachments in the parklands and amend the City's existing policy for private landscaping of parklands?

Background

On January 13, 2016, the City Council considered the code enforcement action plan for removal of parklands encroachments and directed that the existing *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* and the *Policy for the Private Landscaping of Parklands* be amended. Upon input from the Parklands Committee and Planning Commission, the attached draft policies have been prepared by staff and the City Attorney's Office as a means of addressing encroachment issues. The draft policies apply only to City parklands unless the City Council seeks to expand the application to the public rights-of-way.

On December 20, 2016, the Planning Commission reviewed the policies and recommended inclusion of factors to be considered when Planning Commission action is requested. On December 5, 2016, and January 12, 2017, the Parklands Committee reviewed the proposed amendments to the policies. The Parklands Committee reviewed updated policies reflecting the Planning Commission input at their January meeting and did not recommend any further changes. Additionally, the Parklands Committee Chairperson expressed specific changes and opinions and he has provided a separate written document (Attachment D) for the City Council's consideration.

Draft Policy for the Removal of Unauthorized Encroachments in the City's Parklands

The existing *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* (Resolution R05-32) has been interpreted to apply citywide. The policy was initially intended to focus on the encroachments associated with the Torrance Boundary Trail. In January 2016, the City Council indicated an interest to amend the policy so the abatement process would not extend to 5 years and, in some cases involving discretionary permits, an even greater term.

The intent of the draft amended *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* is to provide for an expedited abatement process not exceeding 1 year unless the responsible property owner obtains an Enforcement Compliance Agreement. Under the authority of the Planning Commission, the Enforcement Compliance Agreement would be a tool to more clearly identify unauthorized encroachments, obtain a survey to establish property lines, secure adequate maintenance during the abatement period and to ensure an abatement schedule concluding in the restoration of the parklands. As envisioned, the Planning Commission will be able to consider factors that may justify an abatement period of 1 to 5 years.

Only minor encroachments are recommended to be eligible for an Enforcement Compliance Agreement. The goal is to quickly remove encroachments that are egregious due to issues including safety concerns, size of encroachment, hindering public access and capturing public parklands for private use. For smaller encroachments that do not create a significant constraint to the public enjoyment of the parklands, a longer abatement process can be afforded. The Enforcement Compliance Agreement is a relatively strenuous process that will be utilized by property owners that have significant investments or interests in the subject encroachment. The agreement process is not an authorization of any encroachment and should be seen as a code enforcement action that seeks removal of the encroachment through a collaborative process.

The attached draft *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* specifically incorporates the following:

- Definitions of “Minor Encroachment” and “Major Encroachment”.
- Removal Requirements per City Code.
 - Pursuant to approval of a discretionary permit.
 - Require removal due to disrepair.
- Removal when substantially modified.
- Removal upon Change of Ownership.
- Removal pursuant to Enforcement Compliance Agreement.
- Notification and disclosure of code enforcement action.

Based upon a review of various records, there are examples whereby either the City and/or the Palos Verdes Homes Association acknowledged the existence of encroachments into the parklands and entered into permissive agreements. Several of the agreements are attached; the oldest involves encroachments that predate incorporation of the City.

In reference to the draft policy, questions for the City Council to consider include:

- Should there be definitions of or distinction between minor and major encroachments?
 - Should the definition of a minor encroachment include a maximum size?
 - Should minor encroachments be eligible for an Encroachment Compliance Agreement?
 - Should an option be available for a major encroachment to be eligible for an Encroachment Compliance Agreement?
- What term should be used for an Encroachment Compliance Agreement?
- Should an Encroachment Compliance Agreement terminate with the sale or transfer of the property?
- Should an Encroachment Compliance Agreement be transferable or eligible for extension?
- PVEMC Section 12.04.090 states that any person applying for a nonstandard encroachment permit shall obtain approval from the Planning Commission. This allows for a miscellaneous application to be considered. The draft policy currently recognizes this option in Section 2 by stating that “nonstandard encroachments such as fixed benches, fences, walls or other structures shall be subject to removal unless a miscellaneous application is approved by the Planning Commission.” Should the policy and zoning code be amended to place restrictions on the types of encroachments that should be considered through a miscellaneous application?
- Code enforcement actions are complicated when the current property owner will not assume responsibility. Does the PVEMC need to include specific language to hold the adjacent property owner responsible for removal if the encroachment occurred prior to their ownership?
 - Should a condition of an Encroachment Compliance Agreement include a refundable cash deposit equal to the City’s cost for removal of the encroachment if there is non-compliance?

Draft Policy for the Private Landscaping of Parklands

The City’s parklands were intended to remain open and in a natural state except as specifically authorized by the grant deeds and PVEMC. However, in some cases, private property owners have made improvements in parklands as an extension of their yards. In 2012, the City Council adopted Resolution R12-05 *Policy for the Private Landscaping of Parklands* as a means of guiding and limiting private landscaping in the parklands.

The amended draft *Policy for the Private Landscaping of Parklands* provides additional clarifying language and establishes an administrative process for minor encroachments and a discretionary process for major encroachments or any requests for hardscapes. It is intended through the draft policy that private landscape proposals be strictly reviewed to minimize ornamental plantings. Unusual locations may support a broader landscape palette.

The attached draft *Policy for the Private Landscaping of Parklands* incorporates the following:

- Objectives to preserve the City’s parklands.
- Clarification that the process only applies to parklands.
- Definitions of “Minor Encroachment” and “Major Encroachment”.
- Establishes administrative procedure for review of existing or proposed private plantings encroaching no more than 5 feet. (This section has been modified since the Parklands Committee review to limit administrative review to native or native compatible landscape. This will cause most existing minor landscape encroachments to require Parklands Committee review).
- Retains Parklands Committee review for any request for hardscape improvements (e.g. steps, stairs, walkways or other surface hardscape).
- Requires Parklands Committee review of any ornamental planting (not determined to be native or native compatible) and existing major landscape encroachments.
- Advises of Change to Parklands process for any new plantings or hardscape improvement which may encroach more than 5 feet.
- Identifies the process and findings for approval of private plantings or hardscape.
- Requires permit fees, installation and maintenance costs to be paid by the applicant.
- Establishes permit or agreement standards
- Confirms that unauthorized private plantings or hardscapes are subject to removal and abatement procedures.

In reference to the draft policy, questions for the City Council to consider include:

- Should there be definitions of and distinction between minor and major encroachments?
 - Should the definition of a minor encroachment include a maximum size?
- What factors should be considered by the Parklands Committee for requests to retain existing, mature private plantings?
- Should private plantings (e.g. lawns) that were approved prior to the approval of Resolution R12-05 be allowed to remain?
- Code enforcement actions are complicated when the current property owner will not assume responsibility. Does the PVEMC need to include specific language to hold the adjacent property owner responsible for removal if the encroachment occurred prior to their ownership?
- Should the City’s landscape maintenance and fire safety/week abatement contractors be instructed to remove private plantings and hardscapes that have not obtained authorization?

Notification

The draft policies have been publically noticed in conformance with the City’s standard practices according to law. Notification has been provided to the Palos Verdes Homes Association.

Recommendation

It is recommended that the City Council discuss the policies and provide direction.

Attachments:

- A: Draft *Policy for the Removal of Unauthorized Encroachments in the City's Parklands*
- B: Draft *Policy for the Private Landscaping of Parklands*
- C: City Council Staff Report dated January 13, 2016
http://pvestates.granicus.com/MetaViewer.php?view_id=1&clip_id=784&meta_id=19759
- D: Comments from Mr. Wade dated January 16, 2017
- E: Encroachment Agreement for 225 Rocky Point Road
- F: License Agreement for 976 Via Rincon
- G: PVHA Approval for 976 Via Rincon
- H: PVHA Agreement for 637 Via Horquilla
- I: Parklands Encroachment for 1602 Espinosa Circle
- J: Resolution R05-32: Policy for the Removal of Unauthorized Encroachments in the City's Parklands
- K: Resolution R12-05: Policy for the Private Landscaping of Parklands
- L: Parklands Committee Staff Report dated January 12, 2017

RESOLUTION NO. R17-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES REPEALING RESOLUTION R05-32 IN ORDER TO AMEND THE CITY'S EXISTING POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENT IN THE CITY'S PARKLANDS

WHEREAS, the City was developed with open space as a core element that significantly defines the character of the community; and

WHEREAS, the City owns approximately 849 acres of parklands that comprise much of the open space and are deed-restricted to remain open for the public's use; and

WHEREAS, a number of residents have constructed and/or maintain encroachments within the parklands without the City's authorization, restricting the public's use of these areas and exposing the City to undue liability; and

WHEREAS, the transfer of ownership of private property adjacent to encroachments is a logical time to require the removal of said unauthorized encroachments; and

WHEREAS, on November 8, 2005, the City Council adopted Resolution R05-32 which established a Policy for the Removal of Unauthorized Encroachments in the City's Parklands; and

WHEREAS, in implementing this Policy, it has come to the attention of City Staff that many outstanding encroachment violations currently exist, which represent unique circumstances including those which are not related to safety or public access; and

WHEREAS, modifications to the existing process for the removal of unauthorized encroachments outlined in the City's Policy have been recommended in order to address outstanding encroachment violations in an efficient and meaningful way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palos Verdes Estates as follows:

- SECTION 1. Resolution R05-32 adopting Policy for the Removal of Unauthorized Encroachments is hereby repealed.
- SECTION 2. The City Council hereby adopts a Policy for the Removal of Unauthorized Encroachments in the City's Parklands attached hereto as Exhibit 1.
- SECTION 3. The City Clerk shall certify to the passage and adoption of Resolution R17-XX and enter it into the book of original resolutions.

APPROVED AND ADOPTED this ____ day of January, 2017.

JENNIFER L. KING, MAYOR

ATTEST:

VICKIE KRONEBERGER, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

EXHIBIT 1

POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS Updated 1/06/2017

The Policy for the Removal of Unauthorized Encroachments in the City's Parklands is established to summarize the existing policies established by the Municipal Code for the removal of encroachments, and to provide an update on the City's enforcement and action plan for the removal of encroachments within City parklands and an abatement schedule for removal of encroachments.. It is the goal of this policy to restore public access to and use of these areas in a timely fashion. The City's parklands were intended to remain open to the public and to remain as undeveloped as possible.

This Policy in no way limits the City's ability to require the removal of any unauthorized encroachment in the parklands for any reason.

1) **Definition of Parklands and Encroachment**

As defined in Section 12.24.010 of the Municipal Code, "*Parklands*" means all areas owned in fee by the city which are designated for open space use. The term "parklands" does not include streets and does not include those portions of property that are subject to a concession agreement or other lease (e.g., golf, tennis, swim, stables), except the sand dunes adjacent to the developed golf course, and improved or used for active recreation.

As defined in Section 12.04.010 of the Municipal Code, "*Encroachment*" means privately owned improvements, facilities or structures, including without limitation any post, sign, pole, fence, wall, deck, building, tree (unless permitted pursuant to PVEMC 12.16.030), pipe, cable, drainage facility, septic system, or recreational facility in the public right-of-way or on other public property, constructed and maintained by the property owner."

"*Nonstandard encroachment*" means any encroachment which does not conform to a standard plan previously approved by the public works director as a city standard encroachment.

As defined in this resolution "*Minor Encroachment*" means any encroachment less than or equal to five (5) feet, as measured from the property line, which neither blocks public access nor poses a safety hazard.

As defined in this resolution "*Major/Significant Encroachment*" means any encroachment which is greater than five (5) feet, as measured from the property line, that to the extent reasonably practicable is not to be done so that the area appears to be privately-owned, creates a barrier to public access, and/or poses a safety hazard (including, but not limited to, blocking access for emergency access or utility maintenance).

2) **Removal Requirements Per City Code**

Require removal of unauthorized encroachments during a discretionary review by the City's Planning Commission

Section 17.04.090 of the City's Municipal Code states that the approval of any development entitlement application per Title 17 or 18 of the Code may be conditioned by the Planning Commission or Council. Such conditions may address any aspect of the project or the property. At the time of developing project plans, surveys are typically conducted and encroachments are identified. As a routine, the Planning Commission imposes a condition on all its approvals, requiring the removal of unauthorized encroachments. The Planning Commission may also condition that landscape and/or hardscape encroachments obtain administrative or Parklands Committee approval pursuant to the Parklands Landscaping Policy. Non-standard encroachments such as fixed benches, fences, walls or other structures shall be subject to removal unless a miscellaneous application is approved by the Planning Commission. All non-standard encroachments will be subject to removal as specified within a notice of violation or within 1 year after notification by the City. The Planning Commission retains authority to allow for up to a 5 year abatement period as a condition of approval with an Enforcement Compliance Agreement.

Require removal of unauthorized encroachments when they fall into disrepair.

Section 8.48.015(H) of the City's Municipal Code states in part that it is unlawful, and it is declared to be a public nuisance, for any of the following conditions to be allowed to exist on any public or private property: landscaping, grounds, walls, retaining and crib walls, fences, or walkways which are maintained in such condition so as to become defective, unsightly, or no longer viable. As the City becomes aware of encroachments which have fallen into disrepair, they are deemed a public nuisance and removal is required. The Director, or his or her designee, shall have the authority to judge when these encroachments are in a state of disrepair.

3) Require removal of unauthorized encroachments when they are modified.

Repairs to an existing unauthorized encroachment shall be made in conformance with the current regulations to the maximum extent possible. Any repairs shall not be construed as authorizing an extension of any time limit for the removal of the unauthorized encroachment. When the City is made aware of any modification to an existing unauthorized encroachment, immediate removal of the entire encroachment shall be required when 50 percent or more of the encroachment has been or is required to be modified or removed.

4) Removal Requirements Upon Adjacent Private Property Transfer of Ownership

Within 60 days of the close of escrow for the transfer of ownership of a previously noticed private property located adjacent to an unauthorized encroachment, the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area. Minor encroachment(s) may be retained for up to a 5 year

abatement period subject to approval by the Planning Commission of an Enforcement Abatement Agreement that includes a provision allowing the new owner to assume responsibility for the abatement subject to the same terms and conditions.

5) Removal Requirements Upon Receiving an Enforcement Compliance Agreement

Following the formal notice of encroachment, the Director, or his or her designee, shall provide notice to the adjacent property owner establishing a period of up to one year to abate all unauthorized encroachments. A property owner may request consideration to enter into an Enforcement Compliance Agreement for minor encroachments within 90 days, or a later period as approved by the Director, of receiving the notice establishing the abatement period.

Each application for an Enforcement Compliance Agreement shall be reviewed and approved by the Planning Commission. A fee shall be submitted with the application in the amount that shall be established by resolution of the council. As a condition of approval of the Enforcement Compliance Agreement, the Planning Commission shall retain authority to allow for an abatement period not to exceed five (5) years. The Planning Commission may consider a renewal of the Enforcement Compliance Agreement.

The Planning Commission shall consider an Enforcement Compliance Agreement upon considering the following factors:

- A. Identify when the encroachment first occurred to determine if the current property owner was responsible for the encroachment or had knowledge of such encroachment at time of purchase of the subject property.
- B. Consider any relevant information describing the circumstances associated with the establishment of the encroachment, including but not limited to any plans or surveys that were on file with the City or Palos Verdes Homes Association.
- C. Determine if there are special circumstances associated with the subject property which do not apply generally to other properties located adjacent to City Parklands.
- D. Establish that the encroachment does not create a barrier or safety concern to the public and there will not be unusual conditions that may be objectionable, detrimental or incompatible with surrounding properties and use of City Parklands.
- E. Evaluate the current condition of the encroachment and maintenance standards necessary to adequately protect the public during the abatement period.
- F. Consider if an unreasonable hardship exists based upon the cumulative cost of removing the encroachment, requirements to construct any new improvements such as fences or walls and restoration of the Parklands.
- G. Identify if the nonstandard encroachment may be eligible for consideration of a miscellaneous application, encroachment permit, license agreement or other similar agreement subject to the terms and conditions allowing for the continuation and maintenance of said encroachment.
- H. Consider grading, drainage, landscape and other measures needed to restore the City Parklands to a natural condition similar with the surrounding area.

All Enforcement Compliance Agreements approved by the Planning Commission shall be recorded on title. The Enforcement Compliance Agreement will include:

1. A survey provided by the adjacent property owner(s) identifying all encroachments;
2. Provide that the permittee will be responsible for obtaining any required encroachment permits, authorizations or agreements as determined by the Planning Commission;
3. Provide that the permittee shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any liabilities, damages, expenses, liens and claims of any nature whatsoever which may be asserted against the City or any of its officers, agents, or employees, including, without limitation, any loss, damage or injury arising from or as a result of any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City or the permittee;
4. Provide for regular maintenance;
5. Provide for the removal of all encroachments pursuant to an abatement schedule and upon the termination of the agreement;
6. Perform restoration of the parklands to return the disturbed area to a natural condition that is similar to the surrounding area; and
7. Pay a deposit to the City, as determined by the Director or Planning Commission, for the removal of said landscaping, hardscape improvements or non-standard encroachments upon full or partial removal of the unauthorized encroachments or termination of the agreement. The City shall utilize the deposit to pay for the reasonable and actual costs of removing the encroachments if, after providing written notice, the permittee or responsible party fails to provide the necessary corrections. In the event permittee fails to remove the encroachments, or any other object or structure placed by the permittee in the parklands, in a timely manner, the City may remove the encroachments and recover from permittee all fees, costs, and expenses (including, but not limited to, attorney fees and collection costs incurred) associated with the City's removal of the encroachments and restoration of the parklands.

6) Notification

As staff becomes aware of unauthorized encroachments in the City's parklands, a notice of the violation shall be sent to the adjacent property owner and permanent record of the notice shall be maintained in the correlating code enforcement case file. Real Property Records Reports shall include mention of any notices, encroachment permits or an Encroachment Compliance Agreement on file.

Prior to sending the formal notice of violation, the City will undertake an investigation to determine the location of the boundary between City and private property. A survey may be obtained if required in the sole discretion of the City. The notice shall give the property owner a period of one month from the date of the notice to appeal the determination that the encroachment is on City property to the Director. The decision of the Director shall be final.

7) **Enforcement**

All properties identified with unauthorized encroachments within the parklands will be subject to enforcement through administrative processes or an Enforcement Compliance Agreement. Each property will be monitored to ensure compliance with abatement schedules.

RESOLUTION NO. R17-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES
ESTATES REPEALING RESOLUTION R12-05 IN ORDER TO AMEND THE CITY'S
EXISTING POLICY FOR THE PRIVATE LANDSCAPING OF PARKLANDS**

WHEREAS, on March 13, 2012, the City Council adopted Resolution R12-05 which established a Policy for the Private Landscaping of Parklands; and

WHEREAS, in implementing this Policy, it has come to the attention of City Staff that private planting encroachments are common and the vast majority have not been installed with authorization pursuant to the Policy; and

WHEREAS, there exist significant locations within the City with existing private landscape that encroaches within the Parklands; and

WHEREAS, modifications to the existing process for the removal of unauthorized encroachments outlined in the City's Policy have been recommended in order to address outstanding encroachment violations in an efficient and meaningful way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palos Verdes Estates as follows:

- SECTION 1. Resolution R12-05 adopting Policy for the Removal of Unauthorized Encroachments is hereby repealed.
- SECTION 2. The City Council hereby adopts a Policy for the Private Landscaping of Parklands attached hereto as Exhibit 1, and incorporated by reference, as the official City policy relating to the review of requests of private individuals to landscape City-owned parklands.
- SECTION 3. The City Clerk shall certify to the passage and adoption of Resolution R17-XX and enter it into the book of original resolutions.

APPROVED AND ADOPTED this ____ day of _____, 2017.

JENNIFER L. KING, MAYOR

ATTEST:

VICKIE KRONEBERGER, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

EXHIBIT 1

CITY OF PALOS VERDES ESTATES PARKLANDS LANDSCAPING POLICY

(Updated January 19, 2017)

- 1. GOALS.** The goal of the Parklands Landscaping Policy is to guide residents and the Parklands Committee regarding the landscaping of the City's parklands by private individuals.

- 2. OBJECTIVES.**

The City's parklands were intended to remain open to the public and to remain as undeveloped as possible. Landscaping within the parklands should only be done to retain an undeveloped and natural look that simulates natural forestation and ground cover.

As defined in Section 12.24.010 of the Municipal Code, "Parklands" means all areas owned in fee by the city which are designated for open space use and "Park" includes all areas owned by the city which are designated for public recreational use, whether active or passive, including all paths, roadways, avenues, and parkways. The Parklands Landscaping Policy does not apply to an unauthorized encroachment within a Park area not owned in fee by the city such as public rights-of-way that are unimproved or utilized as paths or parkways.

Landscaping should not be done so that the parklands area appears to be privately-owned or so that the landscaping creates a barrier to the public. Any landscaping that is allowed as a result of an approved application should be limited to native or native compatible varieties as determined by the City. Any irrigation should be temporary in nature and placed on the ground, not buried.

Applications for placement within the parklands of man-made items, such as stairs, walkways or other surface hardscape, shall be reviewed by the Parklands Committee. Applications for any other nonstandard encroachments such as benches, fences, walls or other structures shall be reviewed by the Planning Commission as a miscellaneous application. In general such applications should be denied unless there are special circumstances.

- 3. DEFINITIONS OF PARKLANDS AND ENCROACHMENT**

As defined in Section 12.24.010 of the Municipal Code, "*Parklands*" means all areas owned in fee by the city which are designated for open space use. The term "*parklands*" does not include streets and does not include those portions of property that are subject to a concession agreement or other lease (e.g., golf, tennis, swim, stables), except the sand dunes adjacent to the developed golf course, and improved or used for active recreation.

As defined in Section 12.04.010 of the Municipal Code, "*Encroachment*" means privately owned improvements, facilities or structures, including without limitation any post, sign, pole, fence, wall, deck, building, tree (unless permitted pursuant to PVEMC 12.16.030), pipe,

cable, drainage facility, septic system, or recreational facility in the public right-of-way or on other public property, constructed and maintained by the property owner.”

“Nonstandard encroachment” means any encroachment which does not conform to a standard plan previously approved by the public works director as a city standard encroachment.

As defined in this resolution “*Minor Encroachment*” means any encroachment less than or equal to five (5) feet, as measured from the property line, which neither blocks public access nor poses a safety hazard.

As defined in this resolution “*Major/Significant Encroachment*” means any encroachment which is greater than five (5) feet, as measured from the property line, that the landscaping, to the extent reasonably practicable, is not to be done so that the area appears to be privately-owned, creates a barrier to public access, and/or poses a safety hazard (including, but not limited to, blocking access for emergency access or utility maintenance).

- 4. ADMINISTRATIVE APPROVAL FOR PRIVATE PLANTINGS.** For those locations where the permittee can adequately demonstrate that appropriate access to the public is provided, the permittee may request administrative approval of an encroachment permit to allow for the minor encroachment of private landscaping to be planted or retained which encroach no more than five (5) feet into the parklands, as measured from the property line. Consideration and approval of an administrative encroachment permit shall be limited to native or native compatible varieties as determined by the City. The director may, in his or her discretion, refer any application to the Parklands Committee for a decision on the issuance of the permit.
- 5. DISCRETIONARY PERMIT PROCEDURE FOR PRIVATE PLANTINGS AND OR HARDSCAPE.** An “Application for Landscape or Hardscape Improvements within City Parklands” shall be obtained from and filed with the City for existing major encroachment of private plantings which encroach more than five (5) feet into the parklands and/or any proposed hardscape improvements which encroach into the parklands. An encroachment permit and/or license agreement will be required upon approval of an “Application to Landscape City Parklands”
- 6. PROPOSED IMPROVEMENTS ELIGIBLE FOR THE “CHANGE TO PARKLANDS” PROCESS.** An “Application for Change to Parklands” shall be obtained from and filed with the City for new plantings and hardscape improvement which may encroach more than five (5) feet into the parklands. An “Application for Change to Parklands” shall not be subject to the findings of approval listed below in section seven or the terms listed in sections eight through ten.
- 7. PROCESS FOR CONSIDERATION BY THE PARKLANDS COMMITTEE.** The Committee shall consider the proposed or existing improvements and the testimony, both verbal and written, of the applicant and of affected property owners. The recommendation of

the Parklands Committee shall be placed on the Consent Agenda of the City Council for final action.

8. FINDINGS FOR APPROVAL OF PRIVATE PLANTINGS AND/OR HARDSCAPE.

The findings for approval of an “Application for Landscape or Hardscape Improvements within City Parklands” are based on those required for approving a Variance within the Zoning section of the Municipal Code:

1. That there are special circumstances attached to the property referred to in the application, which do not apply generally to other properties in the same area;
2. That the granting of such application is necessary to do substantial justice, and to avoid practical difficulty or unnecessary hardship;
3. That the granting of the application will not result in material damage or prejudice to other property in the vicinity, nor be detrimental to the public safety or welfare;
4. That the landscaping, to the extent reasonably practicable, is not to be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public;

9. PERMIT FEES. A fee shall be submitted with the application in the amount that shall be established by resolution of the council.

10. COSTS FOR INSTALLATION AND MAINTENANCE. All costs for installation and maintenance shall be paid by the applicant. An encroachment permit, license agreement or other similar agreement between the city and the property owner defining a maintenance schedule and standards that run with the property in perpetuity is required.

11. PERMIT OR AGREEMENT STANDARDS. Whether approved of administratively or by the Parklands Committee and City Council, each encroachment permit, license agreement or other similar agreement shall:

1. Provide the adjacent property owner(s) with approval of a plan showing the encroachment area and identifying all landscape and hardscape materials;
2. Provide that the permittee will be responsible, if approved, for any irrigation within the parklands;
3. Provide that the permittee shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any liabilities, damages, expenses, liens and claims of any nature whatsoever which may be asserted against the City or any of its officers, agents, or employees, including, without limitation, any loss, damage or injury arising from or as a result of any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City or the permittee;
4. Provide for regular maintenance; and
5. Pay a deposit to the City, as determined by the Director or Parklands Committee, for the potential removal of said landscaping and hardscape improvements. The City shall utilize the deposit to pay for the reasonable and actual costs of removing said landscaping and hardscape improvements if, after providing written notice, the permittee or responsible party fails to provide the necessary corrections. In the event permittee fails to remove the encroachments, or any

other object or structure placed by the permittee in the parklands, in a timely manner, the City may remove the encroachments and recover from permittee all fees, costs, and expenses (including, but not limited to, attorney fees and collection costs incurred) associated with the City's removal of the encroachments and restoration of the parklands.

12. REMOVAL & ABATEMENT. Private plantings or hardscapes (including, but not limited to, walkways and steps) that are not authorized through an encroachment permit, license agreement or other similar agreement shall be subject to immediate removal by the responsible adjacent property owner or abatement by the City. All properties identified with unauthorized encroachments within the parklands will be subject to enforcement through administrative processes or an Enforcement Compliance Agreement. Each property will be monitored to ensure compliance with abatement schedules.



MEMORANDUM

Agenda Item #: 10

Meeting Date: 1/13/16

TO: HONORABLE MAYOR AND CITY COUNCIL

THRU: ANTON DAHLERBRUCH, CITY MANAGER *AD*

FROM: SHERI REPP-LOADSMAN, PLANNING & BUILDING DIRECTOR *SR*

SUBJECT: REVIEW OF CODE ENFORCEMENT ACTION PLAN FOR
REMOVAL OF PARKLAND ENCROACHMENTS AND
CONSIDERATION OF AN ABATEMENT SCHEDULE FOR
REMOVAL OF ENCROACHMENTS

DATE: JANUARY 13, 2016

ISSUE/PURPOSE

Provide an update on the City's enforcement and action plan for the removal of encroachments within City parklands and request consideration of an abatement schedule for removal of encroachments.

BACKGROUND

Many instances of encroachments on City property have been reported and are being identified. The City has formulated a code enforcement action plan to address the designated open space of parklands and City rights-of-way (ROW). A vital element to the successful enforcement strategy included hiring a full-time, experienced Code Enforcement Officer in December 2014. For many years, the City had one part-time Code Enforcement Officer to address all complaints and violations. The new Code Enforcement Officer's first year has been focused on reducing a backlog of cases and developing tools, plans and procedures for mitigating violations..

Code Enforcement Tools and Process:

The goal of Code Enforcement is to obtain voluntary compliance with existing codes when there is an existing violation. After an encroachment violation is reported or discovered, the Code Enforcement Officer conducts a site inspection. The investigatory process requires photographic evidence, systematic research of the City address file, an

assessment of permits, and typically a review of approved plans. Once corrective action is deemed necessary, the Code Enforcement Officer begins a dialogue with the responsible party, usually the property owner. The Code Enforcement Officer begins enforcement with a knock on the door, a telephone call or by issuing a written Notice of Violation (NOV) to the property owner. Relatively short, reasonable timelines for voluntary compliance are hopefully agreed upon and thereafter, the Code Enforcement Officer monitors the progress to ensure the obligation is achieved. A failure to voluntarily remove an encroachment or meet the agreed upon schedule will result in misdemeanor prosecution through the Court system. (Note, Administrative Citations is an intermediate step that could expedite cases before incurring legal prosecution expenses that staff recommends as an enhancement to the tool box of enforcement techniques.)

Code Enforcement has established clear expectations and consistency in abating a vast assortment of violations. The following table provides an overview of Code Enforcement cases in 2015.

2015 Overview of Code Enforcement Cases

Case Type	Abated & Closed	Opened & Notified
Parkland Encroachments	6	4
City ROW Encroachments	10	13
All Other Violations	244	81
Total	260	98

In most instances, an investigation of code violations occurs when a resident reports a potential violation. Other cases may be initiated as the City becomes aware of violations. Cases that involve violations that do not constitute a significant safety, blockage of access or nuisance impact are a lower priority and may remain open for some time for case load management. With limited resources, it is necessary to prioritize the various types of enforcement/complaints in order to effectively abate the most critical issues at the onset with a tiered approach. The following chart illustrates the tiered approach:

Priority 1:

Prohibited Discharge
Hazardous/Unsafe conditions in Parklands or Rights-of-Way
Inadequate barriers for swimming pools/spas
Sewage Spill/Overflow
Illegal grading
Uninhabitable living conditions
Work commencing without permits
Unstable structures
Dangerous or dead tree
Potential damage to public or private property

Priority II

New encroachments in Parklands or Rights-of-Way
Non-permitted construction
Over height fences or walls
Lighting onto adjacent property
Mechanical Noise
Blocked public access
Violations of Neighborhood Standards

Priority III

RV, boat or trailer in public view
Inoperable vehicle stored in public view
Refuse container placement
Overgrown, dead or dying vegetation
Setback violations
Other structural and infringing encroachments

Parklands Encroachments

Information has been gathered from field investigations, review of development plans and community referrals to identify a number of locations with unauthorized encroachments. As noted above, some locations have already been initiated as cases. A significant number of geographic areas are under investigation as follows:

2016 Encroachment Case Evaluations

	Geographic Areas Identified Investigation in Progress.
Parkland Encroachments	16
City ROW Encroachments	29
Total	45

These geographic locations are associated with both rights-of-way and parklands, typically paths and lanes, where a series of properties have encroached with fences, private landscape, patios or other structures. In many cases, the encroachments are minor and do not represent a safety concern or blocked access. In other cases, the encroachments must be removed to restore to the public the access to, and use of, the parklands and rights-of-way.

An encroachment occurs when a property owner intrudes on, in, or under the ground space or in the air space of an adjacent City-owned property, either deliberately or inadvertently. Encroachment results from any use of such City land by individuals for their own private purposes. Parkland encroachments may be structural (e.g., construction of decks, pools, and retaining walls), non-structural (e.g., irrigation or yard drainage), or vegetative (e.g., planting of gardens, shrubs, and trees).

Parkland encroachments are of concern because they: (a) restrict or limit the use and enjoyment of public lands maintained by the City for the benefit of all residents; (b) may pose a safety hazard to the public and give rise to liability claims from resultant injuries; (c) may damage the natural environment and undermine the City's stewardship role in protecting natural features; (d) may destabilize public lands with resultant damage to adjacent private lands; and (e) may result in taxpayer costs to restore degraded public lands.

Consistent with the adopted policies and practices, it remains the view that encroachments on City parklands should not be permitted except in the most unusual of circumstances. Staff recommends establishing a clear process for resolving encroachments. In practice, encroachments should be resolved through informal meetings between staff and property owners. To facilitate resolution, staff believes the Planning Commission could play a role in reviewing Encroachment Enforcement Agreements that clearly define abatement schedules, maintenance obligations and restoration standards. In addition, both staff and the Planning Commission can help control future encroachments by requiring legal surveys when reviewing building permits or development applications adjacent to parkland, and by requiring that fencing be provided on private properties along parkland as a condition of approval when reviewing site plan applications.

Besides the Municipal Code, there are two existing policies that guide code enforcement activities associated with the Parklands as follows:

- Resolution R05-32 *Adopting Policy for the Removal of Unauthorized Encroachments in the City's Parklands* (November 2005)
Resolution R12-05 *Adopting Parklands Landscape Policy* (March 2012)

Discussion of Resolution R05-32

In 2004, the City commenced a study to identify unauthorized encroachments within the parklands. The focus was on the Torrance Boundary Trail; however, other properties were also included. Resolution R05-32 established a policy which summarized the existing policies within the Municipal Code and added a requirement for removal upon time of sale. For proceeding with many of the outstanding encroachment violations that represent unique circumstances including those that are not safety related or inhibiting access to the public, updates to the *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* are recommended in Attachment A.

Attachment A to this report provides a description of a modified process for the removal of unauthorized encroachments that incorporates the following:

- States that immediate abatement is required for new encroachments.
- Requires immediate abatement for existing encroachments determined to present a safety issue or to unduly restrict the access, use and enjoyment of the parklands.
- Distinguishes between "minor" and "significant" unauthorized encroachments.

- Establishes maximum abatement schedules to be implemented by staff (up to 1 year) and the Planning Commission (up to 5 years).
- Authorizes the Planning Commission to allow for Encroachment Abatement Agreements for a term of up to five years or until the abutting land is sold. Upon the expiration or termination of the agreement, the encroaching property owner shall remove the encroachment and restore the parkland to its natural condition, all at that property owner's expense. Agreements will be recorded on title, and the encroaching property owner will pay all costs, including survey, fees, and restoration costs.

The current *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* allows for up to 5 years after notification by the City for the removal of an encroachment. Staff is recommending that the 5 years be reduced to 1 year for administrative actions. However, it is proposed that the Planning Commission retain authority to allow for up to a 5 year abatement period as a condition of approval.

Currently the Planning Commission may apply a condition of approval requiring the removal of unauthorized encroachments and the standard practice is to require the violation to be corrected in order to obtain final approval upon project completion. This may result in an extended time frame since construction projects may be delayed or be slow in completion. A maximum of 5 years to correct a violation establishes a limit for the time to abate the condition.

The *Policy* requires removal when the structure is modified. This would require removal even for minor maintenance. It is recommended that removal be required when 50 percent or more of the encroachment is removed or removal is required pursuant to Section 8.48.015 (H), which requires removal due to disrepair/public nuisance.

The *Policy* also requires removal of the unauthorized encroachments immediately upon change of ownership. Consideration is requested for the retention of minor encroachment of fences and walls that are well designed and compatible to the neighborhood and as such, a 5-year term to achieve the abatement would apply. These structures may also be subject to a renewal of term.

A new process involving an Enforcement Abatement Agreement is also recommended to clearly identify the scope of the encroachment and steps for abatement. Currently, the policy indicates that the City has responsibility for performing a survey and may obtain authority to remove the unauthorized structure and invoice the adjacent property owner, and lien the property. Alternatively, the Enforcement Abatement Agreement will provide a process that minimizes legal and removal costs to the City and provide a more effective means of achieving compliance.

Parklands Landscaping Policy (Resolution R12-05)

In 2012, the City Council adopted Resolution R12-05, a policy for the private landscaping of parklands. The Resolution allows for the Parklands Committee to review private plantings in the parklands and provide a recommendation to the City Council. The objectives indicate that the landscaping should not appear to be "privately-owned", create a barrier to the public and should be limited to native varieties.

Based upon a review of current code enforcement investigations, private plantings encroachments are common and the vast majority have not been installed with authorization pursuant to the *Parklands Landscaping Policy*.

There exist significant locations with existing private landscape (e.g. fruit trees, shrubs and ground cover) that encroaches within the Parklands. For those locations where it can be demonstrated that appropriate access to the public is provided, an administrative process is requested to allow for a license agreement or encroachment permit to allow private landscaping to be retained that is up to a 5 foot encroachment. It is recognized that this private landscaping will likely not be native and may appear to be privately-owned. Any authorization should be subject to a license agreement or encroachment permit providing that the adjacent property owner obtain approval of a plan identifying all landscape materials, indemnify the City, provide for regular maintenance and pay a fee for the potential removal of said landscaping. Private plantings that are not authorized through a license agreement or encroachment permit would be subject to immediate removal.

For new plantings or existing private plantings encroaching more than 5 feet into the parklands, private individuals will continue to be required, pursuant to Resolution R12-05, to obtain approval from the Parklands Committee. It is recommended that the Parklands Committee require a license agreement or encroachment permit providing that the adjacent property owner obtain approval of a plan identifying all landscape materials, indemnify the City, provide for regular maintenance, and pay a deposit for the potential removal of said landscaping.

There are some properties that have obtained Parklands Committee and City Council approval for private landscape encroachments that are clearly private in nature (e.g. orchard, lawn and irrigation). It is recommended that the *Parklands Landscaping Policy* include the ability for these prior authorizations to be abated. It is recommended that a 1 to 5 year period apply for the removal of plants and trees that encroach more than 5 feet into the parklands. It is also recommended that no irrigation be allowed within the parklands.

Hardscape improvements, such as walkways and steps, may exist as an unauthorized encroachment. For those locations where it can be demonstrated that appropriate access for the public is provided, an administrative process is requested to allow for a license agreement or encroachment permit to allow the hardscape improvement to be retained. Any authorization should be subject to a license agreement or encroachment permit

providing that the adjacent property owner obtain approval of a plan identifying all materials, indemnify the City, provide for regular maintenance and pay a fee for the potential removal of said hardscape. Hardscape that is not authorized through a license agreement or encroachment permit may be subject to immediate removal.

Who's Responsible?

In some situations it is difficult for the City to locate an individual who is responsible for a specified encroachment in parklands. Adjacent property owners often explain that the encroachment was not of their doing or the encroachment was in place when they moved into their home. In these circumstances the City may need to abate the violation for safety or access purposes. Over a period of time, the City may remove longstanding encroachments in parklands. An alternative option for consideration is to amend the Municipal Code, similar to the provisions for rights-of-way maintenance (Municipal Code 12.16.060), to require all property owners to care for and provide maintenance of parkways adjacent to their real properties. Currently, the Municipal Code does not provide a clear maintenance requirement for adjacent property owners to parklands. Such a provision would create a clear obligation as properties change ownership.

FISCAL IMPACT:

Standards and implementation of enforcement should consider the limited staff resources of one full-time Code Enforcement Officer. Additional funds in the landscape maintenance and other contract services may assist in the abatement of longstanding encroachments and will be recommended by staff through the budget process.

RECOMMENDATION

It is recommended that the City Council discuss and provide direction to staff for the potential modification to the *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* and the *Parklands Landscape Policy*.

ATTACHMENTS

- A. Proposed Code Enforcement Strategy Chart
- B. Municipal Code 12.16.060
- C. Resolution R05-32: *Policy for the Removal of Unauthorized Encroachments in the City's Parklands*
- D. Resolution R12-05: *Parklands Landscape Policy*

Report Prepared By:



Ellisa Hall, Code Enforcement Officer

ATTACHMENT A
PROPOSED CODE ENFORCEMENT STRATEGY FOR UNAUTHORIZED ENCROACHMENTS IN PARKLANDS

Structures	Administrative/ Code Enforcement	Administrative/ Code Enforcement	Planning Commission (concurrent with review of discretionary permits or with review of Encroachment Abatement Agreement)	Alternative Planning Commission
New Construction	No encroachments permitted			
Existing Fence/Wall or structure Condition	Major encroachment (greater than 5 ft.): Subject to immediate removal if any of the following: 1) Blocking access 2) Safety issue 3) 5 ft. or greater encroachment	Minor encroachment (up to 5 ft.): Up to one year abatement period or immediate removal if any of the following: 1) 50% or more removed/replaced 2) Dilapidated or public nuisance 3) Sale or transfer of property 4) Upon determination that public access is required Note: Encroachments within pathways may be limited due to the need for vehicular access. Encroachments less than 5 ft. may be subject to immediate removal if blocking access for vehicles or utility maintenance.	Minor encroachment (up to 5 ft.): Up to 5 year abatement period or immediate removal if any of the following: 1) 50% or more removed/replaced 2) Dilapidated or public nuisance 3) Sale or transfer of property 4) Upon determination that public access is required	Certain existing fences or walls are substantial, attractive and compatible with the surrounding neighborhood. Should these type of encroachments be allowed beyond the 5 years? A policy could be approved to allow for these fences or walls to remain until either of the following: 1) Abated if 50% or more removed/replaced 2) Dilapidated or public nuisance 3) Upon determination that public access is required
NOV Recorded on Property		Preferred but not required. NOV will be sent to property owner, copy in address file and copy to PVHA.	Yes. Property must agree to NOV recordation in order to obtain longer abatement period.	

ATTACHMENT A
PROPOSED CODE ENFORCEMENT STRATEGY FOR UNAUTHORIZED ENCROACHMENTS IN PARKLANDS

Private Landscape	Administrative/Code Enforcement	Administrative/Code Enforcement	Parklands Committee	Alternative
New Plantings	No encroachments permitted	Minor encroachment (up to 5 ft.): <ul style="list-style-type: none"> • Must use native plantings, must not appear to be “privately owned” or create a barrier to the public 	Application for private plantings to be submitted	
Existing Plantings	Dead, dying or dangerous plantings subject to immediate removal	Minor encroachment (up to 5 ft.): <ul style="list-style-type: none"> • Must use native plantings, must not appear to be “privately owned” or create a barrier to the public 	Application for private plantings to be submitted	Existing vegetative encroachments are often ornamental plants that are not native. A streamlined approach for addressing existing minor vegetative encroachment (up to 5 ft.) may be appropriate to allow for approval by staff if plantings deemed acceptable and does not create a barrier to the public
New Hardscape (e.g. walkway, steps or stairs)		Not eligible for administrative review	Application to be submitted	Determination needed if Planning Commission should review in lieu of Parklands Committee. Application for private plantings may include hardscape.
Existing Hardscape (e.g. walkway, steps or stairs)		Minor encroachment (up to 5 ft.) may be retained if no safety concerns and facilitates public access	Major encroachments extending beyond 5 feet subject to the following: <ol style="list-style-type: none"> 1) No safety concerns 2) Facilitates public access 3) Does not appear to be “privately owned” 4) Removal may contribute to erosion or other issues 	Determination needed if Planning Commission should review in lieu of Parklands Committee. Application for private plantings may include hardscape.

ATTACHMENT A

PROPOSED CODE ENFORCEMENT STRATEGY FOR UNAUTHORIZED ENCROACHMENTS IN PARKLANDS

		Yes	Yes	<p>If the adjacent property owner is not found to be responsible, City will have option to remove and to assume full cost.</p> <p>City may want to consider an ordinance amendment to require adjacent property owner to be responsible (similar to ROW)</p>
Previously Authorized Orchard, lawns and irrigation				<p>Options: Allow to continue or subject to abatement</p>

ATTACHMENT B

12.16.060 Maintenance.

A. It is made the duty of all owners and persons having possession and control of real property within the city to cultivate and care for and provide complete maintenance of all shrubs, lawns and groundcovers planted or set out within any of the streets, avenues, highways and parkways adjacent to their real properties.

B. Owners and persons having possession or control of real property within the city are encouraged to promptly notify the public works director of any tree or shrub in a public area immediately adjacent to the person's property which is in such condition as to be a menace to public safety or dangerous to life or property.

C. Trimming and Removal. Except as may be provided in PVEMC 12.16.100(D), the city will not remove a tree in the parkway adjoining any property unless such tree is dead or a hazard to the public or to street maintenance or other services of the city. (Ord. 701 § 2 (Exh. 1), 2012; Ord. 491 § 1, 1989; Ord. 361 § 1, 1981)

RESOLUTION R05-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA ADOPTING A POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS

WHEREAS, the City was developed with open space as a core element that significantly defines the character of the community; and

WHEREAS, the City owns 849 acres of parklands that comprise much of the open space and are deed-restricted to remain open for the public's use; and

WHEREAS, a number of residents have constructed and/or maintain encroachments within the parklands without the City's authorization, restricting the public's use of these areas and exposing the City to undue liability;

WHEREAS, the transfer of ownership of private property adjacent to encroachments is a logical time to require the removal of said unauthorized encroachments;

NOW THEREFORE, the City Council of the City of Palos Verdes Estates DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby adopts a Policy for the Removal of Unauthorized Encroachments in the City's Parklands attached hereto as Exhibit 1.


Section 2. The City Clerk shall certify to the passage and adoption of Resolution R05-32 and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED on this 8th day of November, 2005.


DWIGHT ABBOTT, MAYOR

ATTEST:

APPROVED AS TO FORM:


Judy Smith, City Clerk

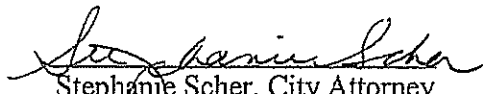

Stephanie Scher, City Attorney

EXHIBIT 1

POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS Updated 11/8/05

The Policy for the Removal of Unauthorized Encroachments in the City's Parklands is established to summarize the existing policies established by the Municipal Code for the removal of encroachments, and to add a requirement for the removal of encroachments when the adjacent private property changes ownership. It is the goal of this policy to restore public access to and use of these areas in a timely fashion.

This Policy in no way limits the City's ability to require the removal of any unauthorized encroachment in the parklands for any reason.

1) Definition of Encroachment

Encroachments are defined in Section 12.04.010 of the Municipal Code as follows:

"Encroachment" means privately owned facilities or structures in the public right of way or on other public property, constructed and maintained by the property owner."

Examples of encroachments include, but are not limited to: fences, walls, hardscape (such as concrete or brick), fireplaces, sheds, gazebos, swings and other play equipment, and tree houses.

2) Removal Requirements Per City Code

Require removal of unauthorized encroachments during a discretionary review by the City's Planning Commission

Section 17.04.090 of the City's Municipal Code states that the approval of any development entitlement application per Title 17 or 18 of the Code may be conditioned by the Planning Commission or Council. Such conditions may address any aspect of the project or the property. At the time of developing project plans, surveys are typically conducted and encroachments are identified. As a routine, the Planning Commission imposes a condition on all its approvals, requiring the removal of non-standard encroachments.

Require removal of unauthorized encroachments when they fall into disrepair.

Section 8.48.015 H of the City's Municipal Code states that it is a public nuisance to maintain fences, walls, landscaping, or walkways that are maintained in a defective, unsightly, or no longer viable condition. As the City becomes aware of encroachments which have fallen into disrepair, they are deemed a public nuisance and removal is required. The Public Works Director, or his or her designee, shall have the authority to judge when these encroachments are in a state of disrepair.

Require removal of unauthorized encroachments when they are modified.

Section 12.04.010 of the City's Municipal Code does not allow the permanent private occupation of City property without a permit. When the City is made aware of any modification underway to an existing unauthorized encroachment, removal of the entire encroachment is required.

3) Removal Requirements Upon Adjacent Private Property Transfer of Ownership

Within 60 days of the close of escrow for the transfer of ownership of a previously noticed private property located adjacent to an unauthorized encroachment(s), the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area.

4) Removal Requirements Five Years After Notification by the City

If a property has not be transferred within five years after notification by the City of the need to remove the illegal encroachment(s), the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area.

5) Notification

As staff becomes aware of significant unauthorized encroachments in the City's parklands, a notice of the violation shall be sent to the adjacent property owner and permanent record of the notice shall be maintained in the correlating "Address File". Real Property Records Reports shall include mention of any encroachment notices on file.

Prior to sending the formal notice of an encroachment which must be removed upon sale or within the specified time period, the City will undertake the necessary action to determine the exact location of the boundary between City and private property, including obtaining a survey, if required in the sole discretion of the City. The notice shall give the property owner a period of one month from the date of the notice to appeal the determination that the encroachment is on City property to the Director of Public Works. The decision of the Director of Public Works shall be final.

6) Enforcement

Staff will track monthly County Assessor's transfer reports and the Code Enforcement Officer will investigate relevant property transfers. If an illegal encroachment(s) is not removed per this policy, the City will immediately remove the encroachment(s), bill the adjacent property owner, lien the property if necessary, and cite the adjacent property owner for an infraction(s).

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

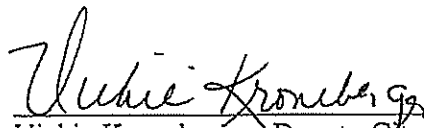
I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R05-32** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 8th of November, 2005, by the following vote:

AYES: COUNCILMEMBERS: Abbott, Flood, Humphrey, Sherwood

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

RECUSED: COUNCILMEMBERS: Goodhart


Vickie Kroneberger, Deputy City Clerk

RESOLUTION R12-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PALOS VERDES ESTATES, CALIFORNIA
ADOPTING A POLICY FOR THE PRIVATE LANDSCAPING OF PARKLANDS

WHEREAS, the City Council expressed a desire for the creation of a policy to guide the residents, Parklands Committee, and City Council regarding requests for the landscaping of City-owned parklands by private individuals; and

WHEREAS, the Parklands Committee has worked with staff to create a Policy for the Private Landscaping of Parklands; and

WHEREAS, this policy fulfills the purpose to guide the City in making decisions on resident's requests for the private landscaping of parklands;

NOW THEREFORE, the City Council of the City of Palos Verdes Estates DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby adopts a Policy for the Private Landscaping of Parklands attached hereto and incorporated by reference, as the official City policy relating to the review of requests by private individuals to landscape City-owned parklands:

Section 2. The City Clerk shall certify to the passage and adoption of Resolution R12-05 and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED on this 13th day of March, 2012.


WILLIAM JOHN REA, MAYOR

ATTEST:


JUDY SMITH, CITY CLERK

APPROVED AS TO FORM:


CHRISTI HUGIN, CITY ATTORNEY

CITY OF PALOS VERDES ESTATES
PARKLANDS LANDSCAPING POLICY

1. **GOALS.** The goal of the Parklands Landscaping Policy is to guide residents and the Parklands Committee regarding the landscaping of the City's parklands by private individuals.

2. **OBJECTIVES.**

The City's parklands were intended to remain open to the public and to remain as undeveloped as possible. Landscaping within the parklands should only be done to retain an undeveloped and natural look that simulates natural forestation and ground cover.

Landscaping should not be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public. Any landscaping that is allowed as a result of an approved application should be limited to "native" varieties as determined by the City. Any irrigation should be temporary in nature and placed on the ground, not buried.

Applications for placement within the parklands of man-made items, such as benches, statues, hardscape, or other, shall be reviewed on a case by case basis, and in general such applications should be denied.

3. **PERMIT PROCEDURE.** An "Application to Landscape City Parklands" shall be obtained from and filed with the City.

4. **PROCESS FOR CONSIDERATION AND APPROVAL.** Each application shall be reviewed by the Parklands Committee. The Committee shall consider the proposed improvements and the testimony, both verbal and written, of the applicant and of affected property owners. The recommendation of the Parklands Committee shall be placed on the Consent Agenda of the City Council for final action.

5. **FINDINGS FOR APPROVAL**

The findings for approval are based on those required for approving a Variance within the Zoning section of the Municipal Code:

1. That there are special circumstances attached to the property referred to in the application, which do not apply generally to other properties in the same area;
2. That the granting of such application is necessary to do substantial justice, and to avoid practical difficulty or unnecessary hardship;
3. That the granting of the application will not result in material damage or prejudice to other property in the vicinity, nor be detrimental to the public safety or welfare.

4. That the landscaping, to the extent reasonably practicable, is not to be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public.

6. **PERMIT FEES.** A fee shall be submitted with the application in the amount that shall be established by resolution of the City Council.

7. **COSTS FOR INSTALLATION AND MAINTENANCE.** All costs for installation and maintenance shall be paid by the applicant. A legal contract between the city and the property owner defining a maintenance schedule and standards that runs with the property in perpetuity is required.

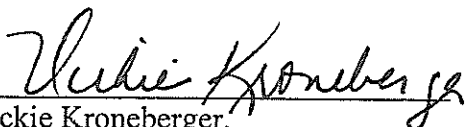
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Executive Assistant/Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R12-05** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 13th day of March, 2012, by the following vote:

AYES: COUNCILMEMBERS: Rea, Bird, Goodhart, Perkins, Humphrey

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



Vickie Kroneberger,
Executive Assistant/Deputy City Clerk

Sheri Repp

From: Bob Wade <
Sent: Monday, January 16, 2017 11:25 AM
To: Sheri Repp
Cc: Anton Dahlerbruch; Jennifer King
Subject: Proposed Policies on Encroachments into Parklands and Parklands Landscaping
Attachments: Draft Encroachment Policy (1-6-17).docx; Draft Parklands Landscaping Policy (1-6-17).docx

As promised at the Parklands Committee meeting this past Thursday, I am attaching written copies of my comments and concerns on the most recent drafts of the proposed policies on Encroachments into Parklands and Parklands Landscaping. Hopefully, these comments will more fully explain my positions and be of some help in guiding City Council consideration and decision making.

Policy on Encroachments into Parklands

As indicated at the meeting, I feel that the core framework of the Policy on Encroachments is workable. We just need to make some changes to make it more effective and efficient as an enforcement tool, while still being sensitive to the circumstances of encroaching property owners. Those changes are set forth in my attached comments. The most critical of my comments concern the definitions of “minor” and “major/significant” encroachments, the possible length of the abatement period under Enforcement Compliance Agreements for “minor encroachments” and making sale and transfer of the adjacent property a “hard stop” for abatement. In particular, an abatement period up to five (5) years for a “minor encroachment” is both too generous and unnecessary. I think we would be hard pressed to find any “minor encroachment” that requires a maximum of two years (one year administrative plus an additional year under an ECA) to abate, if even that long.

Parklands Landscaping Policy

Simply put, I strongly believe that the proposed policy on Parklands Landscaping is misguided and would set a very dangerous precedent for the City. While the proposed policy might help the City manage the enforcement caseload, it would do so by authorizing and condoning encroachment behavior that the City needs to guard against. And, once encroachments are approved and/or permitted, the damage to parklands is done . . . in perpetuity. Furthermore, doing so will set a dangerous precedent that makes it harder, if not impossible, to control future encroachment applications. Keep in mind that we are talking about private hardscape encroachments here, not just plantings.

I will defer to the City Attorney on the legality of the City authorizing or permitting such encroachments. But, regardless of legality, the proposal is bad policy.

The existing policies on Parklands Landscaping and Change to Parklands have served the City well. We have approved parklands improvement and beautification projects that are both reasonable and appropriate and denied private plantings that make the parklands areas appear privately owned. If rejecting the proposed Landscaping policy means that more residents will come to the Committee seeking approval of private landscaping and hardscape encroachments, then so be it. Any such additional workload for the Committee is part of the job. And, we have the existing policies to deal with it.

For these reasons, I strongly urge City Council to reject the proposed draft Parklands Landscaping Policy.

Thanks for the opportunity to further explain my views on these proposed policies.

Bob Wade
Chairman, Parklands Committee

DRAFT POLICY ON ENCROACHMENTS IN THE PARKLANDS
Updated January 6, 2017

General Comments

- Our role on the Parklands Committee is to protect and enhance City parklands for the benefit of our residents and users, within the guidelines provided by the Municipal Code and City Council. In doing so, I believe that our first allegiance is to the parklands. While we should be sensitive to the interests and circumstances of adjacent property owners that may have encroached into parklands, encroachments into the parklands cannot be tolerated and must be abated as quickly as possible.

Questions & Recommendations

1. With regard to the definitions of “minor” and “major/significant encroachment”:
 - a. I’m concerned about the implications of the 5-foot provision. While five feet from the property line may not seem significant at first blush, it’s only one dimension. The encroachment could run the entire length of the property line . . . 50 feet, 100 feet or more. The encroachment could continue further along abutting lots.
 - b. While a minor encroachment may not block access to parklands, it could substantially impair public use or access to parkland. If we have an Encroachment Compliance Agreement under the proposed policy, that impairment could exist for up to 5 years. In my view, the harm and burden on parklands users clearly outweighs any benefit to the encroaching landowner by dragging out abatement.
 - c. Additionally, there has been some concern that a 5-year abatement period is simply too long. In my view, there are very few minor encroachments that could not be abated in twelve months. In those rare cases where circumstances and fairness call for a longer time, I think an ECA extension of one year might be appropriate. I simply cannot believe that it would really take more than two years to abate a minor encroachment.
 - d. I would like to propose two amendments to the proposed draft to address these concerns:
 - i. That the phrase “substantially impair public use or access” replace the term “block” in both definitions; and
 - ii. That the duration of an Enforcement Compliance Agreement be for a period not to exceed one year, rather than up to five. That would mean an encroaching property owner could have up to one year administratively (by decision of the Director) and could apply to the Planning Commission for an extension of up to an additional year, based on the factors in section 4) B of the draft policy.
2. Section 2, Notification

- a. The first paragraph reads, “Real Property Records Reports shall include mention of any notices, encroachment permits, or an Encroachment Compliance Agreement on file.”
 - b. Hopefully, this would provide effective and timely notice of an encroachment to potential buyers of the property.
 - c. If not, what can we do to ensure that buyers are not surprised by the existence of an encroachment?
 - d. Can we somehow put potential buyers on notice that they should secure a survey and ensure that that there are no encroachments?
 - e. How about a warning that, as buyers, the responsibility to abate any encroachments runs with the property?
 - f. Perhaps language can be included in section E of the proposed policy or on the City website to alert buyers.
 - g. ECA’s are recorded in the land records, so there should be no failure to notify in those cases.
3. Section 4, Encroachment Removal Requirements
- a. Under the proposed policy, Encroachment Compliance Agreements only apply to “minor encroachments”, not to “major/significant encroachments”. I have no objection to that limitation. I would, however, oppose providing such grace for major encroachments.
 - b. In paragraph A, the property owner may request consideration to enter into an Enforcement Compliance Agreement for minor encroachments within 90 days or a later period as approved by the Director.
 - c. Is there any reason why this period cannot be limited to 60 days from receipt of the notice establishing the abatement period? My concern here is swiftness and certainty in ultimately abating encroachments.
 - d. In the second paragraph, I would recommend, for previously stated reasons, that the any extended abatement period be for not more than an additional one year . . . and that there be no further extension.
 - e. Again, we should be focused on abating encroachments as quickly as possible, rather than dragging out the abatement process or creating opportunities for delay.
 - f. In paragraph B, iv, replace the term “barrier” with “substantial impairment of public use or access to parklands.”
 - g. In paragraph B, I think there should be consideration of any environmental or geologic concerns associated with the encroachment, removal of the encroachment or restoration.
4. Sections C and D: No Issues
5. Section E
- a. I recommend that we end this section after the first sentence.
 - b. Sale and transfer serves as an effective tool to abate encroachments.
 - c. We should fully leverage it and not create a mechanism for unnecessary delay, especially when there is no reason to do so.

DRAFT PARKLANDS LANDSCAPING POLICY
(Updated 1/6/17)

General Comments

- Unlike the proposed encroachment policy that can be fine-tuned and improved, the proposed Parklands Landscaping Policy is misguided and sets a dangerous precedent.
- What it creates is a process and policy that allows approval of unauthorized private landscaping and/or hardscape and for permitting encroachments in City parklands. In short, it condones the very behavior the City needs to prevent and guard against.

Specific Comments

- In section 4, “minor encroachments” of existing or proposed private landscaping and of existing hardscape can be approved administratively.
- In section 5, the Parklands Committee, upon proper application, shall consider “major/significant encroachments” of existing or proposed landscaping and/or hardscape and proposed new hardscape within five feet.
- If we were addressing a situation where there were no existing encroachments to parklands, I cannot imagine that the City would create a policy that would open the door to approving or permitting private encroachments, whether “minor” or “major”.
- The proposed policy seems designed to manage existing private encroachments, rather than to enforce the deed restrictions and protect the parklands.
- The net effect will be to allow private landscaping and hardscape in the parklands that simply should not be there. And, it will be there in perpetuity. Simply put, the policy lets the “horse out of the barn, and we will never get it back in.”
- The issue is not whether private landscaping (even native plants) would make the particular area more attractive or that private hardscape (stairs or paths) would improve access to parklands. Attractive private landscaping using even native plants will look privately owned, simply because it is designed, organized and limited in area to the property of the adjacent owner. And, in many cases, private hardscape may only improve access to parklands for the adjacent property owner. Leaving it up to staff or even the Parklands Committee to make the right decision under the proposed policy is risky, dangerous and unnecessary.
- I strongly believe the proposed policy may well encourage and condone the very kind of behavior the City must guard against.
- In my opinion, the existing Parklands Landscaping Policy and Change to Parklands policies give us the appropriate tools to properly address appropriate parklands improvements and beautification.

- The existing policies have served the City well. The Parklands Committee has approved appropriate beautification projects, such as the Lunada Bay Homeowners/Land Conservancy pilot beautification project, the Malaga Cove Homeowners project at Via Pinale and other projects. The Committee has also used the existing Parklands Landscaping Policy to deny and abate private planting in the parklands.
- I, therefore, would strongly recommend that we **not** approve the proposed new Parklands Landscaping Policy.

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is entered into this 11th of JANUARY, 2012, by the CITY OF PALOS VERDES ESTATES, a municipal corporation, hereinafter called "City", and William N. Rowley hereinafter called "Property Owner."

WHEREAS, Property Owner owns the underlying fee estate of the property commonly known as 225 Rocky Point in the City of Palos Verdes Estates and legally described as Lot 21 of Tract 17606 and indicated in Exhibit A.

WHEREAS, City owns the underlying fee estate along the bluff between Property Owner's property and the Pacific Ocean as indicated in Exhibit B (hereinafter, the "Encroachment Area").

WHEREAS, there exists improvements, consisting of a stairway, drawbridge and walls (collectively, the "Improvements") which are encroaching onto the Encroachment Area. Said Improvements are indicated on Exhibits B, C, D, and E, attached hereto and made a part hereof.

WHEREAS, the Improvements are presently unauthorized and in violation of Palos Verdes Estates Municipal Code section 12.04.010.

WHEREAS, Property Owner desires that City allow the Improvements within the Encroachment Area to remain in place.

WHEREAS, the encroaching stairway and drawbridge are used periodically by Police, Fire Department and Lifeguard personnel for expedited access to the beach at Lunada Bay, thereby lowering the response times for incidents at said beach.

NOW THEREFORE, City hereby grants to Property Owner the right to encroach onto the Encroachment Area subject to the following terms, covenants and conditions to which the City and Property Owner agree:

1. DESCRIPTION OF ENCROACHMENT AREA. The Encroachment Area is defined as the area in which the stairway, drawbridge, and walls currently exist, and being further defined and restricted to those indicated on Exhibits B, C, D, and E attached hereto and made a part hereof.

2. TERMINATION. This Agreement is terminable at will upon 30 days notice by the City. Property Owner shall cause all Improvements within the Encroachment Area to be removed within 120 days after the City notifies Property Owner that it is exercising its right to terminate this Agreement.

3. USE. Property Owner may use the Encroachment Area only for the limited purpose of maintaining and using the existing bluff stairs, drawbridge and walls.

THIS DOCUMENT IS OFFICIAL BUSINESS OF THE CITY OF PALOS VERDES ESTATES AND IS EXEMPT FROM FEES PURSUANT TO GOVERNMENT CODE SECTIONS 6103 and 27383 FOR RECORDATION. (A 9 page document) Vickie Kroneberger Deputy City Clerk

4. MAINTENANCE OF IMPROVEMENTS. Property Owner shall furnish at his sole expense all maintenance of the Improvements. Maintenance shall be undertaken as necessary to maintain the Improvements in a neat, clean, safe and orderly condition.

5. ENTRY AND USE BY CITY AND EMERGENCY PERSONNEL. City and its agents, together with police, fire department, and lifeguard personnel, shall have the right to enter onto and cross Property Owner's property for the purpose of accessing and using the Improvements at any time. Property Owner agrees to provide City with keys, keycards, or other devices necessary to access the Improvements.

6. CITY'S RIGHTS. It is further understood and agreed by Property Owner that City's rights to the Encroachment Area are paramount to this Agreement. Property Owner shall in no way interfere with City's right to use, access or possess the Encroachment Area and nothing about this Agreement shall be construed to afford Property Owner any type of vested right whatsoever to maintain the Improvements within the Encroachment Area.

7. ALTERATIONS AND IMPROVEMENTS. Property Owner shall make no further improvements or alterations affecting the Encroachment Area without first obtaining all requisite permits and approvals from all responsible agencies. In no event shall any improvements or alterations be made or approved that in any way interfere with the City's use of its property. If City gives notice of termination of this Agreement, Property Owner shall, within 120 days and at his sole expense, remove all Improvements from the Encroachment Area as specified by City. If after the giving of said notice, Property Owner fails to remove all improvements and vacate the Encroachment Area as specified, then said failure shall constitute authorization for City, or its authorized agents, to enter upon the Encroachment Area, and Property Owner's adjacent property as necessary, and remove the Improvements therefrom. All costs associated with the removal of the Improvements by City shall be at Property Owner's expense and the City shall have the right to recover said costs by any means legally permissible.

8. CITY TO BE HELD HARMLESS. This Agreement is made on the express condition that City shall be free from all liability or loss by reason of injury to any person or property, from whatever cause, while within the Encroachment Area, or in any way connected with the Encroachment Area or with the improvements thereon, including any liability for injury to the person or property of Property Owner, his guests, agents, employees, contractors, licensee or invitees. Property Owner hereby covenants and agrees to, and shall, indemnify and defend City and save City harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses however occurring.

9. CONTINUATION OF AGREEMENT AFTER BREACH. Should Property Owner breach this Agreement, the Agreement will continue in effect as long as City does not terminate Property Owner's right to possession at City's option.

10. BINDING ON SUCCESSORS/RECORDATION. The obligations contained in this Agreement to be performed by City and Property Owner shall be binding on City's and Property Owner's successors and assigns. City and Property Owner consent to the recordation of this Agreement with the Los Angeles County Recorder's Office.

6

11. DAMAGE TO IMPROVEMENTS. It is agreed that while using the Improvements City will take reasonable care to not damage them. However, if any of the Improvements should become damaged, City shall not be obligated in any way to repair or replace any of the Improvements and it shall become the obligation of Property Owner to promptly make said repairs should it become necessary.

12. GOVERNING LAW, WAIVER, CAPTIONS, VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California. No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law. The captions heading the various paragraphs of this Agreement are for convenience and shall not be considered to limit, expand, or define the contents of the respective paragraphs. Masculine, feminine, or neuter gender and the singular and the plural number, shall each be considered to include the other whenever the context so requires. If either party consists of more than one person, each such person shall be jointly and severally liable. This Agreement shall be interpreted under California law and according to its fair meaning, and not in favor of or against any party. The exclusive venue for any dispute arising from this Agreement shall be the Superior Court of the County of Los Angeles.

13. NOTICES: Any notice or notices provided by this Agreement, or required by law to be given or served upon City or Property Owner, may be given or served by depositing the same in the United States Mail, postage prepaid, addressed as follows:

To City: City of Palos Verdes Estates
Attn: City Manager
340 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

To Property Owner or his successors in interest:

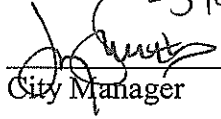
Property Owner
225 Rocky Point Road
Palos Verdes Estates, CA 90274

14. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and no term or provision thereof may be changed, waived, discharged or terminated unless made in writing and executed by both parties hereto.

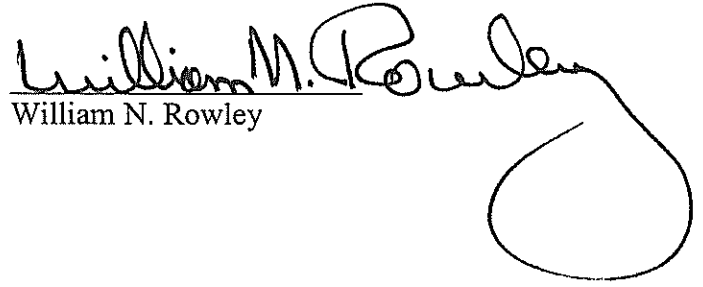
IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have caused this Agreement to be executed. *City of Palos Verdes Estates*

CITY: *William John Rea* :
William John Rea, Mayor

City of Palms Verdes
Estates

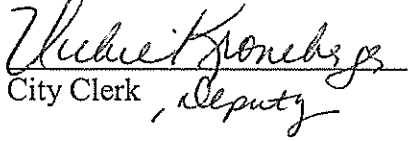


City Manager

4


William N. Rowley

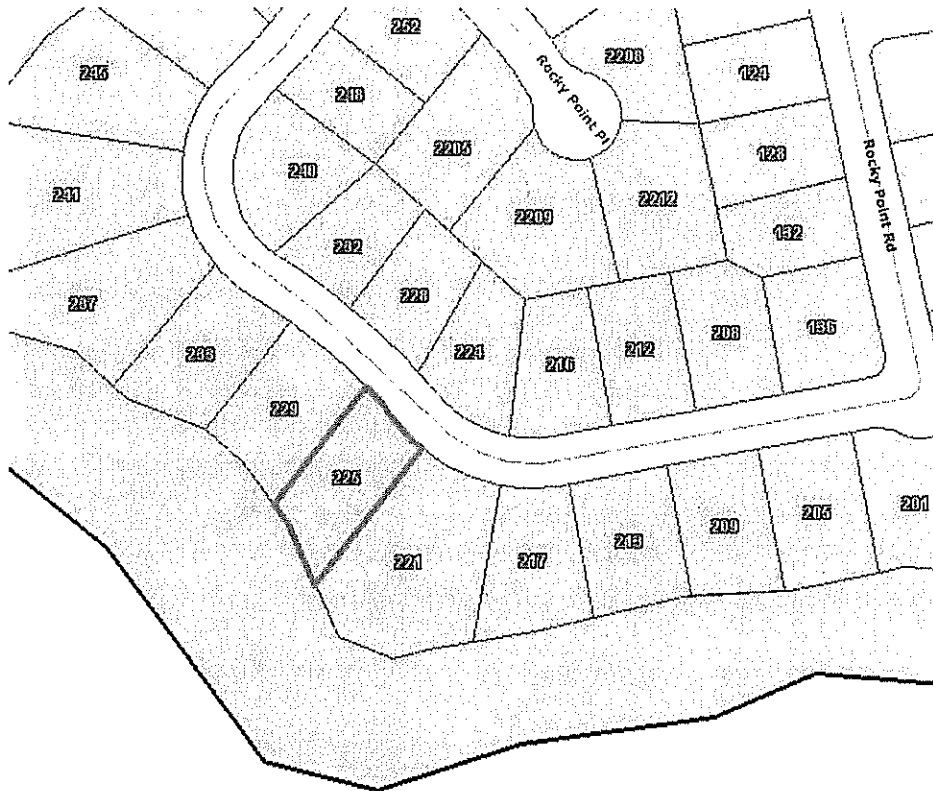
ATTEST:



City Clerk, Deputy

7

Exhibit A



Copyright ©2011, County Appraiser, Telford, Customer Data, Digital Map Products

Exhibit B



Exhibit C



Exhibit D



Exhibit E



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles }

On JANUARY 26, 2012 before me, Vickie Kroneberger, Notary Public,
[Date] [Name of Notary Public and Title "Notary Public"]

personally appeared, WILLIAM N. Rowley
[Name(s) of signer(s)]

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Vickie Kroneberger
Signature of Notary Public



(seal)

*****OPTIONAL INFORMATION*****
THE INFORMATION PROVIDED BELOW IS NOT REQUIRED BY LAW

CHARACTER OR TITLE OF DOCUMENT ENCROACHMENT AGREEMENT

NUMBER OF PAGES 9 (1 of 2 originals) DOCUMENT DATE 1/11/2012

SIGNER(S) OF THE DOCUMENT OTHER THAN THOSE NAMED ABOVE:

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME CITY OF PALOS VERDES
ESTATES

MAILING 340 PALOS VERDES DR W

CITY, STATE ZIP CODE
PALOS VERDES ESTATES, CA

ATTN. CITY CLERK 90274

02/14/2012

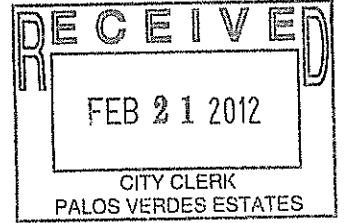


20120249199

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

ENCROACHMENT AGREEMENT



LICENSE AGREEMENT

This License for use of real property (“License”) is made by and between the City of Palos Verdes Estates (“City”) and John DeLuca and Lenore DeLuca (collectively with John DeLuca, “Licensee”).

RECITALS

A. City is the owner in fee of certain real property in the County of Los Angeles, State of California, more particularly described in Exhibit “A” attached hereto (the “Fee Parcel”).

B. Licensee is the owner of certain real property commonly referred to as 976 Via Rincon, Palos Verdes Estates, California, and being more particularly described as Lot 7 of Block 1731 of Tract 7142 in the County of Los Angeles, State of California (the “Residence”).

C. Pursuant to the terms and conditions of this License, City desires to permit Licensee to enter on to the Fee Parcel and to place and maintain thereon a portion of a retaining wall for the benefit of the Residence in the location shown on Exhibit “B” attached hereto.

NOW, THEREFORE, City and Licensee agree as follows:

1. Grant of License. City hereby grants to Licensee an exclusive, revocable License to place and maintain a portion of a retaining wall upon the Fee Parcel in the location shown in Exhibit “B” hereto, subject to all terms and conditions of this License Agreement.

2. Term. The term of this License shall commence December 16, 1998. This License shall remain in effect unless and until terminated by City for any of the following reasons:

- (a.) Licensee fails to comply with any one or more of the terms or conditions of this Agreement; or

(b) A determination is made by City in its sole and exclusive discretion that the public interest requires termination of the License.

3. License Void for Conditions. Notwithstanding any provision of this License to the contrary, this License shall be immediately void and shall be deemed to have been void *ab initio* upon a finding by any court of competent jurisdiction that any provision of this License is in violation of any declaration of covenants, conditions and restrictions or any deed restriction relevant to the Fee Parcel, or that this License otherwise may impair in any manner whatsoever City's fee interest in the Fee Parcel.

4. Termination Obligations. Upon termination of this License for any reason, Licensee shall remove at Licensee's own cost and expense that portion of the wall maintained by Licensee upon the Fee Parcel and shall return the Fee Parcel to the condition it was in prior to the construction of such structure unless prior written consent of City to maintain such structure is first obtained.

5. Repair and Maintenance. Licensee agrees to repair and maintain each and every portion of the wall a portion of which is subject to this license agreement at its sole and exclusive cost and expense. Licensee understands and agrees that City shall have no responsibility for such repair or maintenance regardless of the cause therefore, including, but not limited to damage to the wall caused by the negligence or intentional action of any member of the public otherwise using the Fee Parcel.

6. Indemnification. Licensee agrees to indemnify, defend and hold harmless City, and City's officers, agents and employees, from and against any liability, claim, or damages, including without limitation attorneys fees and costs of suit, arising from Licensee's exercise of the rights granted under this License. Such indemnification and defense shall include, but not be limited to,

claims for damage suffered by any member of the public otherwise using the Fee Parcel allegedly caused by the wall or any portion thereof.

7. Insurance. Licensee shall at all times maintain liability insurance in the amounts and in accordance with the terms of the City of Palos Verdes Estates Encroachment Endorsement, attached hereto as Exhibit "C."

8. Successors and Assigns. This License and each and every term and condition hereof shall be binding up and shall inure to the benefit of the parties hereto and their successors in interest to the Fee Parcel and the Residence.

9. Governing Law. This License is made and is to be performed in the State of California and shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

10. Attorneys' Fees. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this License or as a consequence of any breach by the other party of its obligation hereunder, the prevailing party in such action or proceeding shall be entitled to have all of its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party.

11. Exhibits. Each exhibit referred to herein is incorporated herein by this reference as if set forth fully at length herein.

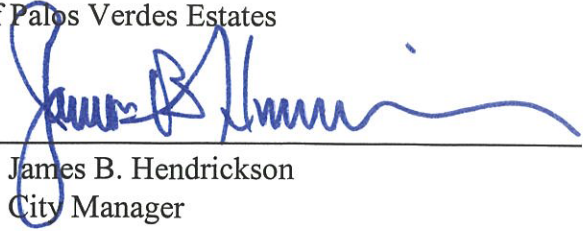
12. Interpretation. This parties have each independently reviewed and participated in preparation of this License, and the terms hereof shall not be construed in favor of or against any party, but shall be construed in accordance with their common meaning.

Executed at Palos Verdes Estates, California on the dates hereafter set forth.

[Signatures on next page]

“CITY”
City of Palos Verdes Estates

Dated: _____

By: 
James B. Hendrickson
City Manager

“LICENSEE”

Dated: 6-10-98

By: 
John DeLuca

Dated: 6-10-98

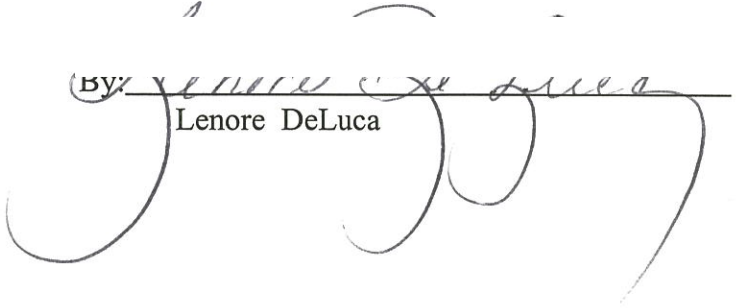
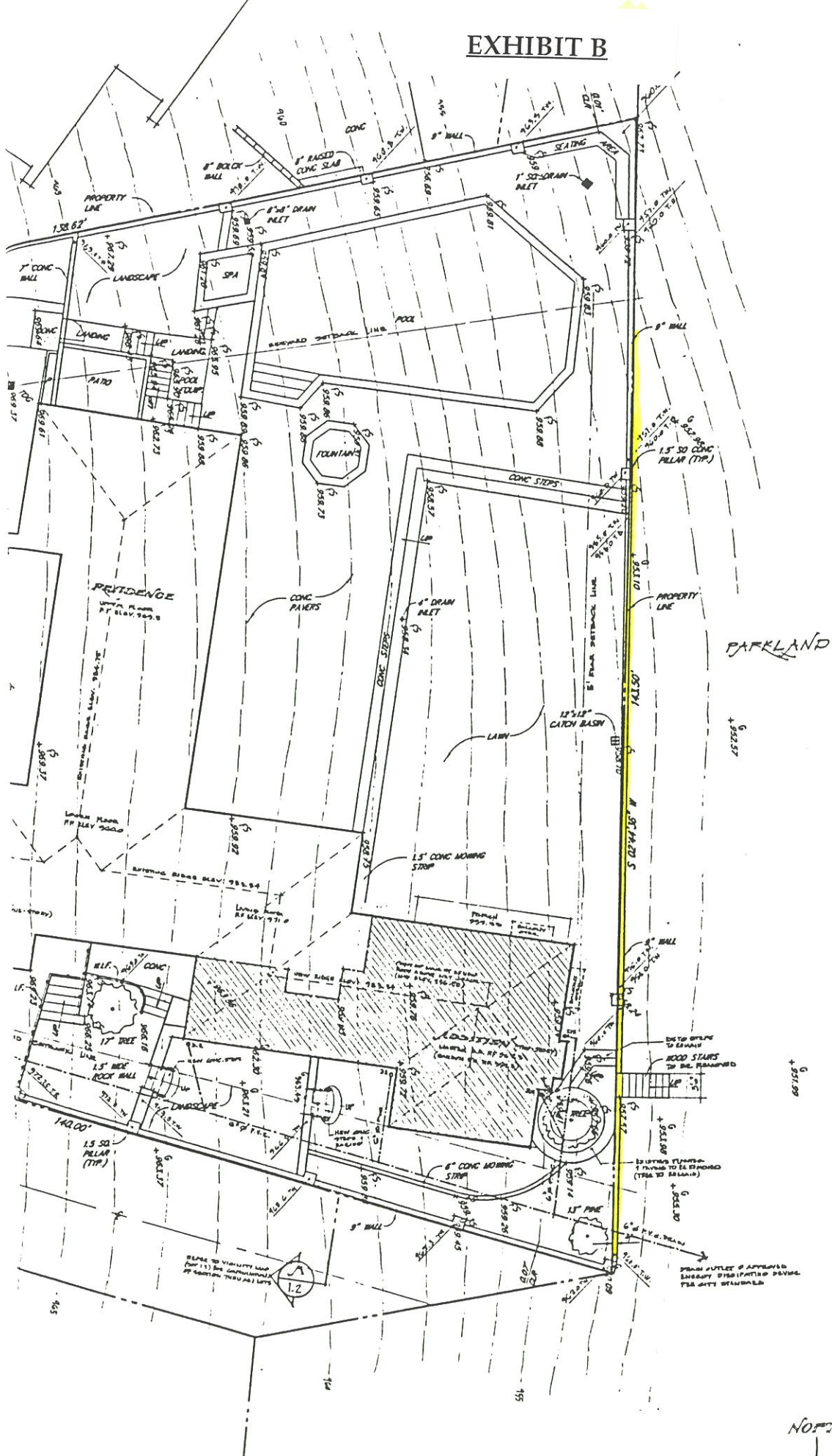
By: 
Lenore DeLuca

EXHIBIT A

LEGAL DESCRIPTION:

Lot A, Tract 8652, Palos Verdes Estates, California.

EXHIBIT B



976 VIA RINCON

EXISTING LOT COVERAGE:	
1111	M & BLDG
1112	M & BLDG
1113	M & BLDG
1114	M & BLDG
1115	M & BLDG
1116	M & BLDG
1117	M & BLDG
1118	M & BLDG
1119	M & BLDG
1120	M & BLDG
1121	M & BLDG
1122	M & BLDG
1123	M & BLDG
1124	M & BLDG
1125	M & BLDG
1126	M & BLDG
1127	M & BLDG
1128	M & BLDG
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1193	M & BLDG
1194	M & BLDG
1195	M & BLDG
1196	M & BLDG
1197	M & BLDG
1198	M & BLDG
1199	M & BLDG
1200	M & BLDG

LEGEND

A.C.	ASPHALT CONCRETE
C.B.	CATCH BASIN
C.L.F.	CHAIN LINK FENCE
C.L.R.	CLEAR
CONC.	CONCRETE
D.I.	DRAIN INLET
E.P.	EDGE OF PAVEMENT
F.F.	FINISH FLOOR
F.S.	FINISH SURFACE
G.	GROUND
P.	PLANTER
S.T.S.	STREET SIGN
T.O.G.	TOP OF GRATE
T.T.	TOP/TOE
W.I.F.	WROUGHT IRON FENCE
W.M.	WATER METER
T.W.	TOP OF WALL
T.P.	TOP OF POST / PILASTER
T.B.	TOP OF BALLUETER
T.R.	TOP OF RAILING

AREAS & COVERAGE

11	AREA OF LOT	1711.0
12	EXISTING RESIDENCE	1711.0
13	EXISTING GARAGE	1711.0
14	AREA OF ADDITION	1711.0
15	TOTAL AREA OF PROPOSED RESIDUAL	1711.0
16	TOTAL PROPOSED COVERAGE	1711.0
17	PERCENT OF COVERAGE	100.0%

NOTES:

- APPROVED REGIONAL CENTRAL M AND FUNCTIONAL ZONING THE M TO APRIL 15 TH. THE PLANS OF PROPOSED AND MAINTAINED TO
- OWNER SHALL SHOW PROPOSED REGIONAL PLANS BY WILLIAM T. ALL OTHER REGULATIONS ARE ENFORCED



CITY OF PALOS VERDES ESTATES
ENCROACHMENT ENDORSEMENT

To be attached and made a part of all policies insuring the liability of any person, form or corporation subject to regulations by the City Council because of the existence of an encroachment.

Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1) The City of Palos Verdes Estates, a municipal corporation, its Mayor, members of its City Council, its officers, agents, servants and employees while acting as such shall and each of them hereby are included as additional insureds in the policy.

2) Said additional insureds shall be indemnified and saved harmless against any and all claims which result from the existence of any encroachment located on the property of the named insured, from any encroachment existing as a result of the named insured's operation or activity or any encroachment on City property immediately adjacent to property owned by the named insured. This hold harmless assumption on the part of the underwriters shall include all costs of investigation and defense.

3) This endorsement and the policy underlying this endorsement may not be cancelled except on thirty (30) days written notice to the City Manager of the City of Palos Verdes Estates.

4) Notwithstanding any other provision of the underlying policy, the limits of liability shall be those provided in the policy or \$100,000 bodily injury to any one person and \$300,000 bodily injury in any one occurrence and \$50,000 property damage for any one occurrence.

5) Limited classifications restricting endorsements, exclusions or other special provisions contained in the policy shall not act to limit the benefits of coverage as they apply to the City of Palos Verdes Estates and its officers, agents, servants and employees as enumerated in this endorsement, however, nothing herein contained shall affect any right of the insurer against the named insureds.

The limits of liability as stated above apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits applying elsewhere in the policy.


Duly Authorized Agent

Attached to and forming part of

Policy No. 71-35-3474-06
of the State Farm Insurance
1090 N. Western Ave., Ste 200
San Pedro, CA 90732
Date: 07/09/98
Expiration Date: 9/12/97-09/12/98 extended to
Site Address: 976 Via Rincon 9/12/99
Palos Verdes Estates, CA 90274
Site Legal Description: H01122

Agency
HUSSEY INSURANCE
1090 N. Western Ave., Suite 200
P.O. Box 6100
San Pedro, CA 90734-6100
Name/Address



HUSSEY INSURANCE AGENCY INC. Lic#: 0B86514
 Auto-Life-Health-Home and Business
 1090 N. Western Ave. Suite 200 E-Mail: HPVS86A@PRODIGY.COM
 SAN PEDRO, CA 90732 PHONE (310) 547-4433 Fax (310) 547-4445

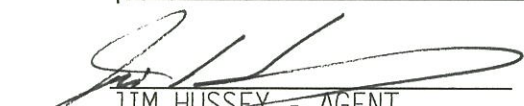
July 09, 1998

CERTIFICATE OF INSURANCE

This is to certify that STATE FARM INSURANCE, BLOOMINGTON, ILL has in force Insurance for: DELUCA, JOHN & LENORE for the limits and period listed below:

POLICY NUMBER	TYPE OF INSURANCE	COVERAGE DATES	LIMITS OF COVERAGE
71-35-3474-0G	HOMEOWNERS	09/16/97 To 09/16/98	DWELLING AMOUNT: \$793,900.00
ADDRESS LOCATION: 976 VIA RINCON PALOS VERDES ESTATES, CA 90274		EXTENDED TO: 09/16/99	LIABILITY: \$300,000.00

 Certificate Holder: ADDITIONAL INSURED:
 CITY OF PALOS VERDES ESTATES
 340 PALOS VERDES DRIVE WEST
 PALOS VERDES ESTATES, CALIFORNIA 90274


 JIM HUSSEY - AGENT
 07/09/98
 DATE



HUSSEY INSURANCE AGENCY INC. Lic#: 0B86514
 Auto-Life-Health-Home and Business
 1090 N. Western Ave. Suite 200 E-Mail: HPV586A@PRODIGY.COM
 SAN PEDRO, CA 90732 PHONE (310) 547-4433 Fax (310) 547-4445

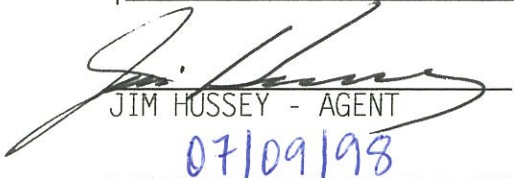
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 Certificate Holder: ADDITIONAL INSURED:
 CITY OF PALOS VERDES ESTATES
 340 PALOS VERDES DRIVE WEST
 PALOS VERDES ESTATES, CALIFORNIA 90274


 JIM HUSSEY - AGENT
 07/09/98
 DATE

PALOS VERDES HOMES ASSOCIATION

Offices in the City Hall • Telephone (310) 373-6721
P.O. Box 188, Palos Verdes Estates, California 90274
HTTP://palosverdes.com/homesassociation
e mail: PVHA@ix.netcom.com
Incorporated 1923

September 24, 1997

George Sweeney, Architect
3 Malaga Cove Plaza, Suite 201
Palos Verdes Estates, CA 90274

Re: Lot 7, Block 1731, Tract 7142 #4540

Dear Mr. Sweeney:

Following are the minutes of the September 16, 1997 Board of Directors meeting:

“LETTER FROM GEORGE SWEENEY ON BEHALF OF MR. AND MRS. ‘
JOHN DELUCA - PARKLAND ENCROACHMENT
Lot 7, Block 1731, Tract 7142, Plan #4540

Following discussion, review of plans and a letter from Mr. Sweeney, motion was made by Director Frengs, seconded by Director Melton and unanimously carried to approve the parkland encroachment, provided the City will grant a license agreement.”

Very truly yours,

Marie C. Sullivan

Marie C. Sullivan

Manager

CC: Mr. and Mrs. John DeLuca, 976 Via Rincon

mm

ENCROACHMENT

Lot 7, Block 1731, Tract 7142, Plan #4540

Following discussion and review of plans, motion was made by Director Frengs, seconded by Director Melton and unanimously carried to approve the parkland encroachment, provided the City will grant a license agreement.

September 12, 1997

Board of Directors
Palos Verdes Homes Association
340 Palos Verdes Drive West
Palos Verdes Estates, CA 90275

RE: Deluca Residence
976 Via Rincon
retaining wall encroachment

Dear Members of the Board:

A recent survey performed for the subject property indicates that an existing retaining wall at the rear property line encroaches an average of 3" onto parkland.

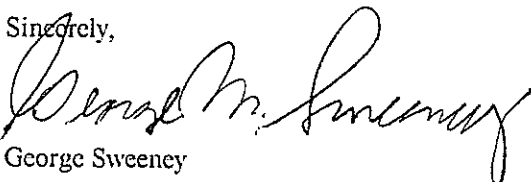
This wall was constructed along with the residence by the original owners in 1962. At that time accuracy and verification standards for construction in Palos Verdes were not what they are today and it is my belief that said encroachment was the result of an honest error on the part of the contractor.

The subject retaining wall is approximately 7' high and is capped with a 3' high cast stone balustrade. If a wall of this magnitude is to be demolished and rebuilt, I am very concerned that current geotechnical engineering standards and code requirements as interpreted and enforced by City consultants would make the replacement of this wall very expensive indeed (in excess of \$90,000.00). Additionally, the spacing of balusters in the existing balustrade does not comply with current building code requirements. Although no hazard exists, City inspectors would require that the balustrade be reconstructed with a much closer spacing of the balusters, and this would be very undesirable aesthetically.

Because the encroachment is of such a minor nature and because the cost, both financially and aesthetically, of relocating the wall is so onerous, it is my hope that some method of permitting the encroachment for a limited period of time may be found. Perhaps a License Agreement for the life of the wall is possible.

We respectfully request your consideration, understanding, and assistance in this matter.

Sincerely,


George Sweeney

DELUCA, JOHN - ADDITION, MAJOR ALTERATION - DWELLING
 Lot 7, Block 1731, Tract 7142
 976 Via Rivera *Via Rincon*

(4540)

Photos were reviewed.
 Show minimum side yard and rear yard on plot plan.
 Stairs and wall on parkland must be removed.
 Try to protect the integrity of this house with proper detailing.
 Approved as above as a preliminary, submit working drawings.

6/23/97

Addition Areas:

Upper floor	<u>813</u>	sq. ft.
Lower floor	<u>813</u>	sq. ft.
Basement	<u>.</u>	sq. ft.
Garage-1/2	<u>.</u>	sq. ft.
Porches-1/3	<u>.</u>	sq. ft.
Detached Structure		sq. ft.
TOTAL	<u>1626</u>	sq. ft.

Prelim Addn & Major Alt.
 Type of submission

6-12-97

Received Date

\$1224 / \$400 \$1624⁰⁰ (#6045)
 Fee Paid

Joseph M. Smalley
 SIGNATURE

FOLLOWING FOR OFFICE USE ONLY

All Called Setbacks 20' Height Limit 2 1/2

Easements: N-3, E-5 Architectural Type II Roof Type choice

Special restrictions _____ Zone A

Floor plans - pg 3.1, 3.2 Foundation plan - pg 2.1

Elevations - pg 4.1, 4.2 Roof plan - pg 4.2

Exterior materials: Roof Material (if new) 2 Piece Mission Tile Pitch 4:12

NOTE: Provide plot plan with a solid line showing building walls as they interface the ground and roof overhang as a dotted line.
 Provide separate roof plan showing the walls below as a dotted line.
 Show gutters and downspouts on roof plan and on elevations.
CLEARLY INDICATE WHAT IS NEW AND WHAT IS EXISTING

Plans Returned to:

Date	Name	No. Plans
<u>4-29-97</u>	<u>Joseph M. Smalley</u>	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	

Comments:

17006

FOUND

Septic Tank & Cesspool Show on Plot Drying Yards _____

Samples: Color _____ Roof Tile

Paint: Ext. Doors Ext. Plaster Masonry NOTE

Dimension: Chimney _____ Front Door Ext. Brick _____

Gutters & Downspouts _____ Plumbing Vents _____

SUPPLY ELEVATION OF TOP OF

THIS AGREEMENT is made with reference to the following facts:

WELLS FARGO BANK, N.A., formerly known as Bank of America NT&SA as trustee of the Ralph M. Parson Trust (hereinafter "PARSON TRUST"), owner of the westerly portion of Lot 11, Block 1830, Tract 7540.

RUSSELL D. SMITH AND ANNETTE FOX SMITH (hereinafter "SMITH") are the owners of the easterly portion of Lot 11, Block 1830, Tract 7540.

PALOS VERDES HOMES ASSOCIATION (hereinafter "PVHA") is a non-profit corporation charged with responsibility for enforcement of Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges affecting said properties including, inter alia, a restriction concerning setback distances between neighboring properties.

A structure exists on the property owned by PARSON TRUST that fails to comply with the setback restrictions. Said structure has existed since 1927.

The only persons or entities directly affected by the location of said structure are PARSON TRUST, SMITH and PVHA.

The location of the PARSON TRUST property and SMITH property is such that the non-compliance is not visible from any public street or apparent from virtually any vantage point.

IT IS HEREBY AGREED:

1. That the existing structure may remain in its present location.
2. If the structure is removed, any new construction shall comply with the setback requirements.

This Agreement applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 29th day of March, 1990.

Peter G. Lawson
PETER G. LAWSON
Vice President

By: Janet D. Erickson Asset Manager
WELLS FARGO BANK, N.A., formerly known as
Bank of America NT&SA as trustee of the
Ralph M. Parson Trust

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
4
MIN. 8 A.M. MAY 4 1990
PAST.

Russell D. Smith
RUSSELL D. SMITH

Annette Fox Smith
ANNETTE FOX SMITH

PALOS VERDES HOMES ASSOCIATION,
a non-profit corporation

By Harry M. Brandel, Jr.
HARRY M. BRANDEL, JR., PRESIDENT

By Betty Joyce Collier
BETTY JOYCE COLLIER, SECRETARY

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On this 29th day of MARCH, 1990, before me, Shirley Ann Blim, a Notary Public in and for said County and State, personally appeared Peter G. Lawson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the VICE PRESIDENT and Janet D. Erickson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Asset Manager of Wells Fargo Bank, N. A., the association that executed the within instrument, and acknowledged to me that such association executed the within instrument.

WITNESS my hand and official seal

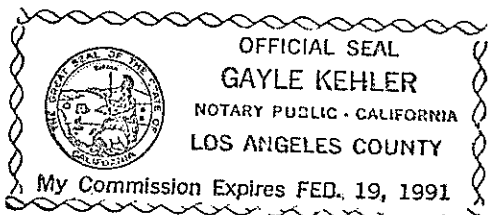


Shirley Ann Blim
Notary Public in and for the
County of Los Angeles
State of California

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On this 6th day of April, 1990, before me, Gayle Kehler, a Notary Public in and for said County and State, personally appeared Russell D. Smith and Annette Fox Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal

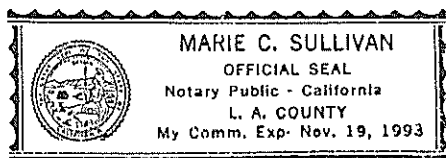


Gayle Kehler
Notary Public in and for the
County of Los Angeles
State of California

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On this 9th day of April, 1990, before me, Marie C. Sullivan, a Notary Public in and for said County and State, personally appeared Harry M. Brandel, jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the President, and Betty Joyce Collier, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Secretary of Palos Verdes Homes Association, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal



Marie C. Sullivan
Notary Public in and for the
County of Los Angeles
State of California

HISTORY FOR ENCROACHMENT INTO PARKLANDS

1602 ESPINOSA CIRCLE

PC-330-11

Parklands Committee: June 13, 2011

City Council: June 28, 2011 and July 12, 2011

height and per the recommendations of the City Forester. The motion was seconded by Paul Rubincam and passed by unanimous oral vote.

3. PC-330-11; Application to retain and maintain non-standard encroachments located in the parklands adjacent to the rear of 1602 Espinosa Circle
Applicant: Steven and Susan Andelson
1602 Espinosa Circle
Palos Verdes Estates, CA 90274

City Forester Moritz introduced this as an application to keep and maintain a 235 sq. ft. grass area and statue in the parklands at the rear of 1602 Espinosa Circle. The applicants list their reasons as follows: The grass area is small, fire safety is enhanced by the grass, the area was previously planted by Ms. Fields, the statue and pedestal are small and integrate into the surrounding area. City Forester Moritz said the City has over 800 acres of parkland, and standards have been developed for it. There are many examples of encroachments onto parkland that have not been approved. Parkland is to be enjoyed by the public and is to have natural vegetation. The Homes Association also has rules. One criteria is that parkland is not to appear as an extension of private property. The City preserves parkland, but does not landscape it.

Ruth Shaffer asked what would be appropriate for this open space. City Forester Moritz said it used to be just soil and pine needles, like the other properties there. The whole area was landscaped with paths by Ms. Field. Ruth Shaffer asked if the Rosemary is natural to PVE; City Forester Moritz said no, but it is a low-water plant. The rocks were already there. For parkland we would not approve grass; even in parks we try to eliminate it and use water-wise plants.

Chairman Peterson pointed out that in the previous application a section of parkland is being watered; City Forester Moritz said he has noted that. Chairman Peterson asked if the Committee should be looking at any of the walls and trails that go to the left and right. City Forester Moritz said this application is only requesting to retain and maintain the section of grass and the statue. There is no reason to remove the other paths, but we also don't want them to be worked on or fixed.

Paul Rubincam asked if the resident needs to remove the sod if the application is denied. City Forester Moritz said he should remove the statue and the grass and grade the area if the application is denied. If there is irrigation, that should also be removed. The steps and other encroachments from the prior resident can remain.

Chairman Peterson said this is ambiguous since the City has allowed the encroachments to exist, and they seem to have been approved by City Council at some point. However, there are no minutes from prior meetings.

City Forester Moritz said the rule is that you can't landscape parklands without City approval. The grass lawn and statue are new. The Committee is not deciding on Ms. Field's work, just the new encroachments. In the past another resident wanted to landscape parklands and many conditions were required, so it was never done. If an encroachment is approved, it is usually for the purpose of the public.

Ms. Cindy Ahearn, 1606 Espinosa Circle, said Chairman Peterson and Mr. Andelson are both attorneys, and they know that when a person landscapes City property, it can become their property. Code Enforcement has been to this property a number of times. Ms. Ahearn did not think that Mr. Andelson should be rewarded for illegally building on City property. She said the statue is offensive and not appropriate for children to see. The City must be fair and not allow such a statue on public land. If Mr. Andelson were to keep the encroachments, the City would be giving him about \$30,000 worth of property.

Mr. Steve Andelson, 1602 Espinosa Circle, said he highly respects parkland. When Ms. Fields owned this property the grass was there. She landscaped the entire area, he has simply maintained it. The grass provides a buffer zone between his property and the parkland that has dry bushes and weeds. That could be a potential fire hazard because of the prevailing winds from the ocean. The City suggests buffer zones as a preventive measure. The grass, groundcover and statue are not permanent and don't increase City maintenance or liability.

Ruth Shaffer said she saw the back yard and thought it to be a lovely area. The house is beautiful. She said the grass is like a fire break between the house and the open space with dry weeds 5 to 6 ft. high. Fire could definitely be an issue there. She could

see having the statue moved onto private property. However we also have the Neptune statue here in Malaga Cove.

Paul Rubincam asked about any approval going to City Council; City Forester Moritz said this Committee is advisory and parties can appeal to City Council. Paul Rubincam noted that the grass in question looks like the private property lawn.

Mary Jane Schoenheider said she saw the house and yard which are beautiful. The grass is on parklands, but it blends nicely with the surroundings. She loved the combination of the parkland and grass, and did not object to the statue.

Dianna Chooljian said when she visits a property she tries not to disturb the resident and hopes to form an unbiased opinion. The home is beautifully tailored on the exterior, and neighbors allowed her to go through to the back where she saw a lovely oasis. She commended the owners for a job well done. She said she understood the legalities, but this is tastefully done. It fits the environment and surrounding parklands.

Ruth Shaffer said she read that some encroachments like this can be allowed to remain. Ms. Ahearn, from the audience, questioned her sources; Ruth Shaffer read verbatim from City policy.

MOTION

Mary Jane Schoenheider moved to approve PC-330-11, application to retain and maintain non-standard encroachments located in the parklands adjacent to 1602 Espinosa Circle. The motion was seconded by Dianna Chooljian and passed by unanimous oral vote.

4. PC-331-11; Application to remove two trees located in the parkway adjacent to 2132 Chelsea Road
Applicant: Sarah Kaupp Boyle
2132 Chelsea Road
Palos Verdes Estates, CA 90274

City Forester Moritz introduced this as a request to remove 2 City trees for the installation of a new circular driveway. Both trees are safe and healthy. The Eucalyptus would need to be removed since it is in the footprint of the driveway, and the Liquidamber tree should be removed since it would be close to the driveway and has a high potential for root damage.

Paul Rubincam asked if there is a way to protect a new driveway, even a straight one, from root damage. City Forester Moritz said roots would need to be removed, and root barriers are not typically used with a large old tree. Also, cutting the roots is tricky, and there is no way to make it work with this tree.

Ms. Sarah Kaupp Boyle, 2132 Chelsea Road, said they hope to build a circular driveway to keep cars in the front. Then they can have their sons play in the back. Also, the existing asphalt driveway is cracked and hazardous now.

Chairman Peterson asked if the circular driveway is approved by the City. Ms. Boyle said the Homes Association has approved it. The City only requires that it be done by a licensed contractor.

Paul Rubincam said initially he did not think he would approve this since there is no view issue; but now he could approve it with reservations. His concern was that approval could set a precedent.

Mary Jane Schoenheider said the driveway has been damaged by the tree roots. Both trees are beautiful, but the applicant is willing to plant a new street tree and also donate to the Tree Bank. She said she could approve it.

Ruth Shaffer said she loves Liquidamber trees, but the driveway is being damaged by the roots. She asked about the street tree; City Forester Moritz said it is the Australian Willow which has a low potential for root damage. It has leaves that are 4 inches long and a "weeping" appearance. It is a slow growing, drought tolerant tree. It is successful wherever it is watered.

Dianna Chooljian asked if the roots would disturb the driveway if one is planted in the center of the circle. City Forester Moritz said the roots will be small when they

- **STOP SIGNS ON VIA DEL MONTE, BOTH DIRECTIONS, NEAR THE GATOS PLACE/VIA DEL MONTE INTERSECTION**
- **SLOW PREPARE TO STOP PAVEMENT MARKINGS PAINTED ONTO VIA DEL MONTE, BOTH DIRECTIONS**

Director Rigg reported that Gatos Place residents requested a stop sign in both directions on Via Del Monte at Gatos Place as well as for red curb on Via Del Monte to help sight visibility. Stops signs were determined to be appropriate and TSC supported red curb on both sides of the street to enhance visibility from La Venta Inn and [from traffic] leaving from Gatos Place. He said it's a complicated intersection and final engineering would need to be worked out to determine what it would look like, albeit similar to the Conejo/Montemar intersection.

Councilmember Goodhart confirmed with Director Rigg that the location of the stop signs are yet to be determined. As proposed, Director Rigg explained that the red curb would be on both sides of Via Del Monte and on each side of the intersection of the side street with Via Del Monte.

Jim Wharton, 3314 Dalemead St., Torrance, of LaVenta Inn, was concerned about the red curb because it may create more danger than what it tries to solve. Also, if they lose parking on Via Del Monte, primarily for staff during events, he was unsure where else they would park other than throughout the neighborhood. They were also concerned about creating hazards for La Venta guests.

Director Rigg said the TSC was more in support of the red curb on the south side of the street adjacent to Gatos Place, as opposed to adjacent to La Venta. Concerns were raised for employees and guests having to park elsewhere, providing a need to cross the street by displacing them onto Gatos Place. However, this would be reviewed again in 6 months.

Mayor Rea said they could affirm the TSC recommendation or they could modify it to remove the red curb on the north side around La Venta Inn. Director Rigg said they typically try to use the least amount of force necessary in any kind of safety or traffic calming issue, so this would be adequate along with vegetation removal.

Councilmember Humphrey said she was concerned about having so much red striping and hazards this may cause, particularly with pedestrians at night trying to get to their cars. She supported minimizing striping.

Councilmember Perkins concurred. They could add more striping later if determined it's needed at the 6 month review. Director Rigg said 'no parking' adjacent to Gatos Place on the south side of the street would be highly needed and effective.

Councilmember Goodhart said Gatos Place residents face a dilemma; having a stop sign there is going to solve that problem. He understood La Venta's concerns, but as long as they maintain no parking on the south side, there should be adequate visibility for both auto and pedestrian traffic. He supported approval as stated in the staff report with the modification.

Councilmember Goodhart moved to approve the recommendation of the Traffic Safety Committee, modified to delete striping of "red curb on westbound Via Del Monte for 109 feet from Gatos Place." The motion was seconded by Councilmember Humphrey and carried by unanimous oral vote.

Director Rigg confirmed this matter would return to the Traffic Safety Committee for review in 6 months.

**PARKLANDS COMMITTEE ITEM OF JUNE 13, 2011 (Agenda Item 6c):
PC-330-11; APPLICATION TO RETAIN AND MAINTAIN NON-STANDARD ITEMS
LOCATED IN THE PARKLANDS ADJACENT TO THE REAR OF 1602 ESPINOSA
CIRCLE
APPLICANT: STEVEN AND SUSAN ANDELSON**

Director Rigg reported that turf and a pedestal with statue within City parklands are proposed. He said the turf was in place when the current residents moved in; they added the pedestal with statue. Complaints from a neighbor initiated a Code Enforcement action; options provided were to either

remove those items or to bring them before the Parklands Committee and Council for approval. Parklands has reviewed and approved five or six similar applications over time when it was found that ground cover provided no significant negative findings. They also found it was appropriate to approve the statue at this time. Director Rigg clarified that the existing stairs and rails at the rear have been in place for 40-50 years; they run behind several of the area homes and over time it was determined it's not the burden of the adjacent property owners to bear. They could determine to remove these structures on City property at any time, but they are not part of this application.

Mayor Rea asked what criteria for retention was applied for this approval. Director Rigg said there is no specific policy or criteria; the Parklands Committee looks to see if there is significant benefit for the adjacent property owner and if it makes functional and practical sense to allow it to remain, and to determine if it has significant impact to the public at large. He said the Parklands Committee is very much against any parkland improvements, such as vegetation that are visible to the public, which makes it appear as private property. The fact that this is at the rear and there is a connection to the long standing pipe/rail system in the stairway gained their support.

Mayor Rea asked if the director, historically, would approve this type of groundcover as cited under current rules and regulations. Director Rigg said he would never approve any landscaping of the parklands and would always defer these decisions to the Parklands Committee.

Councilmember Perkins said she was concerned about the criteria for approval and how Council applies it consistently when it comes to parklands encroachments, being particularly aware of ongoing discussions about the Valmonte boundary strip. It has been Council's position not to encourage or permit anything that allows someone to make use of parklands or right-of-way in a way that looks like it's part of private property. She asked staff how they would ensure this doesn't set a precedent. Director Rigg said an encroachment would specifically need Planning Commission approval, by definition it includes a structure or facility. Neither one of these – grass or free standing statue/pedestal – are classified as such. He said the City Attorney's office concurred that the statue is not a structure; it is movable. The precedent setting nature is a concern; however, research shows that 6 of these have been approved over the past 12 years. They are of an unusual and site-specific need. The last one approved was on the corner of Campesina and Via La Cuesta; landscaping of a sliver of parkland between the property and public right-of-way were allowed.

Councilmember Humphrey said allowing the statue to remain concerned her because it makes it appear that it is on private property. They could require the applicant move the statue onto their private property.

Councilmember Perkins said her concern is more extensive; she does not think of turf and grass as a fire prevention measure. It looks as if it is part of [the applicant's] back yard. Councilmember Humphrey was in concurrence; they supported returning the area to a more natural state contiguous with the hillside without the statue.

Councilmember Goodhart asked if the existing PV stone structure serves to prevent land slippage and if the stairs provides safety for pedestrians in the parkland. Director Rigg said many years ago the owner of the lot next door owned this and another vacant lot and built these rock wall structures; it is not tied to this application. They could be removed and would not destabilize the slopes.

Steve Andelson, 1602 Espinosa Circle, applicant, said the regulations approved by Council allow citizens to plant vegetation on parkland immediately adjacent to their property for reasons which include fire prevention and the enhancement of parkland beauty provided the encroachment does not restrict public access, and is not a permanent structure. He said they live next to a very large open canyon and the parkland improvement is green; this buffer zone aids in fire prevention. He said the parkland canyon is not openly accessible to the Fire Dept. and is potentially a fire hazard. He said the weeds, as on the other side of the rocks, would result. He said the rock wall was there for over 40 years, built by prior owners. He said there was existing grass and ground cover, which they've continued to maintain. If not maintained, he said the City Forester said the area would revert to weeds and pine needles – it would create a fire hazard immediately adjacent to their property. Mr. Andelson said this does not impose any adverse impact on public health or safety, no additional maintenance responsibility to the City, no barriers or permanent structures. They would remove the statue if required. He requested support of the Parklands Committee decision.

Mayor Rea said the statue should be removed and brought back across the property line. He was inclined to defer to the Parklands Committee's decision to allow the turf to remain.

Councilmember Perkins noted they did not have the full benefit of minutes review. She supported continuance to fully understand the Parklands Committee discussion.

Unanimous consensus of Council was to continue this matter to the July 12th or 26th Council meeting with the applicant present.

COMMUNICATIONS FROM THE PUBLIC – No one came forward to speak.

PUBLIC HEARINGS

APPEAL OF PLANNING COMMISSION DENIAL OF WT-115-10; WIRELESS TELECOMMUNICATION FACILITIES APPLICATION FOR EQUIPMENT PROPOSED WITHIN THE CITY RIGHT-OF-WAY ADJACENT TO 2827 VIC VICTORIA. LOT 7, TRACT 30393

**APPELLANT/APPLICANT: NEXTG NETWORKS OF CALIFORNIA, INC.
890 TASMAN DRIVE
MILPITAS, CA 95035**

City Clerk Judy Smith confirmed public notice was given.

Planning Director Rigg reviewed the history of this application (originally submitted June 2010) ultimately denied by the Planning Commission. An 11 ft. steel pole 22 ft. from the edge of pavement was proposed within the City's public ROW, 120 ft. south of the driveway located at 2827 Via Victoria, 7 in. diameter, and set into the hillside requiring a 4 ft. retaining wall and pad (20 sq. ft. hardscape). He noted that utilities are currently undergrounded in this area making for a visually rural residential neighborhood. The City's wireless consultant, Jonathon Kramer, reviewed the project in January and reported there was not a significant gap in service; there was virtually uninterrupted coverage in the area. Significant coverage was also confirmed by staff multiple times. This is a Verizon site as proposed by NextG. From aesthetics standpoint, Mr. Kramer concluded that the site could be redesigned to be less intrusive. February 2011, the revised project raised significant aesthetic concerns of the proposed pole in their existing views and property values. In March, two proposals were provided: 1) 23 ft. high pole 4 ft. from the edge of pavement, close to an adjacent tree, and 2) the application before Council this evening as reviewed by the Planning Commission. Visual impact concerns were again raised with both proposals. The Planning Commission reviewed and denied the application in May 2011, pursuant to significant discussion regarding lack of gap of coverage, and aesthetics, which fall into the time, place, and manner findings that are within the wireless telecommunications ordinance within the Code. He deferred to the City Attorney to discuss the 'no gap in coverage' finding.

Assistant City Attorney Smith said the Planning Commission found that there wasn't a significant need for coverage in the area and had significant aesthetics concerns; both of which could be considered. Under the Telecommunications Act, he stated, a City can deny an application if, 1) it doesn't meet City ordinances, and 2) it doesn't result in effectively prohibiting telecommunications service, or whether or not there is a significant gap in coverage. Therefore, the Planning Commission's questioning as to whether or not there is a need for coverage in the area is completely relevant. Under City Ordinance, it provides that the Planning Commission and Director can consider aesthetics, but also other impacts that relate to the health, safety or welfare of the community that could relate to the time, place and manner restrictions for wireless telecommunications services. The Planning Commission made the finding that there wasn't a significant need for coverage based on both the expert testimony of Mr. Kramer and by staff's determination that there wasn't a need for additional coverage in the area.

Director Rigg said the appeal purports that the Planning Commission denial was in error due to the fact that the need for coverage is irrelevant to the findings for approval. The appellant also indicates that the Planning Commission should not rely on Mr. Kramer's expert opinion that there is no gap in service. He said the Planning Commission also specifically discussed one of the findings per our Code is that time, place, and manner includes aesthetics.

CONSENT AGENDA

- CITY COUNCIL MINUTES OF JUNE 28, 2011
- TREASURER’S MONTHLY REPORT – JUNE 2011
- RESOLUTION R11-17; AFFIRMING THE PLANNING COMMISSION DENIAL OF WT-115-10; WIRELESS TELECOMMUNICATION FACILITIES APPLICATION FOR EQUIPMENT PROPOSED WITHIN THE CITY RIGHT-OF-WAY ADJACENT TO 2827 VIA VICTORIA
- DESIGNATION OF VOTING DELEGATE (COUNCILMEMBER GOODHART) – LEAGUE OF CALIFORNIA CITIES ANNUAL BUSINESS MEETING
- CLAIM REJECTION – COY, ELLIOTT

COMMUNICATIONS FROM THE PUBLIC – No one came forward to speak.

OLD BUSINESS

Councilmember Humphrey recused herself from discussion on the next item and departed the Chamber.

PARKLANDS COMMITTEE MEETING ITEM OF JUNE 13, 2011: PC-330-11; APPLICATION TO RETAIN AND MAINTAIN NON-STANDARD ITEMS LOCATED IN THE PARKLANDS ADJACENT TO THE REAR OF 1602 ESPINOSA CIRCLE APPLICANT: STEVEN AND SUSAN ANDELSON

Public Works Director Rigg reported that the Parklands Committee unanimously (5-0) approved an application to retain turf and a statue (on pedestal) in the parklands adjacent to 1602 Espinosa Circle on June 13, 2011. City Council directed this item be removed from the City Council Agenda on June 28, 2011, for further review. Photographs were reviewed. Existing stairs, rails, and small retaining walls in the parklands are long standing encroachments and were not part of the application and not part of the City’s enforcement action on the property. He said the statue has since been moved out of the parklands. He said there are no applicable findings for applications of this nature within the Code; the few applications that have been approved by the Parklands Committee have been small and unique in nature.

Mayor Rea confirmed with Director Rigg that there is an underground watering system and it is part of this application.

Mayor Pro Tem Bird asked if it’s relevant to consider public access. Director Rigg said the Parklands Committee, when denying a similar application, has considered if it’s a large piece of land that would look like private property that would preclude the public from using the parkland that it is their right to use. MPT Bird confirmed that the subject lawn area is 235 sq. ft. in area.

Councilmember Perkins asked about past applicable criteria regarding parkland not appearing as an extension of private property. Director Rigg said ground cover that looks more natural has been approved by the Parklands Committee; concerns have been expressed that they not have an appearance of private property on the parklands.

Councilmember Goodhart said the lawn appears to be a natural extension of the turf on private property. He asked if there’s been some effort to distinguish the property line. Director Rigg responded that there was no demarcation between parklands and private property.

Councilmember Perkins confirmed with Director Rigg that grass had not been considered as natural groundcover for most of the previously approved similar applications. Mayor Rea commented that there is non-native vegetation all over parklands, e.g. eucalyptus trees. Director Rigg agreed; he said Parklands and Council have looked for precedence on similar applications, but the applications

received over the years have been unique. This evening's decision may set policy for future consideration. There have not been previous applications that are significantly similar to this one.

Susan Andelson, 1602 Espinosa Circle, said the prior owners cultivated the property including the adjacent parkland, installing irrigation, concrete paths and stairways. Grass, groundcover, shrubs and trees were planted on their property and adjacent parkland. The property was subsequently subdivided. The stacked stones on the right side of the lawn were pre-existing. She stated they determined to harmonize the existing parkland with their property, which included grass and groundcover to enhance the beauty of the area. An objective was to create a defensive space for fire protection against a canyon fire; this area is considered a high fire risk. She said prevailing winds flow through the canyon (a natural chimney) toward their house. She concluded that they maintain the vegetation to mitigate the risk of fire by creating a natural fire break, harmonizing their property with the pre-existing conditions of the parkland to create a pleasing environment.

Steve Andelson, 1602 Espinosa Circle, said the Parklands Committee unanimously approved their application, stating City regulations permits citizens to plant vegetation on parkland immediately adjacent to their property for fire prevention or the enhancement of parkland beauty, so long as the encroachment does not restrict public access and is not a permanent structure. He said there are no rules that prohibit parkland improvements that may appear to be an extension of private property and that the parklands shall not be fenced or otherwise enclosed for private use. He said their efforts were to harmonize their property with the pre-existing landscape; there are no structures or barriers that will limit public access. [This area of] parkland is completely isolated without available access, except through private property. He said their application is supported by existing precedent. He spoke of City boundary properties that were allowed to retain existing vegetation. Their application creates and aids fire prevention; the adjacent canyon is considered a high fire hazard and fire protection is a major issue for them. He said their application is unique; the same parkland area was already cultivated by the prior owner for 50+ years; they have continued to develop and maintain this vegetation because it compliments and harmonizes both theirs and parkland property and is a natural fire break.

Councilmember Goodhart asked about a letter received that asserts landscaping of City property could result in ownership. City Attorney Hogin said there is no way to acquire private interest in public land by adverse possession.

Councilmember Goodhart supported approval; points made for fire safety are reasonable.

MPT Bird agreed. He visited the property; the area (canyon/deep ravine) is not accessible by the public, just by the adjacent property owners. Unlike the Torrance boundary area where members of the public have access, this area does not result in the denial of access. He said it is also a very small non-material size of land and could support this as an exception to the rule to not allow improvements/use of the parkland. He spoke of the vegetation/planting and its fire retardant nature, and appreciated that the statue was voluntarily removed. He said the Parklands Committee did a fine job in their review and appreciated public comment; he favored approval of the application.

Councilmember Perkins said she visited the property and was troubled that their decision may not provide clear direction to the Parklands Committee. The City Forester said that criteria is for parkland not to appear as an extension of private property; it is not a written policy, but it was also a very clear understanding when she served on the committee. She said she has unfinished parkland behind her house as well and didn't feel she could plant it, incorporating it as part of her backyard. Reviewing minutes, it appeared the Parklands Committee cited that the house and yard is beautiful, tastefully done, and tending to look at aesthetics where there are no clear criteria; she agreed it is a lovely extension. Another criteria, when reviewing after-the-fact applications, is to consider if they would have approved this had it come before them before it was planted. She said grass is not fire retardant groundcover. She would have felt more comfortable if the grass would have stopped at the property line and there was other natural groundcover instead; she was concerned approval would be read into in a way they might not intend. If approved, she supported clarification as to how it would also relate to plantings that would be allowed at the Torrance boundary strip when fences come down. She said the grass makes it appear as their personal property; although beautiful, she could not support approval.

Mayor Rea shared Councilmember Perkins' concern; it does look an extension of private property, although not fenced. There have been no public access complaints about this part of the canyon because of this grass lawn. He was also concerned that the area is being irrigated. He commented on

the available criteria provided for their review and had trouble discerning applicable standards. He did not think approval would set a precedent because it is such an unusual situation given the history provided in testimony. He said the equities favor approval of the application, although the statue could not be approved. He supported review of the current rules and regulations by the Parklands Committee, and providing them recommendations with the standards that ought to be applied in similar situations.

Councilmember Goodhart agreed aesthetics shouldn't be criteria they consider with an after-the-fact application.

Councilmember Perkins confirmed with Director Rigg that the Parklands Committee will work on policy/guidelines for this type of application.

MPT Bird agreed with Councilmember Perkins; it is bothersome that the encroachment appears as an extension of the property owner's lawn. Since this encroachment is inaccessible to members of the public and on such a relatively small area, it is unique. He didn't think they are setting a precedent that would allow residents to extend their yards into parkland; he would not support such applications. He asked the City Attorney about precedential value if litigated in the future. Attorney Hogin responded that it has limited precedential value, because it appears the rules may be clarified and changed soon. She said Council has found that this is an inaccessible area of parklands, its primary value to the system of parkland is aesthetic, it's well kept, and it may provide some fire break. They are accepting it based on its unique characteristics.

MPT Bird said it is also unique because this particular encroachment can't be seen or accessed by members of the public unless they go onto private property to see it.

Councilmember Perkins said this is true of a number of canyon-facing properties.

Councilmember Goodhart moved concurrence with the Parklands Committee and allow resident of 1602 Espinosa Circle to maintain an area of turf, as currently exists today, within the parklands adjacent to 1602 Espinosa Circle, and deny the request to retain the statue in the parklands. The motion was seconded by MPT Bird and carried by majority oral vote; Perkins dissenting.

Councilmember Humphrey returned to the Chamber.

NEW BUSINESS

REVIEW AND ENGINEERING DESIGN PROPOSAL FOR TRAFFIC CALMING IMPROVEMENTS ON VIA DEL MONTE FROM KOA CORPORATION

Director Rigg reported KOA completed a traffic study on Via Del Monte in 2004, at a cost of \$7000. Different ideas to calm traffic on the street were presented. No applications were made until the request, with specific suggestions, of Malaga Cove Homeowners Association in August 2010, Installation occurred, effectiveness was reviewed and staff was directed to determine additional measures for traffic calming on Via Del Monte. As previously selected through a prior competitive process, staff contacted KOA, acknowledging new state of the art techniques may be more effective than what was previously proposed. Modifying the process for traffic calming was also directed; our adopted policy is essentially by resident-led initiative. KOA's proposal indicates two tiers of traffic calming recommendations within a 2-step proposal. First, traffic calming review and recommendations would be provided; the first tier would not include engineered solutions but things such as signage, striping, etc.--items that are low on impact, but effective. The second tier would be similar to some of the measures proposed in [KOA's] first study, focusing on things such as chicanes, islands, and speed cushions. The Traffic Safety Committee would review the options and would recommend a preliminary design that could be bid for contract. If more engineering is indicated, additional monies for complete contract documents may be needed. The KOA proposal is for \$9800.

Councilmember Goodhart said many options were provided to them with the previous study; he asked if KOA's proposal highlights different techniques. Director Rigg said the items proposed with the first study were more two-tiered items – high result, high impact recommendations such as speed cushions and median islands. He believed they were not embraced by residents due to the high impacts. With this proposal, they would also look at lesser impactful recommendations, such as striping and signage.

CITY COUNCIL
JULY 12, 2011

RESOLUTION R05-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA ADOPTING A POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS

WHEREAS, the City was developed with open space as a core element that significantly defines the character of the community; and

WHEREAS, the City owns 849 acres of parklands that comprise much of the open space and are deed-restricted to remain open for the public's use; and

WHEREAS, a number of residents have constructed and/or maintain encroachments within the parklands without the City's authorization, restricting the public's use of these areas and exposing the City to undue liability;

WHEREAS, the transfer of ownership of private property adjacent to encroachments is a logical time to require the removal of said unauthorized encroachments;

NOW THEREFORE, the City Council of the City of Palos Verdes Estates DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby adopts a Policy for the Removal of Unauthorized Encroachments in the City's Parklands attached hereto as Exhibit 1.

Section 2. The City Clerk shall certify to the passage and adoption of Resolution R05-32 and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED on this 8th day of November, 2005.

Dwight Abbott
DWIGHT ABBOTT, MAYOR

ATTEST:

APPROVED AS TO FORM:

Judy Smith, City Clerk

Stephanie Scher, City Attorney

EXHIBIT 1

POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS

Updated 11/8/05

The Policy for the Removal of Unauthorized Encroachments in the City's Parklands is established to summarize the existing policies established by the Municipal Code for the removal of encroachments, and to add a requirement for the removal of encroachments when the adjacent private property changes ownership. It is the goal of this policy to restore public access to and use of these areas in a timely fashion.

This Policy in no way limits the City's ability to require the removal of any unauthorized encroachment in the parklands for any reason.

1) Definition of Encroachment

Encroachments are defined in Section 12.04.010 of the Municipal Code as follows:

"Encroachment" means privately owned facilities or structures in the public right of way or on other public property, constructed and maintained by the property owner."

Examples of encroachments include, but are not limited to: fences, walls, hardscape (such as concrete or brick), fireplaces, sheds, gazebos, swings and other play equipment, and tree houses.

2) Removal Requirements Per City Code

Require removal of unauthorized encroachments during a discretionary review by the City's Planning Commission

Section 17.04.090 of the City's Municipal Code states that the approval of any development entitlement application per Title 17 or 18 of the Code may be conditioned by the Planning Commission or Council. Such conditions may address any aspect of the project or the property. At the time of developing project plans, surveys are typically conducted and encroachments are identified. As a routine, the Planning Commission imposes a condition on all its approvals, requiring the removal of non-standard encroachments.

Require removal of unauthorized encroachments when they fall into disrepair.

Section 8.48.015 H of the City's Municipal Code states that it is a public nuisance to maintain fences, walls, landscaping, or walkways that are maintained in a defective, unsightly, or no longer viable condition. As the City becomes aware of encroachments which have fallen into disrepair, they are deemed a public nuisance and removal is required. The Public Works Director, or his or her designee, shall have the authority to judge when these encroachments are in a state of disrepair.

Require removal of unauthorized encroachments when they are modified.

Section 12.04.010 of the City's Municipal Code does not allow the permanent private occupation of City property without a permit. When the City is made aware of any modification underway to an existing unauthorized encroachment, removal of the entire encroachment is required.

3) **Removal Requirements Upon Adjacent Private Property Transfer of Ownership**

Within 60 days of the close of escrow for the transfer of ownership of a previously noticed private property located adjacent to an unauthorized encroachment(s), the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area.

4) **Removal Requirements Five Years After Notification by the City**

If a property has not be transferred within five years after notification by the City of the need to remove the illegal encroachment(s), the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area.

5) **Notification**

As staff becomes aware of significant unauthorized encroachments in the City's parklands, a notice of the violation shall be sent to the adjacent property owner and permanent record of the notice shall be maintained in the correlating "Address File". Real Property Records Reports shall include mention of any encroachment notices on file.

Prior to sending the formal notice of an encroachment which must be removed upon sale or within the specified time period, the City will undertake the necessary action to determine the exact location of the boundary between City and private property, including obtaining a survey, if required in the sole discretion of the City. The notice shall give the property owner a period of one month from the date of the notice to appeal the determination that the encroachment is on City property to the Director of Public Works. The decision of the Director of Public Works shall be final.

6) **Enforcement**

Staff will track monthly County Assessor's transfer reports and the Code Enforcement Officer will investigate relevant property transfers. If an illegal encroachment(s) is not removed per this policy, the City will immediately remove the encroachment(s), bill the adjacent property owner, lien the property if necessary, and cite the adjacent property owner for an infraction(s).

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

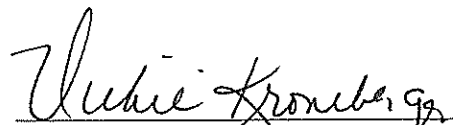
I, Vickie Kroneberger, Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R05-32** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 8th of November, 2005, by the following vote:

AYES: COUNCILMEMBERS: Abbott, Flood, Humphrey, Sherwood

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

RECUSED: COUNCILMEMBERS: Goodhart


Vickie Kroneberger, Deputy City Clerk

RESOLUTION R12-05

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PALOS VERDES ESTATES, CALIFORNIA
ADOPTING A POLICY FOR THE PRIVATE LANDSCAPING OF PARKLANDS**

WHEREAS, the City Council expressed a desire for the creation of a policy to guide the residents, Parklands Committee, and City Council regarding requests for the landscaping of City-owned parklands by private individuals; and

WHEREAS, the Parklands Committee has worked with staff to create a Policy for the Private Landscaping of Parklands; and

WHEREAS, this policy fulfills the purpose to guide the City in making decisions on resident's requests for the private landscaping of parklands;

NOW THEREFORE, the City Council of the City of Palos Verdes Estates DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby adopts a Policy for the Private Landscaping of Parklands attached hereto and incorporated by reference, as the official City policy relating to the review of requests by private individuals to landscape City-owned parklands:

Section 2. The City Clerk shall certify to the passage and adoption of Resolution R12-05 and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED on this 13th day of March, 2012.



WILLIAM JOHN REA, MAYOR

ATTEST:



JUDY SMITH, CITY CLERK

APPROVED AS TO FORM:



CHRISTI HUGIN, CITY ATTORNEY

**CITY OF PALOS VERDES ESTATES
PARKLANDS LANDSCAPING POLICY**

1. **GOALS.** The goal of the Parklands Landscaping Policy is to guide residents and the Parklands Committee regarding the landscaping of the City’s parklands by private individuals.

2. **OBJECTIVES.**

The City’s parklands were intended to remain open to the public and to remain as undeveloped as possible. Landscaping within the parklands should only be done to retain an undeveloped and natural look that simulates natural forestation and ground cover.

Landscaping should not be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public. Any landscaping that is allowed as a result of an approved application should be limited to “native” varieties as determined by the City. Any irrigation should be temporary in nature and placed on the ground, not buried.

Applications for placement within the parklands of man-made items, such as benches, statues, hardscape, or other, shall be reviewed on a case by case basis, and in general such applications should be denied.

3. **PERMIT PROCEDURE.** An “Application to Landscape City Parklands” shall be obtained from and filed with the City.

4. **PROCESS FOR CONSIDERATION AND APPROVAL.** Each application shall be reviewed by the Parklands Committee. The Committee shall consider the proposed improvements and the testimony, both verbal and written, of the applicant and of affected property owners. The recommendation of the Parklands Committee shall be placed on the Consent Agenda of the City Council for final action.

5. **FINDINGS FOR APPROVAL**

The findings for approval are based on those required for approving a Variance within the Zoning section of the Municipal Code:

1. That there are special circumstances attached to the property referred to in the application, which do not apply generally to other properties in the same area;
2. That the granting of such application is necessary to do substantial justice, and to avoid practical difficulty or unnecessary hardship;
3. That the granting of the application will not result in material damage or prejudice to other property in the vicinity, nor be detrimental to the public safety or welfare.

4. That the landscaping, to the extent reasonably practicable, is not to be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public.

6. **PERMIT FEES.** A fee shall be submitted with the application in the amount that shall be established by resolution of the City Council.

7. **COSTS FOR INSTALLATION AND MAINTENANCE.** All costs for installation and maintenance shall be paid by the applicant. A legal contract between the city and the property owner defining a maintenance schedule and standards that runs with the property in perpetuity is required.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF PALOS VERDES ESTATES)

I, Vickie Kroneberger, Executive Assistant/Deputy City Clerk for the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution **R12-05** was duly and regularly approved and adopted by the City Council of the City of Palos Verdes Estates at its regular meeting of the City Council on the 13th day of March, 2012, by the following vote:

AYES: COUNCILMEMBERS: Rea, Bird, Goodhart, Perkins, Humphrey

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



Vickie Kroneberger,
Executive Assistant/Deputy City Clerk



M E M O R A N D U M

Agenda Item #: 6
Meeting Date: 1-12-17

TO: MEMBERS OF THE PARKLANDS COMMITTEE

FROM: SHERI REPP LOADSMAN, DEPUTY CITY MANAGER/ *SR*
PLANNING AND BUILDING DIRECTOR

SUBJECT: DISCUSSION OF PROPOSED AMENDMENTS TO THE CITY'S EXISTING POLICY FOR THE PRIVATE LANDSCAPING OF PARKLANDS AND THE EXISTING POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENT IN THE CITY'S PARKLANDS

DATE: JANUARY 12, 2017

Background

The City Council has requested that existing policies addressing encroachments within the parklands be updated. The Parklands Committee is requested to review and provide comment on the proposed *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* and the proposed *Policy for the Private Landscaping of Parklands*.

On December 5, 2016, the Parklands Committee reviewed the proposed amendments to the policies and continued discussion to the January 12, 2017 meeting. On December 20, 2016, the Planning Commission reviewed the policies and recommended inclusion of factors to be considered when Planning Commission action is requested.

Discussion

On January 13, 2016, the City Council considered the code enforcement action plan for removal of parklands encroachments and directed that the existing *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* and the *Policy for the Private Landscaping of Parklands* be amended. The attached draft policies have been prepared by Staff and the City Attorney's Office as a means of providing an effective means of addressing encroachment issues.

Concern was raised that the existing *Policy for the Removal of Unauthorized Encroachments in the City's Parklands* often extended the abatement process to 5 years and, in some cases involving discretionary permits, the encroachments could be present for an even greater term. The modifications to the *Policy for the Removal of*

Actions taken by this Committee are advisory. The City Council will take action on all appropriate items on Wednesday, January 11, 2017.

Unauthorized Encroachments in the City's Parklands provides for an expedited abatement process not exceeding 1 year unless the responsible property owner obtains an Enforcement Compliance Agreement.

Under the authority of the Planning Commission, the Enforcement Compliance Agreement will be a tool to more clearly identify unauthorized encroachments, obtain a survey to establish property lines, secure adequate maintenance during the abatement period and to ensure an abatement schedule concluding in the restoration of the parklands. As envisioned, the Planning Commission will be able to consider factors that may justify an abatement period of 1 – 5 years.

Definitions utilized in the proposed policies include the following:

As defined in Section 12.24.010 of the Municipal Code, "Parklands" means all areas owned in fee by the city which are designated for open space use. The term "parklands" does not include streets and does not include those portions of property that are subject to a concession agreement or other lease (e.g., golf, tennis, swim, stables), except the sand dunes adjacent to the developed golf course, and improved or used for active recreation.

As defined in Section 12.04.010 of the Municipal Code, "Encroachment" means privately owned improvements, facilities or structures, including without limitation any post, sign, pole, fence, wall, deck, building, tree (unless permitted pursuant to PVEMC 12.16.030), pipe, cable, drainage facility, septic system, or recreational facility in the public right-of-way or on other public property, constructed and maintained by the property owner."

"Nonstandard encroachment" means any encroachment which does not conform to a standard plan previously approved by the public works director as a city standard encroachment.

As defined in this resolution "Minor Encroachment" means any encroachment less than or equal to five (5) feet, as measured from the property line, which neither blocks public access nor poses a safety hazard.

As defined in this resolution "Major/Significant Encroachment" means any encroachment which is greater than five (5) feet, as measured from the property line, that blocks public access, and/or poses a safety hazard (including, but not limited to, blocking access for emergency access or utility maintenance).

The identification of minor and major encroachments is utilized to distinguish processes and procedures that are administrative or require review and approval by the Parklands Committee and City Council.

The policies also clarify the requirement for a miscellaneous application to be obtained from the Planning Commission for nonstandard encroachments, including but not limited

Actions taken by this Committee are advisory. The City Council will take action on all appropriate items on Wednesday, January 11, 2017.

to fixed seating, walls and fences. The Parklands Committee would review hardscape improvements which would include walkways, steps and stairs.

The policies have been revised since the last Parklands Committee review and are attached. Changes include recommendations from the Planning Commission and the City Attorney's Office.

The City Council is scheduled to review the draft policies at their meeting scheduled for January 24, 2017. Comments and recommendations from the Parklands Committee will be summarized in the staff report for the City Council.

Recommendation

This is a matter of Committee discretion.

Attachments

- A – Draft *Policy for the Removal of Unauthorized Encroachments in the City's Parklands*
- B – Draft *Policy for the Private Landscaping of Parklands*

Actions taken by this Committee are advisory. The City Council will take action on all appropriate items on Wednesday, January 11, 2017.

RESOLUTION NO. R17-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES
ESTATES REPEALING RESOLUTION R05-32 IN ORDER TO AMEND THE CITY'S
EXISTING POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENT
IN THE CITY'S PARKLANDS**

WHEREAS, the City was developed with open space as a core element that significantly defines the character of the community; and

WHEREAS, the City owns approximately 849 acres of parklands that comprise much of the open space and are deed-restricted to remain open for the public's use; and

WHEREAS, a number of residents have constructed and/or maintain encroachments within the parklands without the City's authorization, restricting the public's use of these areas and exposing the City to undue liability; and

WHEREAS, the transfer of ownership of private property adjacent to encroachments is a logical time to require the removal of said unauthorized encroachments; and

WHEREAS, on November 8, 2005, the City Council adopted Resolution R05-32 which established a Policy for the Removal of Unauthorized Encroachments in the City's Parklands; and

WHEREAS, in implementing this Policy, it has come to the attention of City Staff that many outstanding encroachment violations currently exist, which represent unique circumstances including those which are not related to safety or public access; and

WHEREAS, modifications to the existing process for the removal of unauthorized encroachments outlined in the City's Policy have been recommended in order to address outstanding encroachment violations in an efficient and meaningful way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palos Verdes Estates as follows:

- SECTION 1. Resolution R05-32 adopting Policy for the Removal of Unauthorized Encroachments is hereby repealed.
- SECTION 2. The City Council hereby adopts a Policy for the Removal of Unauthorized Encroachments in the City's Parklands attached hereto as Exhibit 1.
- SECTION 3. The City Clerk shall certify to the passage and adoption of Resolution R17-XX and enter it into the book of original resolutions.

ATTACHMENT: A

APPROVED AND ADOPTED this ____ day of January, 2017.

JENNIFER L. KING, MAYOR

ATTEST:

VICKIE KRONEBERGER, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

EXHIBIT 1

POLICY FOR THE REMOVAL OF UNAUTHORIZED ENCROACHMENTS IN THE CITY'S PARKLANDS Updated 1/06/2017

The Policy for the Removal of Unauthorized Encroachments in the City's Parklands is established to summarize the existing policies codified by the City's Municipal Code for the removal of encroachments, and to update the City's enforcement and action plan for the removal of encroachments within City parklands and the creation of an abatement schedule for the removal of said encroachments.. It is the goal of this policy to restore public access to and use of these areas in a timely fashion. The City's parklands were intended to remain open to the public and to remain as undeveloped as possible.

This Policy in no way limits the City's ability to require the removal of any unauthorized encroachment in the parklands for any reason.

1) Definition of Parklands and Encroachment

As defined in Section 12.24.010 of the Municipal Code, "*Parklands*" means all areas owned in fee by the city which are designated for open space use. The term "parklands" does not include streets and does not include those portions of property that are subject to a concession agreement or other lease (e.g., golf, tennis, swim, stables), except the sand dunes adjacent to the developed golf course, and improved or used for active recreation.

As defined in Section 12.04.010 of the Municipal Code, "*Encroachment*" means privately owned improvements, facilities or structures, including without limitation any post, sign, pole, fence, wall, deck, building, tree (unless permitted pursuant to PVEMC 12.16.030), pipe, cable, drainage facility, septic system, or recreational facility in the public right-of-way or on other public property, constructed and maintained by the property owner." Examples of encroachments include, but are not limited to: fences, walls, hardscape (such as concrete or brick), fireplaces, sheds, gazebos, swings and other play equipment, and tree houses.

"Nonstandard encroachment" means any encroachment which does not conform to a standard plan previously approved by the public works director as a city standard encroachment.

As defined in this resolution:

"Minor Encroachment" means any encroachment less than or equal to five (5) feet, as measured from the property line, which neither blocks public access nor poses a safety hazard.

"Major/Significant Encroachment" means any encroachment which is greater than five (5) feet (as measured from the property line), creates a barrier to public access, and/or poses a safety hazard (including, but not limited to, blocking access for emergency access or utility

maintenance). Major/Significant Encroachments shall be abated immediately and shall not be subject to the provisions of this resolution.

2) Notification

As staff becomes aware of unauthorized encroachments in the City's parklands, a notice of the violation shall be sent to the adjacent property owner and permanent record of the notice shall be maintained in the correlating code enforcement case file. Real Property Records Reports shall include mention of any notices, encroachment permits or an Encroachment Compliance Agreement on file.

Prior to sending the formal notice of violation, the City will undertake an investigation to determine the location of the boundary between City and private property. A survey may be obtained if required in the sole discretion of the City. The notice shall give the property owner a period of one month from the date of the notice to appeal the determination that the encroachment is on City property to the Director. The decision of the Director shall be final.

Following the formal notice of encroachment or final decision, any encroachment which would require longer than one year to abate shall require the property owner to enter into an Enforcement Compliance Agreement with the City. The purpose of the Enforcement Compliance Agreement will be to clearly identify the scope of the encroachment and outline the steps required for compliance. All Enforcement Compliance Agreements shall be recorded on title, and the encroaching property owner is responsible for all costs and fees, including any costs related to surveys or restoration.

3) Enforcement

All properties identified with unauthorized encroachments within the parklands will be subject to enforcement through administrative processes or an Enforcement Compliance Agreement. Each property will be monitored to ensure compliance with abatement schedules.

4) Encroachment Removal Requirements

A. Following any formal notice of encroachment, the Director, or his or her designee, shall provide notice to the adjacent property owner establishing a period of up to one year to abate all unauthorized encroachments. A property owner may request consideration to enter into an Enforcement Compliance Agreement for minor encroachments within 90 days, or a later period as approved by the Director, of receiving the notice establishing the abatement period.

Each application for an Enforcement Compliance Agreement shall be reviewed and approved by the Planning Commission. A fee shall be submitted with the application in the amount that shall be established by resolution of the council. As a condition of approval of the Enforcement Compliance Agreement, the Planning Commission shall retain authority to allow for an abatement period not to exceed five (5) years. The Planning Commission may consider a renewal of the Enforcement Compliance Agreement.

Major/Significant Encroachments shall be abated immediately and shall not be subject to the provisions of this section.

B. The Planning Commission shall consider an Enforcement Compliance Agreement upon considering the following factors:

- i. Identify when the encroachment first occurred to determine if the current property owner was responsible for the encroachment or had knowledge of such encroachment at time of purchase of the subject property.
- ii. Consider any relevant information describing the circumstances associated with the establishment of the encroachment, including but not limited to any plans or surveys that were on file with the City or Palos Verdes Homes Association.
- iii. Determine if there are special circumstances associated with the subject property which do not apply generally to other properties located adjacent to City Parklands.
- iv. Establish that the encroachment does not create a barrier or safety concern to the public and there will not be unusual conditions that may be objectionable, detrimental or incompatible with surrounding properties and use of City Parklands.
- v. Evaluate the current condition of the encroachment and maintenance standards necessary to adequately protect the public during the abatement period.
- vi. Consider if an unreasonable hardship exists based upon the cumulative cost of removing the encroachment, requirements to construct any new improvements such as fences or walls and restoration of the Parklands.
- vii. Identify if the nonstandard encroachment may be eligible for consideration of a Miscellaneous Application, encroachment permit, license agreement or other similar agreement subject to the terms and conditions allowing for the continuation and maintenance of said encroachment.
- viii. Consider grading, drainage, landscape and other measures needed to restore the City Parklands to a natural condition similar with the surrounding area.

C. All Enforcement Compliance Agreements approved by the Planning Commission shall be recorded on title. The Enforcement Compliance Agreement will include:

- i. A certified survey conducted by a licensed engineer to be provided by the adjacent property owner(s) identifying all encroachments;
- ii. Provide that the permittee will be responsible for obtaining any required encroachment permits, authorizations or agreements as determined by the Planning Commission;
- iii. Provide that the permittee shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any liabilities, damages, expenses, liens and claims of any nature whatsoever which may be asserted against the City or any of its officers, agents, or employees, including, without limitation, any loss, damage or injury arising from or as a result of any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City or the permittee;

- iv. Provide for regular maintenance;
- v. Provide for the removal of all encroachments pursuant to an abatement schedule and upon the termination of the agreement;
- vi. Perform restoration of the parklands to return the disturbed area to a natural condition that is similar to the surrounding area; and
- vii. Pay a deposit to the City, as determined by the Director or Planning Commission, for the removal of said landscaping, hardscape improvements or non-standard encroachments upon full or partial removal of the unauthorized encroachments or termination of the agreement. The City shall utilize the deposit to pay for the reasonable and actual costs of removing the encroachments if, after providing written notice, the permittee or responsible party fails to provide the necessary corrections. In the event permittee fails to remove the encroachments, or any other object or structure placed by the permittee in the parklands, in a timely manner, the City may remove the encroachments and recover from permittee all fees, costs, and expenses (including, but not limited to, attorney fees and collection costs incurred) associated with the City's removal of the encroachments and restoration of the parklands.

D. Repairs to an existing unauthorized encroachment shall be made in conformance with the current regulations to the maximum extent possible. Any repairs shall not be construed as authorizing an extension of any time limit for the removal of the unauthorized encroachment. Minor modifications, repairs, and/or maintenance to the encroachment shall be permitted; however, when the City is made aware of any modification to an existing unauthorized encroachment where 50 percent or more of the encroachment has been or is required to be modified or removed, , the City shall require the immediate removal of the entire encroachment.

E. For the transfer of ownership of a previously noticed private property located adjacent to an unauthorized encroachment, the encroachment(s) shall be removed by the adjacent property owner and the area shall be restored to a condition similar to other parklands in the area within 60 days of the close of escrow. Minor Encroachment(s) (which are in good condition and compatible with the surrounding neighborhood) may be retained for up to a 5 year abatement period subject to approval by the Planning Commission of an Enforcement Abatement Agreement that includes a provision allowing the new owner to assume responsibility for the abatement subject to the same terms and conditions.

RESOLUTION NO. R17-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES
ESTATES REPEALING RESOLUTION R12-05 IN ORDER TO AMEND THE CITY'S
EXISTING POLICY FOR THE PRIVATE LANDSCAPING OF PARKLANDS**

WHEREAS, on March 13, 2012, the City Council adopted Resolution R12-05 which established a Policy for the Private Landscaping of Parklands; and

WHEREAS, in implementing this Policy, it has come to the attention of City Staff that private planting encroachments are common and the vast majority have not been installed with authorization pursuant to the Policy; and

WHEREAS, there exist significant locations within the City with existing private landscape that encroaches within the Parklands; and

WHEREAS, it is the City's Policy that encroachments for private use and enjoyment are not appropriate on City property; such encroachments are generally construed to be a detrimental to the City's interest because of the singularly private benefit that is gained from them; and

WHEREAS, modifications to the existing process for the removal of unauthorized encroachments outlined in the City's Policy have been recommended in order to address outstanding encroachment violations in an efficient and meaningful way.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palos Verdes Estates as follows:

- SECTION 1. Resolution R12-05 adopting Policy for the Removal of Unauthorized Encroachments is hereby repealed.
- SECTION 2. The City Council hereby adopts a Policy for the Private Landscaping of Parklands attached hereto as Exhibit 1, and incorporated by reference, as the official City policy relating to the review of requests of private individuals to landscape City-owned parklands.
- SECTION 3. The City Clerk shall certify to the passage and adoption of Resolution R17-XX and enter it into the book of original resolutions.

APPROVED AND ADOPTED this ____ day of January, 2016.

JENNIFER L. KING, MAYOR

ATTACHMENT: B

ATTEST:

VICKIE KRONEBERGER, City Clerk

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

EXHIBIT 1

CITY OF PALOS VERDES ESTATES PARKLANDS LANDSCAPING POLICY

1. **GOALS.** The goal of the Parklands Landscaping Policy is to guide residents and the Parklands Committee regarding the landscaping of the City's parklands by private individuals.

2. **OBJECTIVES.**

The City's parklands were intended to remain open to the public and to remain as undeveloped as possible. Landscaping within the parklands should only be done to retain an undeveloped and natural look that simulates natural forestation and ground cover.

As defined in Section 12.24.010 of the Municipal Code, "Parklands" means all areas owned in fee by the city which are designated for open space use and "Park" includes all areas owned by the city which are designated for public recreational use, whether active or passive, including all paths, roadways, avenues, and parkways. The Parklands Landscaping Policy does not apply to an unauthorized encroachment within a Park area not owned in fee by the city such as public rights-of-way that are unimproved or utilized as paths or parkways.

Landscaping should not be done so that the parklands area appears to be privately-owned or so that the landscaping creates a barrier to the public. Any landscaping that is allowed as a result of an approved application should be limited to "native" varieties as determined by the City. Any irrigation should be temporary in nature and placed on the ground, not buried.

Applications for placement within the parklands of man-made items, such as stairs, walkways or other surface hardscape, shall be reviewed by the Parklands Committee. Applications for any other nonstandard encroachments such as benches, fences, walls or other structures shall be reviewed by the Planning Commission as a Miscellaneous Application. In general such applications should be denied unless there are special circumstances.

3. **DEFINITIONS OF PARKLANDS AND ENCROACHMENT**

As defined in Section 12.24.010 of the Municipal Code, "*Parklands*" means all areas owned in fee by the city which are designated for open space use. The term "*parklands*" does not include streets and does not include those portions of property that are subject to a concession agreement or other lease (e.g., golf, tennis, swim, stables), except the sand dunes adjacent to the developed golf course, and improved or used for active recreation.

As defined in Section 12.04.010 of the Municipal Code, "*Encroachment*" means privately owned improvements, facilities or structures, including without limitation any post, sign, pole, fence, wall, deck, building, tree (unless permitted pursuant to PVEMC 12.16.030), pipe, cable, drainage facility, septic system, or recreational facility in the public right-of-way or on other public property, constructed and maintained by the property owner."

“Nonstandard encroachment” means any encroachment which does not conform to a standard plan previously approved by the public works director as a city standard encroachment.

As defined in this resolution:

“Minor Encroachment” means any encroachment less than or equal to five (5) feet, as measured from the property line, which neither blocks public access nor poses a safety hazard.

“Major/Significant Encroachment” means any encroachment which is greater than five (5) feet, as measured from the property line, that the landscaping, to the extent reasonably practicable, and/or poses a safety hazard (including, but not limited to, blocking access for emergency access or utility maintenance).

4. **ADMINISTRATIVE APPROVAL FOR UNAUTHORIZED PRIVATE PLANTINGS AND/OR HARDSCAPE.** For those locations where the permittee can adequately demonstrate that appropriate access to the public is provided, the permittee may request administrative approval of an encroachment permit to allow for the minor encroachment of private landscaping to be planted or retained which encroach no more than five (5) feet into the parklands, as measured from the property line. Consideration and approval of an administrative encroachment permit shall be based on the findings of approval listed below in section seven, and shall be subject to the terms listed in sections eight through ten.
5. **DISCRETIONARY PERMIT PROCEDURE FOR UNAUTHORIZED PRIVATE PLANTINGS AND/OR HARDSCAPE.** An “Application for Landscape or Hardscape Improvements within City Parklands” shall be obtained from and filed with the City for existing major encroachments of private plantings or hardscape improvements which encroach more than five (5) feet into the parklands and/or any proposed hardscape improvements which encroach less than five (5) feet into the parklands. An encroachment permit and/or license agreement will be required upon approval of an “Application to Landscape City Parklands”
6. **PROPOSED IMPROVEMENTS ELIGIBLE FOR THE “CHANGE TO PARKLANDS” PROCESS.** An “Application for Change to Parklands” shall be obtained from and filed with the City for new plantings and hardscape improvement which may encroach more than five (5) feet into the parklands. An “Application for Change to Parklands” shall not be subject to the findings of approval listed below in section seven or the terms listed in sections eight through ten.
7. **PROCESS FOR CONSIDERATION BY THE PARKLANDS COMMITTEE.** The Committee shall consider the proposed or existing improvements and the testimony, both verbal and written, of the applicant and of affected property owners. The recommendation of the Parklands Committee shall be placed on the Consent Agenda of the City Council for final action.

- 8. FINDINGS FOR APPROVAL FOR UNAUTHORIZED PRIVATE PLANTINGS AND/OR HARDSCAPE.** The findings for approval of an “Application for Landscape or Hardscape Improvements within City Parklands” are as follows:
1. That there are special circumstances attached to the property referred to in the application, which do not apply generally to other properties in the same area;
 2. That the granting of such application is necessary to do substantial justice, and to avoid practical difficulty or unnecessary hardship;
 3. That the granting of the application will not result in material damage or prejudice to other property in the vicinity, nor be detrimental to the public safety or welfare; and
 4. That the landscaping, to the extent reasonably practicable, is not to be done so that the area appears to be privately-owned or so that the landscaping creates a barrier to the public.
- 9. PERMIT FEES.** A fee shall be submitted with the application in the amount that shall be established by resolution of the council.
- 10. COSTS FOR INSTALLATION AND MAINTENANCE.** All costs for installation and maintenance shall be paid by the applicant. A legal contract or license agreement between the city and the property owner defining a maintenance schedule and standards that run with the property in perpetuity is required.
- 11. ENCROACHMENT PERMIT.** Whether approved of administratively or by the Parklands Committee and City Council, each encroachment permit shall:
1. Provide the adjacent property owner(s) with approval of a plan showing the encroachment area and identifying all landscape and hardscape materials;
 2. Provide that the permittee will be responsible, if approved, for any irrigation within the parklands;
 3. Provide that the permittee shall indemnify, defend and hold harmless the City and its officers, agents and employees from and against any liabilities, damages, expenses, liens and claims of any nature whatsoever which may be asserted against the City or any of its officers, agents, or employees, including, without limitation, any loss, damage or injury arising from or as a result of any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City or the permittee;
 4. Provide for regular maintenance; and
 5. Pay a deposit to the City, as determined by the Director or Parklands Committee, for the potential removal of said landscaping and hardscape improvements. The City shall utilize the deposit to pay for the reasonable and actual costs of removing said landscaping and hardscape improvements if, after providing written notice, the permittee or responsible party fails to provide the necessary corrections. In the event permittee fails to remove the encroachments, or any other object or structure placed by the permittee in the parklands, in a timely manner, the City may remove the encroachments and recover from permittee all fees, costs, and expenses (including, but not limited to, attorney fees and

collection costs incurred) associated with the City's removal of the encroachments and restoration of the parklands.

12. REMOVAL & ABATEMENT. Private plantings or hardscapes (including, but not limited to, walkways and steps) that are not authorized through an encroachment permit shall be subject to immediate removal by the responsible adjacent property owner or abatement by the City. However, at its discretion, the City may permit an abatement period of between 1 – 5 years pursuant to the Policy for the Removal of Unauthorized Encroachments in the City's Parklands.