

Proposal for Resolving Encroachments on Parklands and Rights of Way

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More than five years have passed since Ried Schott and I prepared an inventory of about 100 encroachments on PVE Parklands, Paths, Lanes and Rights of Way, and submitted a report including photographs, maps and diagrams to City Manager Tony Dahlerbruch and City Planning Director Alan Rigg. Since then, the City has made some progress in enforcement, but the vast majority of the encroachments remain, and many have gotten worse as vegetation has been allowed to grow and further block public access to these public lands.

In some cases, there was a public process wherein the encroachments were vetted by the Parklands Committee and or Planning Commission, adjudicated and then formally acted on by the City Council, but the encroachments remain today.

Clearly, some residents refuse to remove encroachments with the hope that there will be no consequences of non-compliance and many violators have been successful with this approach. As a result, residents have been able to derive private benefit from this usurpation of public land until “caught”, and even then, they are not required to pay a fine for having violated the code. At this time, these residents are only asked to remove the encroachment; however, without repercussions, many residents simply refuse to remove their encroachments and since resulting litigation is both expensive and time-consuming, the City is reluctant to pursue it. Residents who encroach need more incentive to act and remove their encroachments.

This needs to change.

The City needs a structural solution, and one that has serious consequences for encroachers beyond merely removing encroachments many years after the initial encroachments (during which time the encroaching residents have enjoyed the use of annexed public land for their private use). Those who encroach should be paying a monetary penalty that is large (to deter) and grows over time (to encourage prompt removal of encroachments) when told to do so after the public vetting process through the Planning/Parkland/City Council process).

Therefore, we offer the following proposal.

- Significant fines/penalties to be established for encroachments and communicated to the public. These fines would increase when encroachments are not removed within six months after City Council action is taken. By “significant”, at least \$10,000 - \$20,000 per encroachment would help deter non-compliance, and further, the fines would double every year until they are addressed. Presently, there is no financial consequence other than the cost of removing the encroachment – hence no incentive to comply.
- A one-time “Amnesty Program” would waive all penalties/fines for the first year of the program. All residents would be informed of the new rules and encouraged to review their property lines and compliance with the Municipal Code as they relate to encroachments. After that, any remaining encroachments would be subject to the new rules – no grandfathering of older “undiscovered” encroachments.
- The “Amnesty Program” would apply to both deed-restricted Parklands as well as all other public lands such as Paths, Lanes and Rights of Way, although the range of fines should potentially be different for Parkland vs Non-Parkland since the City’s has the discretion to allow

certain encroachments on Paths, Lanes and Rights of Way because these are not deed restricted parkland. Fines should be in ranges, so building a structural wall on parkland would be penalized at a higher fine than putting up a bird bath, for instance.

- If residents comply and fix encroachments during the Amnesty period, the Community benefits from the removal of encroachments and no fines would be levied. If violators don't comply and have to pay fines, the Community would raise meaningful additional revenue. Either way, PVE wins.
- As currently specified in the Code and the deed restrictions, failure to pay the fines and remove the encroachments would result in liens that would prevent the sale of the property before the property is sold. In the new guidelines, the magnitude of the fine would escalate meaningfully – such as doubling every year. The City would continue to have the authority to remove the encroachments and bill the resident, as per Municipal Code and the underlying Deed Restrictions relating to parkland. In addition, no building permits would be granted until the lien is satisfied.
- As an extra incentive for compliance, when someone has membership with one or more of the PVE concessions, perhaps those memberships could be suspended; this would result in their inability to use those club facilities until their lien is satisfied?

To assist in identifying encroachments, the volunteer Parkland Rangers under the PVE Police Department could help flag the encroachments and help determine whether they are resolved. Rangers currently have a form to report physical issues on Parkland that is acted on by Streets & Parks, e.g. fallen trees, graffiti, drainage issues, garbage, etc. However, the PVE Police Department has not set up a form or a specific process for Rangers to report encroachments. The new Code Enforcement Officer could meet with several of the Parkland Rangers to establish such a more definitive process.

- A related issue is the disconnect between the PVE departments for Code Enforcement and for Fire Abatement / Parkland Maintenance to make Parklands more readily accessible. More trails and paths to access Parklands are becoming inaccessible because of vegetation overgrowth. The Rangers are not allowed to trim any branches or cut weeds, which currently close paths and trails. This could be modified so that the Rangers would be empowered for small improvements in trails without needing approval of the Parklands Committee and City Council for each path or trail to be cleared from overgrowth that is blocking access to Parklands. A Trail & Path Map was established a few years ago, and this map could serve to identify those paths and trails that should be kept from being overgrown. To better coordinate Parkland encroachments and the clearing of overgrowth, there also should be one point person at PVE to oversee and coordinate this.
- Another approach might be to have certain paths and trails adopted annually, to enlist volunteers to assist in keeping them clear and safe.

Ried and I encourage you to consider this proposal and discuss it at a future City Council Meeting. In the meantime, we'd welcome the opportunity to meet with you to discuss and refine the proposal.

Thank you,

