



MEMORANDUM

Agenda Item #: _____
Meeting Date: 10/25/05

TO: JAMES B. HENDRICKSON, CITY MANAGER

FROM: ALLAN RIGG, PUBLIC WORKS DIRECTOR

**SUBJECT: MODIFICATIONS TO EXISTING POLICY REGARDING THE
REMOVAL OF UNAUTHORIZED ENCROACHMENTS ON CITY
PARKLANDS**

DATE: OCTOBER 25, 2005

The Issue

Should the City Council adopt Resolution R05-32 adopting modifications to the existing policy regarding the removal of unauthorized encroachments on City parklands?

Background and Analysis

The City of Palos Verdes Estates is often described as an oasis within Los Angeles County. Sweeping views of the Pacific Ocean coupled with abundant naturally preserved open spaces translate into a community where residents find rest and solace from the urban environment beyond City borders. In a region of the country known for its concrete jungle and desert climate, the lush open spaces of Palos Verdes Estates are truly a treasure.

History

When the Olmstead brothers thoughtfully planned the development which would eventually become Palos Verdes Estates, they envisioned a community where structures would complement and not overpower the natural environment. Meandering roads were planned to follow the terrain of the land and homes were designed to respect natural features. Neighborhoods were to be permeated by trails and parks, and vast areas of lands were designated for preservation as parklands. The Olmsteads hoped to establish a community where the natural environment could be enjoyed, experienced and equally shared by all members of the community.

Soon after its incorporation in 1939, 849 acres of open space were dedicated to the City by the Palos Verdes Homes Association, subject to the deed restriction that these areas must be perpetually maintained for the public to enjoy. The deed restrictions further stipulated that should any open space be privately occupied, ownership would revert to the original owner: the

Homes Association. The City wholeheartedly accepted this condition, recognizing the value to the community in preserving its open space. As the City Code was developed, chapter 18.16 was established to regulate the open space parcels, including city-owned lots, street right-of-way and parklands. PVEMC section 18.16.010 states, "The purpose of the open space (OS) zone is to preserve, promote and enhance valuable natural and open space resources in the city." Chapter 12.24 was similarly adopted containing specific restrictions and rules pertaining to the City's parks. A Parklands committee was established, charged with the role of protecting and nurturing the parklands.

Encroachments

Encroachments consist of the placement of any permanent feature by a private property owner onto the publicly-owned land, including: fences, walls, hardscape, gardens and hedges. PVEMC section 12.04.010 states that permits are required prior to the placement of any permanent feature on city property. However, because such encroachments would violate the deed restrictions which the City must legally comply with, encroachments cannot be, and are not, permitted on parklands.

Hundreds of the over 5000 residential lots in the City have the good fortune of abutting parkland parcels. Residents of these lots enjoy the beauty and serenity that their proximity to parklands affords them. Over the years encroachments into the parklands, by private residents, have occurred in various forms. These encroachments violate the City code and the deed restrictions, but more importantly they rob the community of public land which exists for the use and enjoyment of all.

Existing Policy

In 1993 the City Council confronted the growing problem of illegal encroachments and determined to take some steps to reverse the situation. Faced with the reality that many encroachments had existed for decades and could be costly to remove, the Council enacted a policy for the gradual removal of illegal encroachments. The Council determined that encroachments should be rectified under three specific conditions, in direct implementation of the City Code. The three components of this policy are outlined below.

Existing Policy 1: 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.

Existing Policy 2: 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.

Existing Policy 3: Require removal of unauthorized encroachments when they are modified.

As noted previously, 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.

Analysis of Existing Policy

Since 1993, these policies have been consistently implemented. Unfortunately, this policy has only enabled the removal of a small percentage of all parklands encroachments within the City. A recent survey conducted in the field, with the aid of aerial photographs, indicated 61 significant parklands encroachments exist today (please see the attached map). Thirty-five of these cases are evident in the parkland strip along the City's boundary with the city of Torrance.

Although the existing policy was a positive first step in addressing the issue, the following shortcomings have been identified:

- Enforcement is a challenge. Many encroachments are constructed or modified at locations which are not readily visible from public viewpoints. If the alterations are not witnessed, or it cannot be demonstrated that they were recently completed, the current policy does not allow staff to require removal of the subject encroachment.
- "Disrepair" is a subjective term, lacking adequate definition. Owners of encroachments found to be in disrepair often vigorously argue they are entitled to maintain the encroachment, citing structures in similar states elsewhere in the community.
- Many existing encroachments enclose parkland areas where trees exist, precluding the City's ability to maintain them. Lack of proper maintenance could result in dangerous conditions and expose the City to unnecessary liability.
- The current policy requires vigilant monitoring and documentation of the encroachments to catch modifications, requiring extensive staff time and resources.

The City has received numerous complaints from residents who argue that the City should immediately cause the removal of all illegal encroachments because the parklands exist for all to enjoy. They further contend that the City's allowance of these encroachments to continue to exist constitutes a "taking" from the public of the open space designated for their use. These sentiments echo the deed restrictions placed on the parklands by the Palos Verdes Homes Association.

Proposed Policy Addition

Improving the effectiveness of the existing encroachment policy is desired. The City should be mindful of the following goals in implementing any policy changes:

- Changes should be easy for the residents and staff to understand with minimal room for interpretation.
- Removal of the encroachments should be required or conducted at a logical time.
- Impacts to existing property owners with encroachments should be minimized.
- Subjectivity should be minimized.
- There should be a deadline for the removal of all encroachments.
- The procedures for the removal of encroachments should be identified for cases where there is non-compliance with the policy.

With these goals in mind, staff proposes adding two additional conditions to the current policy requiring the removal of unauthorized encroachments in the parklands adjacent to private property upon the transfer of property ownership. Owners of known illegal encroachments will be notified when this policy change is adopted. Owners could elect to either rectify the deficiency immediately, or postpone the matter. In the event of a postponement, removal of the encroachment would be required, whenever any of the following three instances occurs:

- 1) At the occurrence of a future transfer of property ownership, In order to allow flexibility, a grace period of 30 days is suggested, from the date of the close of escrow for the required removal of identified encroachments.
- 2) Seven years from the date of notification from the City to the property owner that the illegal encroachments need to be removed.
- 3) When any of the three conditions listed previously occur.

Permanent record of the notices would be maintained in the appropriate address files. At the time of property transfer, the Building Department would include mention of any encroachment notices present in the file, in the Real Property Records Report, which is legally required at the time of any property sale within the City. The seller and buyer could then negotiate the terms necessary to effectuate the removal of any encroachments.

If there is noncompliance with a required removal, the City would perform the removals, then lien the adjacent property owner for the cost of the removals, including staff time. If the City wished to further expedite the removal of the encroachments, it would have the option to cite the adjacent property owner for maintaining an illegal structure(s), which is an infraction and carries penalties up to \$500 per day.

The attached resolution marries the existing policy with the modification outlined above.

Alternatives Available to Council

The following alternatives are available to the City Council:

1. Approve Resolution R05-32 adopting modifications to the existing policy regarding the removal of unauthorized encroachments on City parklands.
2. Approve Resolution R05-32 adopting modifications to the existing policy regarding the removal of unauthorized encroachments on City parklands, with modifications.

3. Decline to Act.

Recommendation from Staff

Staff recommends that the Council approve Resolution R05-32 adopting modifications to the existing policy regarding the removal of unauthorized encroachments on City parklands.

Staff report prepared by

Allan Rigg
Public Works Department

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 25th day of October, 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 10/25/05

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 30 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 Seven Years After Notification by the City

If a property has not be transferred within seven 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.

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).