

(R-93-2134)

RESOLUTION NUMBER R- 282396

ADOPTED ON JUL 26 1993

RESOLUTION ESTABLISHING COUNCIL POLICY 700-06
REGARDING ENCROACHMENTS ON CITY PROPERTY.

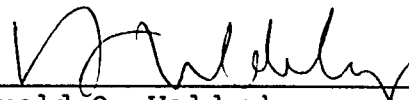
WHEREAS, the City Council wishes to establish guidelines for the authorization or removal of encroachments on City property and to establish responsibility for the protection of City property from unauthorized encroachments; and

WHEREAS, the City Manager on June 2, 1993 presented to the Transportation and Land Use Committee a proposed policy regarding encroachments to the Transportation and Land Use Committee, which was endorsed by the committee with several clarifications that have been incorporated; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that Council Policy 700-06, entitled Encroachments on City Property, is hereby established as set forth in the Council Policy, on file in the Office of the City Clerk as Document No. RR- 282396.

BE IT FURTHER RESOLVED, that the City Clerk is hereby instructed to add the aforesaid to the Council Policy Manual.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:mb
06/24/93
Or.Dept:NCC
R-93-2134

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT

ENCROACHMENTS ON CITY PROPERTY

POLICY
NUMBER

700-06

EFFECTIVE
DATE

BACKGROUND

Many instances of unauthorized encroachments on City property are reported or discovered each year. Responsibility for the protection of City property from unauthorized encroachments and the mechanisms by which the City can enforce its property rights have not been clear.

PURPOSE

To establish policies related to the protection of City property from unauthorized encroachment by private parties; to establish guidelines by which requests for encroachments may be considered; to establish the responsibilities of City departments regarding the protection of City property from unauthorized encroachment; to establish policies specifically related to erosion and drainage control measures on City property; and to establish policies regarding the disposition of existing unauthorized encroachments.

DEFINITIONS:

Encroachment - development, construction or use on City property

City Property - land which is owned in fee title by the City excluding such land which is public right-of-way.

Detrimental - causing any of the following: significant adverse impact on sensitive resources or historic sites; impediments to access or use; a hazardous or potentially hazardous condition, a potential public liability (including economic); causing any other situation or condition which is not in the City's best interest.

Permit Issuing Authority - that department designated as responsible for determining whether or not an encroachment can be allowed - see Section 1 of this policy.

DOCUMENT NO. RR-282396
FILED JUL 26 1993
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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DATEI. POLICIES- GENERAL

1. It is the City's policy to protect its property from unauthorized encroachment and to seek remedy, e.g., removal, repair, restoration, etc. when such activity occurs, to recover its costs related to such action to the greatest extent possible, and to pursue administrative and legal actions, fines and damages when necessary and/or prudent.

2. It is the City's policy that requests for authorization to encroach on City property be considered as follows:

General City Property (including non-dedicated parkland): The City may grant authorization for encroachment on its property if it is determined by the responsible department that the requested action would not violate any deed restrictions related to the City property, map requirements or other land use regulations; would not be detrimental to the City's property and interests; would not preclude other appropriate use, would be consistent with the City's General Plan, and is otherwise prudent and reasonable.

Dedicated Parkland: The City may grant authorization for encroachment on dedicated parkland if it is determined by the responsible department that the requested action would not only meet criteria for General City Property as stated above but would also be consistent with City Charter Section 55; i.e., that it would not change the use or purpose of the parkland. Permission for encroachment on dedicated parkland that would benefit only a private party shall not be granted.

3. It is the City's policy that authorization to encroach on City property may be granted only by written encroachment authorization and shall be contingent upon such stipulations and conditions deemed appropriate by the City to protect its property and interests. Such stipulations shall include but not be limited to:

- 1) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the permittee.
- 2) The permittee shall agree to at all times indemnify and save the City free and harmless from and pay in full any and all claims, demands, losses, damages or expenses that the City may

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- sustain or incur in any manner resulting from the construction maintenance, state of use, repair or presence of the encroaching structure or development installed hereunder, including any loss, damage or expense arising out of (a) loss of or damage to property (b) injury to or death of person, excepting any loss, damage, or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.
- 3) The party receiving the encroachment authorization must agree to remove the encroachment within 30 days after notice by the Permit Issuing Authority to do so;
 - 4) The City shall have the authority to remove any encroachment or cause the removal if the permittee does not comply with the 30 day notice and all costs related to such action shall be chargeable to the permittee.
 - 5) The permittee shall be required to maintain a policy of liability insurance in an amount satisfactory to the City in order to protect the City from any potential claims which may arise from the encroachment.
 - 6) The encroachment authorization shall be recorded in the Office of the County Recorder and shall relate to the property directly adjacent to the encroachment and shall run with that property. Therefore only an adjacent property owner can receive an encroachment permit.
 - 7) Acknowledgement that authorization by the Permit Issuing Authority and receipt of all appropriate development permits must be obtained prior to any future improvements or modifications to the encroachment.

In addition to the above stipulations, the receipt by the private party of all other relevant permits and approvals; including but not limited to Coastal Development Permits, Sensitive Coastal Resource Permits, Hillside Review Permits, Resource Protection Permits, etc., shall be required prior to the construction of the authorized encroachment. Normal noticing requirements and community review for such discretionary permits apply.

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4. It is the City's policy that the party requesting an encroachment shall pay an encroachment authorization fee established to recover costs associated with processing the request for encroachment authorization and, monitoring/ inspecting installation of the encroachment where appropriate. In addition the City shall require payment of an annual encroachment fee which will include a reasonable charge for use of City property and recovery of annual inspection costs.

5. It is the City's policy that departments which issue development permits shall be aware of City property interests and may not issue permits for development which encroaches on City property without proof from the private party that appropriate written authorization has been obtained from the responsible City department.

6. Responsibilities

Neighborhood Code Compliance Department - Responsible for the protection of City property from unauthorized encroachments and enforcement related thereto.

Property Department - Responsible for the issuance of encroachment authorization on general City property and leaseholds. It is also responsible for providing the other departments with information regarding property lines, ownership and title as necessary.

Park and Recreation Department - Responsible for the issuance of encroachment authorizations on dedicated and designated parkland and open space. It is also responsible, in consultation with the Engineering and Development Department, for certain coastal rights-of-way which are not used as streets.

Water Utilities Department - Responsible for issuance of encroachment authorization on land owned by the Water and Sewer Funds.

II. POLICIES- EROSION CONTROL MEASURES

1. It is the City's policy to provide erosion control measures on City property to the extent that funding is available and public improvements or public safety are jeopardized.

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2. It is the City's policy to not assume responsibility for erosion control measures on its property to protect private property.

3. It is the City's policy to consider giving authorization to private parties for erosion control measures on City property in as reasonable a manner as possible pursuant to the other policies stated herein.

4. For purposes of determining whether or not erosion control measures by private parties will be allowed on dedicated parkland, an action will be considered beneficial to the park if it contributes to the stabilization of bluff or cliffs that are steeper than the angle at which the soil is naturally stable.

5. It is the City's policy that any authorization to provide erosion control measures on City property shall include provisions for visual impact mitigation and enhancement.

III. POLICIES- DRAINAGE CONTROL MEASURES

1. For purposes of determining whether or not drainage control measures by private parties will be allowed on dedicated parkland, an existing encroachment will be considered beneficial to the park if it is and remains the only reasonable method of preventing surface erosion of parkland due to uncontrolled drainage; a proposed encroachment will be considered beneficial if it meets the above criteria and qualifies for all regulatory permits.

2. It is the City's policy that any authorization to provide drainage control measures of City property shall include provisions for visual impact mitigation and enhancement.

IV. POLICIES - EXISTING ENCROACHMENTS

1. Type of encroachment: Erosion and Drainage Control Measures

If consistent with other sections of this policy, it is the City's policy to offer an encroachment authorization which would contain all the stipulations and requirements

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contained in Section I of the policy, including a permit fee and annual charge. In addition, a requirement to improve or bring the encroachment up to safe and acceptable standards, including aesthetic standards, as determined necessary by the City Manager may be imposed. In the coastal areas, coastal permits will be required for those encroachments placed after October of 1988.

2. Type of Encroachment: Private Use and Enjoyment i.e, improvements that are generally construed to be detrimental to the City's interest because of the singularly private benefit that is gained from them by a private party. Examples are stairways, walls, fences, decks, antennas, and landscaping which is not necessary for erosion control and which has the appearance of private property.

A. It is the City's policy that such types of encroachments are not appropriate on City property and may not be authorized. It is the City's policy to pursue removal or other corrective action; provided, however, that if the encroachment is minor in nature; i.e., is unobtrusive and does not impede access or use of the City property, the Manager may waive enforcement action. However, it is understood that such encroachments may be subject to a recordation of official notice of the encroachment with the County Recorder and that lack of enforcement action does not construe authorization to encroach or a giving up of City property. This policy also does not impact requirements to obtain required building or other development permits.

3. In the event that the City evaluation indicates that a particular unauthorized encroachment cannot be authorized or allowed to remain because it is hazardous or a potential liability to the City or because it is either detrimental or non-beneficial per this policy, or in the event that the private party cannot or will not obtain the required authorization, the City shall pursue administrative and legal remedies to protect its interests and shall to the greatest extent possible collect damages and costs related to the enforcement of this policy.

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4. It is not the intent of this policy to modify or supersede in any way the requirements of San Diego Municipal Code Section 103.0538 which apply to the Ocean Front Walk area.

Adopted by Resolution _____, dated _____.

Passed and adopted by the Council of The City of San Diego on JUL 26 1993
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juan Vargas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

(Seal)

SUSAN GOLDING
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Saida S. [Signature]*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-282393 Adopted JUL 26 1993

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SAN DIEGO, CA