

SUNROAD ENTERPRISES
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To: Kelly Batten

From: Tom Story 

Date: March 8, 2013

Subject: Waiver of Council Policy 700-06

Request: Sunroad Centrum Partners, the owner of two parcels contiguous with the newly constructed 2.0-acre Centrum Park in Kearny Mesa, requests that the City Council waive Council Policy 700-06 and direct the Park and Recreation Department to accept a nine (9)-foot-wide building restricted easement along the north and south property lines of the park, adjacent to Sunroad's parcels.

Background: First approved by the City Council in 1997, the New Century Center Master Plan, aka Spectrum Center, contemplated redevelopment of the 244-acre former General Dynamics industrial site with mixed-use commercial/industrial development. Consistent with the City's General Plan and the City of Villages concept, the Spectrum Master Plan was amended in 2000 and 2002 to include multi-family residential uses in the western portions of the site. The 2002 amendments also included park requirements associated with the additional residential development authorized with the amendment.

In partial satisfaction of the park requirements for Phase 1 residential development, a 379 D.U. apartment project, Wood Partners completed construction of the 2.0-acre Centrum Park in 2012. Under separate permits, Sunroad Centrum Partners is now constructing residential Phases 2 and 3 (252 total D.U.s) contiguous with the Centrum Park and to the immediate north and south of the park. Consistent with the development standards of the Spectrum Master Plan, which established a minimum building setback of zero (0) feet for the rear yards, the Planned Development Permits for Phases 2 and 3 (PDP #'s 325462 and 9058321) were approved by the City Planning Commission with rear yard building setbacks of 6'-0".

In reliance on the approved PDP's, construction drawings were then prepared showing 6'-0" building setbacks from the Park. During the building permit plan check review it was noted that the California Building Code (CBC) would require a 15' building setback from the park if the park were not designated a 'Public Way'.

As more fully detailed in the attached letter from James Churchill, P.E., the park could reasonably be deemed a public way because it meets the CBC definition as a "...parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public uses..."

An alternative to having the Centrum Park designated a public way would be to record a nine (9)-foot wide building restricted easement along the north and south property lines of the park, adjacent to Sunroad's parcels. City staff has identified that the request to record a building restricted easement over any portion of the park is inconsistent with Council Policy 700-06 and as such they are obligated to deny Sunroad's request absent waiver of the Council Policy.

It is Sunroad's contention that the requested building restricted easement will not impede access to or use of the site for park purposes. As a practice, small neighborhood parks do not have structures such as restrooms or Recreation Centers. In all likelihood, there will never be a desire or need to build a structure on this neighborhood park. The easement would place no restriction on the park's landscaping. Nor would it necessitate any modification of the current Centrum Park General Development Plan, park maintenance, or park operations.

The key issue is whether or not the City would ever proceed to build a structure on the 2.0-acre park. While it is theoretically possible that in the future the City might want to build a structures on the site within nine ((9) feet of the north and south property lines of the park, it is unlikely that the City would ever secure a public vote to dispose of dedicated parkland, nor is it likely that the neighbors would support having a structure built on the park.

Draft Findings: Waiver of Council Policy 700-06 in this instance, meets the guidelines established in Council Policy 700-06 because recordation of a nine (9)-foot-wide building restricted easement along the north and south property lines of the park: (1) would not violate any deed restrictions related to the park, map requirements or other land use regulations; (2) would not be detrimental to the City's property interests; (3) would not preclude appropriate uses of the park; (4) would be consistent with the General Plan; (5) would otherwise be prudent and reasonable; and (6) would not change or interfere with the use and purpose of the park.



CHURCHILL ENGINEERING, INC.

Building and Fire Code Consulting

June 7, 2012

VIA EMAIL

tstory@sunroadenterprises.com

Tom Story
V.P. Development
Sunroad Enterprises
4445 Eastgate Mall, Suite 400
San Diego, California 92121
858-362-8500

Re: Park - Public Way
Sunroad Centrum Residential, Phases II & III
Lightwave Ave. & Spectrum Center Blvd.
San Diego, California
CEI Project No: 12037

Dear Tom:

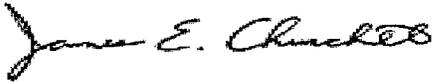
Churchill Engineering, Inc. has evaluated the classification of the proposed park located between the Sunroad Centrum Phase II and III projects as a public way in determining the maximum allowable area of openings permitted within the exterior walls facing the park property. Our opinion is that the park should be considered as a public way for determining the fire separation distance for both buildings facing the park. As described on page 159 of the 2009 IBC Handbook Fire- and Life-Safety Provisions, a public way may also include open spaces other than streets or alleys that the building official may determine are reasonably likely to remain unobstructed through the years. Based on the size and location of the proposed park it appears to be unlikely that a building or other type of obstruction that may potentially create an exposure hazard would be placed on the park property in the future. Section 1002 of the 2010 California Building Code (CBC) defines a public way as:

"A street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet."

In accordance with Section 705.8.1 of the CBC, the maximum area of exterior wall openings permitted is based on the fire separation distance. When the exterior walls of a building face a public way the building code defines the fire separation distance as the distance measured from the building face to the centerline of the public way. Based on the area of exterior wall openings being proposed each of the buildings are required to have a minimum fire separation distance of 15 feet. At a fire separation distance of 15 feet to less than 20 feet CBC Table 705.8 permits the maximum area of unprotected openings in an exterior wall in any story of a building equipped throughout with an automatic sprinkler system to be 75 percent of the wall area; and at a fire separation distance of 20 feet or greater there is no limit to the amount of openings permitted. The centerline of the proposed park is greater than 20 feet from the building face of both buildings, therefore, the area of exterior wall openings being proposed are clearly within the limitations of the building code when considering the park as a public way.

Sincerely,

CHURCHILL ENGINEERING, INC.

A handwritten signature in black ink that reads "James E. Churchill". The signature is written in a cursive style with a large initial "J" and a stylized "E".

James E. Churchill, P.E.
President

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: ENCROACHMENTS ON CITY PROPERTY
POLICY NO.: 700-06
EFFECTIVE DATE: May 24, 1999

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. Additionally, there are currently no guidelines for City staff to use in evaluating proposed encroachments which could benefit the public and generate revenue for the City.

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 encroachments; 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; and to establish guidelines and an evaluation process for encroachment authorization of telecommunication facilities on parkland and open space.

DEFINITIONS:

Encroachment - development, construction on or use of 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(F) of this Policy.

Permittee - Person or entity seeking encroachment authorization pursuant to this Policy.

I. POLICIES- GENERAL

- A. Unauthorized Encroachments. 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.

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- B. Guidelines for Encroachment Authorization. It is the City's policy that requests for authorization to encroach on City property be considered as follows:
1. General City Property: 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 interests; would not preclude other appropriate use; would be consistent with the City's General Plan; and would otherwise be prudent and reasonable.
 2. Dedicated or Designated Parkland and Open Space: The City may grant authorization for encroachment on dedicated or designated parkland and open space 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 or interfere with the use or purpose of the parkland or open space. Permission for encroachment on dedicated or designated parkland and open space that would benefit only a private party shall not be granted.
 - a. In addition to complying with the above criteria, proposed telecommunications facilities must be disguised such that they do not detract from the recreational or natural character of the parkland or open space. Further, proposed telecommunication facilities must be integrated with existing park facilities, and must not disturb the environmental integrity of the parkland or open space.
 - b. Prior to encroachment authorization, the proposed telecommunication facility must be reviewed by the Park and Recreation Department to determine whether the facility complies with the criteria of Section B. If the Park and Recreation Department determines that the proposed facility complies with Section B, the Community Planning Committee for the potentially affected parkland or open space must be notified. The proposed facility must then be reviewed by the following advisory bodies for a recommendation:
 - i) Community Recreation Council for park or open space where encroachment is proposed;
 - ii) Area Committee, a subcommittee of the Park and Recreation Board, or Citizens' Advisory Committee for open space area where encroachment is proposed, as appropriate;
 - iii) Design Review Committee, subcommittee of the Park and Recreation Board, as appropriate; and
 - iv) Park and Recreation Board, or governing open space Task Force for those areas where they exist.

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- c. The recommendation of the Community Recreation Council, the Area Committee or Citizen's Advisory Committee, and the Design Review Committee, as applicable, shall be submitted to the Park and Recreation Board or governing open space Task Force. The Park and Recreation Board, or governing open space Task Force, shall submit its recommendation as follows:
 - i) For minor telecommunication facilities, to the Park and Recreation Director, who shall determine whether the facility should be authorized.
 - ii) For major telecommunication facilities, to the City Council, who shall determine whether the facility should be authorized.

If the facility is authorized, the Real Estate Assets Department shall negotiate and prepare the necessary encroachment authorization.

C. Written Encroachment Authorization Required. It is the City's policy that permission 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 sustain or incur in any manner resulting from the construction, maintenance, 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 a 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;

When the encroachment authorization is in the form of an Encroachment Permit, the Permittee must agree to remove the encroachment within **thirty (30)** days after notice by the Permit Issuing Authority to do so;

The City shall have the authority to remove any encroachment or cause **its** removal if the Permittee does not comply with the thirty (30) day notice required by Section I.C.3., and all costs related to such action shall be chargeable to the Permittee;

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F. Permit Issuing Authority/Responsibilities.

1. City Council - Responsible for approving the placement of major telecommunication facilities on dedicated or designated parkland or open space.
2. Neighborhood Code Compliance Department - Responsible for the protection of City property from unauthorized encroachments and enforcement related thereto.
3. Real Estate Assets Department - Responsible for the issuance of encroachment authorization on general City property and leaseholds, and, for negotiation and preparation of encroachment authorizations for previously approved telecommunication facilities to be located on dedicated or designated parkland or open space. It is also responsible for providing the other departments with information regarding property lines, ownership and title, as necessary.
4. Park and Recreation Department - Responsible for the issuance of encroachment authorizations, and for approval by the Park and Recreation Director of the placement of minor telecommunication facilities, on dedicated and designated parkland and open space. It is also responsible, in consultation with the Planning and Development Review Department for certain coastal rights-of-way which are not used as streets.
5. Engineering and Capital Projects Department - Responsible for issuance of encroachment authorization on land owned by the Water and Sewer Funds.
6. Planning and Development Review Department - Responsible for the review and issuance of discretionary permits associated with all applications for telecommunication facilities.

II. POLICIES - EROSION CONTROL MEASURES

- A. Erosion Control By City. 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. It is the City's policy to not assume responsibility for erosion control measures on its property to protect private property.
- B. Erosion Control By Private Parties.
 1. 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.
 2. For purposes of determining whether or not erosion control measures by private parties will be allowed on dedicated or designated parkland or open space, an action will be considered beneficial to the parkland or open space if it

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contributes to the stabilization of bluff or cliffs that are steeper than the angle at which the soil is naturally stable.

- C. Mitigation. 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

- A. Drainage Control By Private Parties. For purposes of determining whether or not drainage control measures by private parties will be allowed on dedicated or designated parkland or open space, and existing encroachment will be considered beneficial if it is and remains the only reasonable method of preventing surface erosion of parkland or open space due to uncontrolled drainage; a proposed encroachment will be considered beneficial if it meets the above criteria and qualifies for all regulatory permits.
- B. Mitigation. It is the City's policy that any authorization to provide drainage control measures on City property shall include provisions for visual impact mitigation and enhancement.

IV. POLICIES - EXISTING ENCROACHMENTS

- A. 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 for erosion and drainage control measures. The authorization shall contain all the stipulations and requirements set forth in Section I of this 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.
- B. Type of Encroachment: Private Use and Enjoyment. It is the City's policy that encroachments for private use and enjoyment are not appropriate on City property and may not be authorized. Such encroachments 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 have the appearance of private property. 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 City 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 constitute authorization to encroach or surrender City property rights. This policy also does not impact requirements to obtain building or other development permits.

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- C. Unauthorized Encroachments. 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 property 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.
- D. Ocean Front Walk. 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.

HISTORY:

“Horton Plaza - Billboards”

Adopted by Resolution R-169963 03/15/1962

Repealed by Resolution R-254869 08/24/1981

(Incorp. into Council Policy 700-05 “Horton Plaza - Use Of”)

“Encroachments on City Property”

Adopted by Resolution R-282396 07/26/1993

Amended by Resolution R-291658 05/24/1999