

COUNCIL POLICY

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;
- 3) 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;
- 4) 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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- 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) When the encroachment authorization is in the form of an Encroachment Permit, the Encroachment Permit 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; and
- 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 Permittee must obtain 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., prior to the construction of the authorized encroachment. Normal noticing requirements and community review for such discretionary permits apply.

D. Fees and Costs.

1. It is the City's policy that the Permittee shall pay an encroachment authorization fee established to recover costs associated with processing the request for encroachment authorization, and with monitoring, inspection or 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 cost.
2. All monies received for placement of minor telecommunication facilities on parkland and open space areas shall be deposited into the Park and Recreation Department General Fund budget. All monies received for placement of major telecommunication facilities shall be deposited into an appropriate account for use within the parkland or open space area where the facility is located.
3. Telecommunication facilities receiving encroachment authorization for parkland or open space may be subject to additional costs, including but not limited to, costs associated with mitigation of visual or physical impacts to the specific park or open space site, and costs associated with complying with applicable local, state or federal law.

- E. Development Permits. 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 Permittee that written authorization has been obtained from the Permit Issuing Authority.

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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