

CITY OF OJAI

RESOLUTION NO. 15-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OJAI ADOPTING A POLICY GOVERNING REVIEW AND APPROVAL OF PRIVATE ENCROACHMENTS IN THE PUBLIC RIGHT OF WAY AND SPECIFYING INSURANCE REQUIREMENTS FOR THESE SPECIAL SITUATIONS UNDER CITY OF OJAI MUNICIPAL CODE SECTION 7-1.107

WHEREAS, the Ojai Municipal Code contains provisions governing the review, issuance, applications for, and approval of encroachment permits in Chapter 1 of Title 7; and

WHEREAS, after taking public testimony and hearing evidence from the public, the City Council desires to adopt a comprehensive policy governing privately owned encroachments into the right of way appurtenant to a property adjacent to the public right of way, not including any encroachments for utility companies; and

WHEREAS, the proposed policy is modeled on the recently adopted approaches utilized by the City of San Buenaventura and the County of Ventura in their efforts to resolve numerous existing but unpermitted privately owned encroachments into the public right of way, particularly existing walls, fences, hedges, and landscaping; and

WHEREAS, the proposed policy is intended to provide a clear path for proposed and to legalize numerous existing but unpermitted privately owned encroachments into the City's public rights of way, particularly existing walls, fences, hedges, and landscaping, applying a comprehensive set of policies that take the expected risks from existing encroachments into account; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City Council determines that the above set forth recitals are true and correct.

SECTION 2. Environmental Determination.

The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that the adoption of the following amendments to the Ojai Municipal Code is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15378 and 15061(b)(3) for the following reasons:

(a) Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that the adoption of this policy governing review and approval of existing and new privately owned encroachments in the public right of way may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. The proposed policy sets forth specific requirements for review and approval for certain existing and new privately owned encroachments in the public right of way, but does not directly approve any particular encroachment into the public right of way. Similarly, the policy's promulgation of insurance requirements for certain privately owned encroachments into the public right of way will not have a potentially significant effect on the environment, because it governs the shifting of risk in the event of an accident, but does not approve any changes on the ground. The proposed policy does not directly authorize any new construction or reconstruction of encroachments into the public right of way. Accordingly, the City finds that these amendments are exempt from CEQA under Guidelines Section 15061(b)(3) because there is no possibility that this resolution will have a significant effect on the environment.

(b) Under CEQA Guidelines Section 15378(b)(5), the adoption of this policy governing review and approval of existing and new privately owned encroachments in the public right of way is not a project under CEQA because it will not cause a "direct physical change in the environment" or a "reasonably foreseeable indirect physical change in the environment" because the policy modifies the City's administrative and risk-shifting procedures for right of way encroachments and does not approve any changes on the ground. Any proposed new construction or reconstruction of encroachments into the public right of way will require independent review by the City, including appropriate CEQA review. Accordingly, the City finds that these amendments do not qualify as a "project" under CEQA Guidelines Section 15378(b)(5) because they constitute administrative activities of government that do not directly or indirectly result in any physical changes in the environment.

SECTION 3. Adoption of Policy for Privately Owned Encroachments into the Public Right of Way.

All applications for encroachment permits for privately owned encroachments into the public right of way that are appurtenant to a property adjacent to the public of right will be reviewed by the Public Works Director in accord with this policy. This policy will not apply to any proposed or existing encroachments owned by any utility company or municipal or governmental utility company or any oil or gas or other petroleum products company. The City Council intends that this policy will provide clarity as to the encroachment permit requirements for new and existing privately owned improvements that are appurtenant to adjacent privately owned property and which encroach into the public right of way, including but not limited to walls, fences, hedges, landscaping, and hardscaping.

For Existing Encroachments: The City will not take any enforcement action against existing privately owned encroachments into the public right of way that are appurtenant to a property adjacent to the public right of way unless there is a higher safety risk, in the judgment of the Public Works Director. For roadside encroachments such as mailbox supports, walls and other encroachments on curves of higher speed streets, all such encroachments may be required to have reflectors/object-markers that indicate the presence of those encroachments to oncoming drivers. Any existing privately owned encroachments into the public right of way that are appurtenant to a property adjacent to the public right of way and which, in the judgment of the Public Works Director, pose a higher safety risk will be required to secure an encroachment permit, in compliance with this policy and Chapter 1 of Title 7 of the Ojai Municipal Code.

For Proposed New or Reconstructed Encroachments, or existing encroachments with a higher safety risk requiring action:

- No encroachments within 5 feet of curb or edge of pavement will be permitted, except: driveway, USPS-approved mailbox or low-laying landscaping.
 - Mailbox supports/columns shall not exceed 2 by 2 foot, and exceed 5 feet high. And shall leave a minimum 4-foot clear of sidewalk clearance/width for pedestrians – City Engineer can approve 3-foot clearance as an exception. When multiple mailboxes are combined on one column, a wider dimension may be approved by the Public Works Director.
- Fences, walls, or hedges no more than 3 feet in height and no fewer than 5 feet from the back of the curb/edge of pavement may be permitted with review of the geometric condition of the roadway (must conform to zoning ordinance); exception up to 6 feet in side or rear yard, subject to zoning ordinance.
- Encroachments that affect existing utilities will require a no-objection letter from the affected utility prior to approval.
- Standard encroachment permit fees apply.
- Insurance will be required in the amount set forth in Ojai Municipal Code section 7-1.107, for a period starting on the date the construction commences and expiring no earlier than one year from the completion of construction.
- The Public Works Director may defer complex applications to the City Council for a decision.
- Applications that do not meet the above standards shall be denied by the Public Works Director, but are appealable to the City Council per Ojai Municipal Code, section 7-1.801.

SECTION 4. Public Notification.

The Public Works Director is hereby directed to notify the public of the adoption of this policy via an appropriate mechanism, calculated to ensure that the public is aware that existing, unpermitted existing privately owned encroachments into the public right of way that are appurtenant to a property adjacent to the public of right may be processed for approval under these standards.

PASSED, APPROVED and ADOPTED this 22nd day of September, 2015 by the following vote:

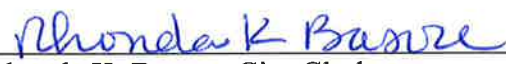
AYES: Blatz, Clapp, Haney, Lara, Weirick
NOES: None
ABSENT: None
ABSTAIN: None

CITY OF OJAI, CALIFORNIA



Severo Lara, Mayor

ATTEST:



Rhonda K. Basore, City Clerk

APPROVED AS TO FORM:



Matthew Summers, City Attorney

PASSED, APPROVED and ADOPTED this 22nd day of September, 2015 by the following vote:

AYES: Blatz, Clapp, Haney, Lara, Weirick

NOES: None

ABSENT: None

ABSTAIN: None

CITY OF OJAI, CALIFORNIA



Paul Blatz, Mayor pro tem

ATTEST:



Rhonda K. Basore, City Clerk

APPROVED AS TO FORM:



Matthew Summers, City Attorney