

RESOLUTION NO. 20-23

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,
AUTHORIZING THE APPROVAL OF AN APPLICATION FOR AN
ENCROACHMENT AGREEMENT FOR 130 E. SCENIC AVENUE, THE SUBJECT
OF A PRIVATE LANDOWNER ENCROACHMENT INTO THE PUBLIC RIGHT OF
WAY; AND AUTHORIZING CITY STAFF TO ENTER INTO AN ENCROACHMENT
AGREEMENT BETWEEN THE CITY AND TITLE OF RECORD PROPERTY
HOLDERS AT SAID ADDRESS**

WHEREAS, the City Council passed and adopted Ordinance No. 09-22 N.S. (the “Ordinance”) on June 28, 2022, amending Richmond Municipal Code (“RMC”) to address public right-of-way (“ROW”) encroachments, generally; and

WHEREAS, the Ordinance amended Article XII (“Public Works”), Chapter 12.30 (“Encroachments and Easements in the Public Rights-of-Way,”) Part 3 (“Private Landowner Encroachment(s) Into Unimproved Portions of Public ROW”), Section 12.30.170, et seq., incorporating provisions to codify the City’s long-standing practice of allowing private landowner encroachments into the public ROW subject to certain conditions; and

WHEREAS, RMC Chapter 12.30.180 requires private landowners (“Owner(s)”) to submit an Encroachment Agreement application to Engineering Division of the Public Works Department (“PW-Engineering”) for encroachments placed within the public ROW; and

WHEREAS, RMC Chapter 12.30.200, et seq. grants City Council authority to approve such applications. The effect of an approval then authorizes the City staff to enter into an Encroachment Agreement between City and Owner(s). Said Encroachment Agreement, once finalized, is recorded on property title and binds successive owners in perpetuity; and

WHEREAS, Owner(s) have applied for approval to install a fence parallel to the roadway at 130 E. Scenic Avenue (“Subject Property”), which will be located within the public ROW. Given the location within the public ROW, Owner(s) submitted an Encroachment Agreement Application to PW-Engineering; and

WHEREAS, The City Engineer has made the requisite affirmative findings in accordance with RMC 12.30.190(a)(1)(A-G); and

WHEREAS, pursuant to RMC 12.30.180(a)(8), PW-Engineering sent a Notice of Encroachment Agreement Application to properties within 300 feet of Subject Property. Thereafter, pursuant to RMC 12.30.200(d), the City Clerk’s Office noticed a public hearing for February 7, 2023, later continued to February 21, 2023, at which time the City Council took public comment. Pursuant to RMC 12.30.200(d), the Clerk’s Office sent a Public Hearing notice by U.S. Mail to neighbors within 300 feet of Subject Property on January 25, 2023. The notice was also published in *West County Times* on January 27, 2023. A courtesy notice of the Public Hearing’s continuation was sent to neighbors on February 10, 2023. Pursuant to 12.300.200(b), a copy of the Encroachment Agreement Application was made available for review in the City Clerk’s Office on February 9, 2023.

THEREFORE, LET IT BE RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. The City Council finds and determines to be in full force and effect the Recitals above and hereby incorporates them fully herein.

SECTION 2. The City Council finds and determines for the reasons stated in the recitals, the adoption of this Resolution is exempt from CEQA under Section 15303(e) of the State CEQA Guidelines.

SECTION 3. Encroachment Agreement Application for 130 E. Scenic Avenue
The City Council has made the following determinations based on the City Engineer’s findings pursuant to RMC Sections 12.30.200(f) and 12.30.190(a)(1)(A-G):

(1) Findings.

(A) Complete application contains all necessary, supporting information.

On May 31, 2022, the property owners, Eli Berland and Kathleen Berland (collectively, the "Applicant") submitted an application for an Encroachment Agreement and supporting information. The application is complete.

(B) The encroachment does not conflict with adopted street improvements or similar plans, or any in development, or that can be anticipated.

The encroachment does not conflict with adopted street improvements or similar plans, nor any street improvements that are in project development; nor are there any street improvements anticipated in this area in the foreseeable future.

(C) The encroachment does not pose a public health or safety hazard as determined by City Engineer.

The encroachment does not pose a public health or safety hazard as determined by the City Engineer. City staff did conduct a sightline study, and the Applicant did provide renderings to demonstrate the sight distances for this proposal, which are part of the application.

(D) The encroachment does not substantially obscure the main property frontage.

The encroachment is a fence that is 72 inches high with the bottom two (2) feet constructed of solid wood, while the top four (4) feet are fifty percent (50%) open. Thus, the encroachment does not substantially obscure the main property frontage.

(E) The encroachment does not adversely impact or affect adjacent properties; and/or result in facilities discordant or inconsistent with other structures placed or erected upon the main property or in the existing ROW; and or make gratuitous use of ROW if the property is not strictly necessary for the proposed use.

There are no residences across the street. The encroachment occurs on a hillside that slopes steeply from the roadway to the home. The encroachment is a fence that has a base lower than the street's elevation. Thus, the encroachment does not adversely impact or affect adjacent properties.

(F) The encroachment has a sufficient setback from street curbs or pavement edges and does not negatively impact the area's reasonable use. A standard setback should be no fewer than three (3) feet, subject to City Engineer's determination that the area's conditions or environment allows otherwise.

The encroachment has a sufficient setback from street curbs or pavement edges and does not negatively impact the area's reasonable use as determined by the City Engineer.

While most of the proposed fence is set back more than three (3) feet, there are portions of the encroachment that are less than three (3) feet. In its existing state, the affected portion of road has a very minimal shoulder (i.e. two to three (2-3) feet). The proposed fence structure does not seek to worsen the existing condition.

(G) The encroachment conflicts with a specific condition below, but the encroachment is warranted due to special circumstances specifically identified and addressed in the encroachment agreement.

The encroachment may conflict with RMC 12.30.180(a)(2)(J)(i). This section requires that a four (4)-foot area of space be allocated for a sidewalk. However, the encroachment may be considered permissible due to the conditions of the site and the potential complications of building a sidewalk on such an extreme slope. Creating an acceptable refuge area for pedestrians will be addressed in the encroachment agreement conditions should Council approve this item.

BE IT FURTHER RESOLVED THAT all the required findings have been met, and the Council determines this Encroachment Agreement Application for 130 E. Scenic in Richmond, California is 1) approved; and 2) City staff is authorized to enter into an Encroachment Agreement with Applicant.

BE IT ALSO RESOLVED THAT this Resolution takes effect immediately upon its adoption.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council declares that it would have passed this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond, at a regular meeting thereof held February 21, 2023, by the following vote:

AYES:	Councilmembers Bana, Jimenez, Robinson, Willis, Zepeda, Vice Mayor McLaughlin, and Mayor Martinez.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

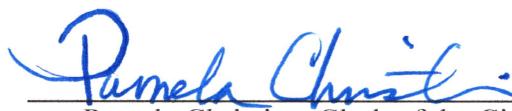
EDUARDO MARTINEZ
Mayor

Approved as to form:

DAVE ALESHIRE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 20-23**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on February 21, 2023.



Pamela Christian, Clerk of the City of Richmond