

**RESOLUTION NO. 27-23**

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,  
AUTHORIZING THE APPROVAL OF AN APPLICATION FOR AN  
ENCROACHMENT AGREEMENT FOR 8 WESTERN DRIVE, 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**

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**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 8 Western Drive (“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, which was later continued to February 21, 2023, and then continued a second time to March 7, 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; a second courtesy notice of the subsequent continuation was sent to neighbors on February 17, 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 17, 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 8 Western Drive**

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-F):

#### (1) Findings.

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

On July 6, 2022, James and Anna Ortiz (collectively, the "Applicant") submitted an application for an Encroachment Agreement, including supporting information.

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

The City has no adopted street improvement or similar plans for Western Drive. The encroachment does not conflict with any anticipated development.

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

Western Drive is a narrow, two (2)-lane street with steep slopes on either side of the roadway. The encroachment does not block vehicle travel or impede sight distance. Due to the slope and existing vegetation found along Western Drive, pedestrian access within the encroachment area is difficult. Due to the proximity of the fence to the intersection of S. Garrard Blvd and Western Drive, the Applicant should be conditioned to provide reflective materials on the fence and to provide an object marker to the satisfaction of the City Engineer. Thus, the encroachment does not pose a public health or safety hazard.

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

The encroachment is a fence that is six (6) feet tall; gravel driveway; stairs to access the house; waste/ recycling storage; and two (2)-foot tall retaining walls. The existing residence is located higher than the street and close to the property line. The stairs are required to access the house from Western Drive. As the residence is higher than the fence, this encroachment does not 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. Due to the topography and configuration of the residence on the existing parcel, the encroachment is necessary to provide reasonable access.

(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 feet, subject to City Engineer's determination that the area's conditions or environment allows otherwise.

The encroachment varies from slightly less than four (4) to six (6) feet from the edge of pavement. RMC 12.30.190(a)(2)(J)(i) requires that a four (4)-foot area of space be allocated for a sidewalk. The Applicant should be conditioned to provide a four (4)-foot sidewalk with a protective curb to the satisfaction of the City Engineer. This may require a partial reconstruction of the fence.

**BE IT FURTHER RESOLVED THAT** all the required findings have been met, and the Council determines this Encroachment Agreement Application for 8 Western Drive 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.

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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 on March 7, 2023, by the following vote:

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

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. 27-23**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on March 7, 2023.

  
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Pamela Christian, Clerk of the City of Richmond