

**RESOLUTION NO. 31-23**

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,  
APPROVING THE ENCROACHMENT AGREEMENT IT DIRECTED CITY STAFF  
TO ENTER INTO WITH TITLE OF RECORD PROPERTY HOLDERS AT 130 E.  
SCENIC AVENUE FOR A PRIVATE LANDOWNER ENCROACHMENT INTO THE  
UNIMPROVED PUBLIC RIGHT OF WAY; AND REAFFIRMING ITS DECISION  
THAT THE ENCROACHMENT MEETS THE REQUISITE FINDINGS PURSUANT TO  
RICHMOND MUNICIPAL CODE 12.30.190(a)(1)(A-G)**

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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 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 in the public ROW; and

**WHEREAS**, RMC 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 executed, is recorded on the property’s title and binds successive owners in perpetuity; and

**WHEREAS**, Owner(s) applied for approval to install a fence parallel to the roadway at 130 E. Scenic Avenue (“Subject Property”) to 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 made the requisite, affirmative findings in accordance with RMC 12.30.190(a)(1)(A-G); and

**WHEREAS**, pursuant to 12.30.180(a)(8), PW-Engineering sent a “Notice of Encroachment Agreement Application” to properties within 300 feet of Subject Property; and, to the Neighborhood Council as per RMC 12.30.110(a)(1). 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; and, as a courtesy, simultaneously noticed the Neighborhood Council. 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 and the Neighborhood Council on February 10, 2023. Pursuant to 12.30.200(b), a copy of the Encroachment Agreement Application was made available for review in the City Clerk’s Office on February 9, 2023; and

**WHEREAS**, following the February 21<sup>st</sup> Public Hearing and the City Council’s determination that the required findings of RMC 12.30.190(a)(1)(A-G) had been met as detailed above, the City Council approved the Encroachment Agreement Application for Subject Property and directed City staff to enter into an Encroachment Agreement with the Owner(s) to be recorded against the property’s title and binding upon successors; and

**WHEREAS**, RMC 12.30.200(e) requires the City Council to formalize its decision regarding the Encroachment Agreement based on the required findings of Section 12.30.190 within 30 days following the Public Hearing. RMC 12.30.200(f) states that the findings for approving an Encroachment Agreement are set forth in RMC 12.30.190(a)(1)(A-G); and

**WHEREAS**, the City Council affirmatively determined the requisite findings of RMC 12.30.190(a)(1)(A-G) had been met, and it adopted those findings in Resolution 20-23, after which it directed the City to enter into an Encroachment Agreement with Owner(s); and

**WHEREAS**, Section 21084 of the California Public Resources Code specifically requires that CEQA Guidelines include a list of project classes or categories determined not to have a significant environmental effect, thus making said categories exempt from CEQA provision(s). CEQA Guidelines, section(s) 15301 through 15333, list exempt specific project categories, including relevant criteria necessary for a project to meet an exemption. CEQA Guidelines Section 15300.2 includes a list of exceptions precluding categorical-exemption use; here, the proposed project does not trigger any exception that would require an exemption override. The current Application meets the requirements for a categorical exemption pursuant to Section 15303(e), "New Construction or Conversion of Small Structures," where subsection (e) addresses accessory/appurtenant structures, which specifically includes fence(s).

**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, that the adoption of this Resolution is exempt from CEQA under Section 15303(e) of the State CEQA Guidelines.

**SECTION 3. Encroachment Agreement Approval for 130 E. Scenic Avenue**

The City Council reaffirms that it has made the following determinations based on the City Engineer's findings pursuant to RMC 12.30.200(f) and 12.30.190(a)(1)(A-G), and it hereby formalizes its decision regarding said findings pursuant to RMC 12.30.200(e) and (f) as follows in approving the Encroachment Agreement between the City and Owners of Subject Property:

**(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 12.30.190(a)(2)(J)(i).<sup>1</sup> 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.<sup>2</sup>*

**BE IT FURTHER RESOLVED THAT** all the required findings have been met, and the City Council hereby: 1) approves the Encroachment Agreement it directed City staff to enter into with title of record property holders at 130 E. Scenic Avenue in Richmond, California for a private landowner encroachment into the unimproved Public ROW; and 2) reaffirms its decision within Resolution 20-23 that the encroachment meets the requisite findings pursuant to RMC 12.30.190(a)(1)(A-G).

**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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<sup>1</sup> On February 21<sup>st</sup>, the paragraph directly above cited RMC 12.30.180(a)(2)(J)(i), which was a scrivener's error. The correct citation is RMC 12.30.190(a)(2)(J)(i).

<sup>2</sup> The City Council subsequently approved this item by adoption of Resolution 20-23 on February 21, 2023.

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 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. 31-23**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on March 21, 2023.

  
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Pamela Christian, Clerk of the City of Richmond