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REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
July 21, 2005

Honorable Members
of the Law & Legislation Committee

Subject: ENCROACHMENTS ON CITY PARKLAND/OPEN SPACE

Location/Council District: Citywide, All Council Districts

Recommendation:

Staff recommends that the Law and Legislation Committee review the attached issue paper (Exhibit A, p. 4), provide direction and support the preparation of an ordinance regarding encroachments on non-right-of-way property, specifically parkland/open space.

Contact: Janet Baker, Park Development Manager, 808-8234
Jonathan Rewers, Parks and Recreation Analyst, 808-7590

Presenters: Janet Baker, Park Development Manager, 808-8234
Jonathan Rewers, Parks and Recreation Analyst, 808-7590

Department: Parks and Recreation

Division: Administration and Park Planning, Design & Development

Organization No: 4725

Summary:

The City of Sacramento currently owns and controls hundreds of acres of undeveloped land designated as parkland/open space. Some adjacent property owners have established unauthorized encroachments on this City property. Currently, the City has no administrative process to force property owners to remove these encroachments. City Code requires an encroachment permit for encroachments in the public right-of-way (ROW), but at present there are no specific provisions for non-ROW properties. Staff has developed an issue paper (Exhibit A, p. 4) recommending that an Ordinance be developed creating a consistent citywide policy empowering the City to deal with these unauthorized encroachments on non-right-of-way property and to allow encroachments on non-ROW property when they benefit the community.

Background Information:

An encroachment is something that enters onto or into the property rights of another. It is generally an issue with adjoining landholders, where one owner projects a building, structure or other thing onto the land of another.

According to the City of Sacramento 2005-2010 Parks and Recreation Master Plan inventory, the City currently has 51 undeveloped park sites accounting for nearly 1,500 acres. The undeveloped acreage is mainly in the form of open space, natural areas, parkways or buffers. These properties, designated as parkland/open space, may remain undeveloped for months, years or decades.

Over time adjacent property owners have established unauthorized encroachments onto this City property, meant for the public's benefit. The City, at present, has no administrative process to force property owners to remove these encroachments. The only option currently open to the City is to take legal action in court against property owners who maintain encroachments on City park property.

In some cases, the City may want to consider authorizing or permitting encroachments on City park property, especially in those cases where the proposed use of the property would provide a public benefit. Uses such as community gardens can be beneficial in that there is some public use and monitoring of the property mitigating negative occurrences such as illegal dumping or other criminal activities.

Staff has prepared an issue paper (Exhibit A, p. 4) recommending that an Ordinance be developed to create a consistent citywide policy with regard to non-ROW property. It should be noted that, while the Department of Parks and Recreation has operational responsibility for a large majority of this property, other departments also have responsibility for non-ROW properties. The proposed ordinance would in brief:

- Establish an official process to allow the use of undeveloped city parkland when beneficial to the community, and
- Empower the City to remove encroachments, which are a detriment to the public benefit.

Staff recommends that the Law and Legislation Committee review the issue paper (Exhibit A, p. 7), provide direction and support the development of the proposed Ordinance.

Financial Considerations:

Staff is recommending that, as part of the proposed ordinance a fine be established and assessed on property owners who do not remove an unauthorized encroachment after a designated period of time. Staff is also recommending that the cost to remove any unauthorized encroachment be at the expense of the property owner. The proposed fine and penalties are recommended to offset the cost of City staff time.

Environmental Considerations:

This activity does not constitute a "project" and is therefore exempt from the California Environmental Quality Act (CEQA), per CEQA Guidelines Sections 15061(B) and 15378(b)(3).

Emerging Small Business Development (ESBD):

Not applicable, as no goods or services are being purchased as part of this report.

Respectfully Submitted by: 
for JANET R. BAKER
Park Development Manager

Approved by: 
ROBERT G. OVERSTREET
Director of Parks and Recreation

Recommendation Approved:


KEN NISHIMOTO
Assistant City Manager

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July 6, 2005

ISSUE PAPER

ISSUE: ENCROACHMENTS ON CITY PARKLAND/OPEN SPACE

Abstract:

The City currently owns and controls hundreds of acres designated as parkland/open space, which are undeveloped. As years have passed, adjacent property owners have established unauthorized encroachments on City property. At present City Code does not prohibit encroachments onto City park property, and there is no administrative process or enforcement authority that would result in their removal. A citywide policy should be established to guarantee consistency in enforcement and use of undeveloped park property throughout the City. It is therefore recommended that a City Ordinance be written and adopted empowering the City of Sacramento, Department of Parks and Recreation to administratively permit the use of undeveloped park property through some type of "revocable permit." The proposed Ordinance would also expressly prohibit unauthorized encroachments.

Problem:

According to the City of Sacramento 2004-2010 Parks and Recreation Master Plan, the City currently has 51 undeveloped park sites accounting for nearly 1500 acres. Some of the undeveloped sites are land set asides for future park development as the City continues to grow. Much of the undeveloped acres are in the form of open space, natural areas, parkways or buffers. These properties, designated as parkland/open space, may remain undeveloped for months, years or decades.

Over time, some adjacent property owners have extended their private property onto city-owned parkland. In addition, some of these property owners have made improvements within the illegally acquired area, such as gardens, landscaping or other outdoor recreational improvements. These "encroachments" have caused both concern to members of the City Council as well as the community. The encroachments may also result in the eventual delay of the development of some of these properties.

Encroachments of the greatest concern have been at the Ninos Parkway in Planning Area 9, South Natomas and the Glenbrook River Access in Planning Area 6, East Sacramento.



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The encroachments at Ninos Parkway include development of extended fence lines, gardens, recreational improvements such as batting cages, basketball courts, and permanent improvements such as irrigated landscaping, etc. The Department of Parks and Recreation, working with the District 1 Council Office, has requested that these encroachments be removed through correspondence to the adjacent property owners, unless an application for a "revocable permit" has been requested for garden areas within the encroachment under the following conditions:

- Fencing is a light to medium weight stock fencing no higher than 36 inches.
- Fencing is secured with a T-post or equivalent, no poured footing or concrete.
- Garden areas extend into the parkway no further than 12 feet.
- No permanent irrigation or electrical be installed.

The encroachments at the Glenbrook River Access also include extended fence lines, gardens, and permanent improvements similar to the Ninos Parkway. Consistent with the process started for the Ninos encroachments, the City also requested that Glenbrook encroachments be removed through correspondence to the property owners. The District 6 Council Office agreed and wants the fencing encroachments removal process to continue. The College Glen Neighborhood Association has expressed continuing concerns over the lack of progress in getting the encroachments removed, and the Department of Parks and Recreation's initial decision to allow the property's use for gardens under the terms of a revocable use permit issued by the Department.

At their April 2005 meeting, the Parks and Recreation Commission (P&RC) requested that all fencing be removed from City property and that no fencing of any type be permitted as part of the garden areas (including the 3-foot wire fencing that they had previously approved). In addition, the P&RC recommended that homeowners be required to carry an additional homeowner policy for any of the permitted garden areas on City park property.

City Code does not prohibit encroachments onto park property. City Code requires an encroachment permit for obstructions in the public right-of-way, but at present there is no specific provision that would require permits for encroachments on non-right-of-way City property such as undeveloped parkland. The only viable option currently open to the City is to take legal action in court against the property owners who maintain encroachments on City park property.

A consistent citywide policy must be developed. These issues cannot be resolved on a case-by-case basis. An administrative procedure needs to be developed to empower the City to deal with encroachments on non-right-of-way property and to allow encroachments, when they provide a benefit to the community.

Recommended Solution:

It is recommended that a City Ordinance be written and developed between the City Attorney's Office, Department of Parks and Recreation and Code Enforcement Department. Upon adoption by the City Council, the Ordinance would establish an administrative and enforcement process to allow permitted encroachments when beneficial to the City and prohibit all unauthorized encroachments.

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Specifically, it is recommended that the ordinance:

1. Authorize the Director of Parks and Recreation or authorized designee to grant revocable permits to allow encroachments on undeveloped city parkland. The proposed revocable permits would allow encroachments to remain based on criteria that would provide parks and recreation benefits to the community. These permits would be for a set period of time (3-5 years recommended), and could be renewed at the end of the permit period. The City (Department of Parks and Recreation) would retain the right to revoke the permit at any time.
2. Set a reasonable period (recommended 90 days) to allow encroachers, once notified by the City, to remove the identified and unauthorized encroachment.
3. Authorize the Director of Parks and Recreation to initiate the process with the Code Enforcement Department to cite violators after the first 90-day period with a monetary penalty or lien for an ongoing unauthorized encroachment.
4. Expressly prohibit encroachments on non-right-of-way property, unless authorized through the aforementioned revocable permit process. The Director of Parks and Recreation, Director of Code Enforcement, and the City Attorney will work together to develop an enforcement plan.

The proposed Ordinance will set a consistent citywide policy and set an administrative and enforcement framework which will:

- Establish an official process to allow the use of undeveloped city parkland when beneficial to the community, and
- Empower the City to remove encroachments, which are a detriment to the public benefit.

It is recommended that development of the proposed Ordinance begin immediately and be completed within the next 6 months. If possible, an emergency ordinance should be considered to give the Code Enforcement Department the ability to minimally cite continued encroachers. This may resolve the issue of continued unauthorized encroachments during the development of the proposed Ordinance.

Conclusion:

The City of Sacramento has hundreds of acres of undeveloped parkland that are non-right-of-way properties. The City has no administrative process to remove ongoing unauthorized encroachments, other than through court action. Secondly, a consistent citywide policy needs to be established on the process for use of these undeveloped properties, so that issues are not resolved on a case-by-case basis. The only remedy is the development and adoption of a City Ordinance. The proposed ordinance would empower the Department of Parks and Recreation to allow encroachments on undeveloped property, based on criteria that would provide parks and recreation benefits to the community. The proposed ordinance would also prohibit unauthorized encroachments and establish an enforcement plan to deal with them in the future.