



STAFF REPORT

AGENDA NO: 10a

MEETING DATE: November 3, 2025

To: Honorable Mayor and City Council

Date: November 3, 2025

From: Tamar Burke, Assistant City Attorney – (650) 558-7275

Subject: Call for Review of Public Works Director's Decision Concerning Encroachment Permit at 1151 Rosedale Avenue Pursuant to Burlingame Municipal Code Section 12.10.060

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing, consider all oral and written testimony received during the hearing, and following closure of the hearing and deliberations, determine whether to uphold or overturn the Public Works Director's denial of the Encroachment Permit application at 1151 Rosedale Avenue.

BACKGROUND

In December 2023, the property owners at 1151 Rosedale Avenue, Dhruv Batura and Priya Takiar ("Owners"), applied for a building permit to construct certain landscaping and fence improvements on their property ("Building Permit".) The application showed the proposed improvements as being on or within the Owners' property lines. The City issued the Building Permit in January 2024. The improvements – (1) a fence along the Rosedale frontage connected by two stone fence pillars, and (2) a solid wooden fence, landscaping, and pavers along the Westmore frontage – were completed shortly thereafter.

In April 2024, City staff inspected the site and determined that the improvements on both the Rosedale and Westmore frontages were erected within the City's right of way, outside of the Owners' property lines. Moreover, City staff identified a City sanitary sewer cleanout on City property, located within the Owners' newly erected fence along the Westmore frontage.

Beginning in April 2024 and through 2025, City staff met with the Owners and their agents to discuss the encroachments. On February 27, 2025, the City issued a Notice of Violation, alleging noncompliance with the City's encroachment permit requirements. Subsequently, the Owners moved the fence along the Rosedale frontage to their property line; however, the two stone fence pillars remain on the City's right of way on Rosedale Avenue. Thus, the remaining encroachments within the City's right of way include: (1) two stone fence pillars along the Rosedale frontage; and (2) a solid wooden fence, landscaping, and pavers along the Westmore frontage.

In July 2025, the Owners submitted a complete application for an encroachment permit authorizing the stone pillars on the Rosedale frontage as well as the structures on the Westmore frontage

(fence, landscaping, and pavers). On July 29, 2025, the Director of Public Works made the following decisions:

1. The Public Works Director granted the application as to the two stone fence pillars on the Rosedale frontage for a period of five years.
2. The Director denied the application as to the improvements along Westmore – a wooden fence, landscaping, and pavers.

The Owners' encroachment permit application and the Public Works Director's determination are both discussed in detail and included as exhibits to the Parties' briefs, included with this staff report.

The Owners timely appealed the Public Works Director's "denial of [their] request for both the Rosedale and Westmore sides." The Owners' notice of appeal is included with City staff's brief as Exhibit Y.

DISCUSSION

The Burlingame Municipal Code ("BMC") states that "[n]o person without first obtaining a permit shall construct or place an encroachment within, on, over, or under a right of way of the City." (BMC § 12.10.020.) An encroachment includes "any paving, tower, pole, . . . fence. . . or any other structure of object of any kind." (Id.)

The BMC vests the Public Works Director ("Director") with authority to "grant the request for an encroachment permit in whole or in part, subject to such conditions as the [Director] may determine are necessary for the health, safety, and general welfare of the public." (BMC § 12.10.040(a).)

An applicant may appeal any decision of the Director to the City Council by submitting notice of the appeal within five days of the Director's decision. (BMC § 12.10.050.) At the hearing, the City Council "shall make its order approving, modifying, or reversing the action" of the Director. (BMC § 12.10.060.) The decision of the City Council is final and conclusive. (Id.)

The Owners and City staff have each submitted detailed briefs and exhibits detailing their arguments and positions for the City Council's consideration. Because the Municipal Code grants the Council the authority to "make any order approving, modifying, or reversing" the Director's action, the City Council has broad discretion to craft a resolution of this appeal. Staff has drafted several potential Resolutions for Council adoption or for direction regarding modification, described below:

1. The Council may deny the appeal, approving the Director's decision, as illustrated in Alternate Resolution No. 1.
 - a. With this decision, the Director's decision stands. The Owners would be permitted to maintain the two stone fence pillars on the Rosedale frontage for five years but would be required to remove all encroachments along the Westmore frontage.
2. The Council may modify the Director's decision, as illustrated in Alternate Resolution No. 2.
 - a. The Council has discretion to modify any or all of the Director's decisions in the denial of Owners' encroachment permit application.

3. The Council may grant the appeal, reversing the Director's determination, as illustrated in Alternate Resolution No. 3.
 - a. The Council may grant the Owners' appeal.

FISCAL IMPACT

There is no expected fiscal impact associated with this item.

Exhibits:

- Exhibit 1: Appellant, Owners', brief and exhibits
- Exhibit 2: Respondent, City Staffs', brief and exhibits
- Alternative Resolution No. 1 – Denying Appeal and Approving Public Works Director's Decision
- Alternative Resolution No. 2 – Modifying Public Works Director's Decision
- Alternative Resolution No. 3 – Granting Appeal and Reversing Public Works Director's Decision