



# STAFF REPORT

## CITY of YORBA LINDA

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### PUBLIC WORKS DEPARTMENT

**DATE:** OCTOBER 19, 2021

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** JAMIE LAI, P.E., DIRECTOR OF PUBLIC WORKS / CITY ENGINEER  
**PREPARED BY:** REGINA HU, SENIOR CIVIL ENGINEER

**SUBJECT:** ENCROACHMENT ONTO CITY EASEMENT REQUEST – 19404 VIA DEL CABALLO

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### RECOMMENDATION

It is recommended that the City Council:

- 1) Authorize improvements within the City's Palm Avenue roadway easement at 19404 Via Del Caballo. Improvements include:
  - recently constructed six-foot (6'-0") combination wall/fence
  - new six-foot (6'-0") tall vehicular gate
  - existing paved sidewalk, paver driveway, trees, shrubs and other landscaping, irrigation, rocks/boulders, and cobble drainage swale; and
- 2) Determine such encroachments will not adversely impact the City's easement, City's facility, or general public safety; and
- 3) Require the homeowner to execute a Declaration of Restrictive Covenant Agreement pursuant to City Council Policy E-5.

### BACKGROUND

The property at 19404 Via Del Caballo (Subject Property, APN 323-401-01) was recently sold in December 2020 (See Attachment A) to Ms. Xiuqin Zhang. The owner of Subject Property recently constructed a six-foot (6'-0") combination stucco wall/ cast-iron fence and is proposing two six-foot (6'-0") tall vehicular gates along the frontage in the same alignment as previous fencing, one on Palm Avenue and one on Via del Caballo. Existing paved sidewalk, paver driveway, trees, shrubs and other landscaping, irrigation, rocks/boulders, and cobble drainage swale were in place from previous owner (See Exhibit B). The City owns and maintains a 30-foot roadway easement from centerline of Palm Avenue known as said easement. Via del Caballo is a private street with a 25-foot roadway easement from centerline of street.

On May 26, 2021, the Planning Commission approved Conditional Use Permit 2021-13 for wall and gate construction exceeding the maximum three-foot (3') height limitation per

Section 18.10.130.A of the Yorba Linda Zoning Code. As part of the approval process, applicant cleared line-of-sight obstructions and traffic safety hazards by trimming back existing landscape and agreed to maintain 15-foot setback for the vehicular gate along Via del Caballo. The proposed vehicular gate along Palm Avenue is not subject to a Conditional Use Permit since it is outside the front yard setback.

On September 21, 2021, City Council conducted a public hearing for the appeal of Conditional Use Permit 2021-13. Appellant based the appeal on incorrect boundary and easement delineation on submitted plans. Upon this finding, Owner voluntarily conducted a boundary survey, revised the site plan, and consequently, the City Council upheld the Planning Commission approval.

## **DISCUSSION**

The current Policy E-5, adopted in 2020, addresses the use of City-held easements. The City owns easement rights over properties citywide for various defined uses. In the Encroachment Permit section of the E-5 Policy (See Attachment D), “no significant impact” is defined as less than one foot of encroachment onto City-owned property / easement. The policy continues to state that over one foot of encroachment constitutes a property / easement vacation process. However, this specific easement is for roadway purposes and should not be vacated.

After reviewing the proposed improvements and conducting a site visit, Public Works has verified that there can be future impacts to the intended use of the roadway easement. The proposed improvements could potentially conflict with future maintenance, widening, or repairs to the street right-of-way as necessary but does not significantly impact the City’s normal use of the easement. As such, any above-ground improvements may need to be removed and/or demolished to facilitate the City’s future roadway needs. Access to the easement is not required for routine maintenance at this time but may be necessary for any future improvements. Thus, a Declaration of Restrictive Covenant is required (See Attachment C).

The proposed improvements within the easement area were evaluated by the owner and Public Works and determined to have no physical adverse effects on the City’s daily use of Palm Avenue and does not adversely impact existing buildings or adjacent properties.

Staff recommends that the existing improvements within the City’s roadway easement be permitted and requests authorization for the City Manager to grant the homeowner an Encroachment Permit for the proposed improvements over the roadway easement, and to enter into a Declaration of Restrictive Covenants Agreement (Agreement). This Agreement requires the property owner to bear any costs for damage to the City-owned facility within the easement and includes an indemnity clause to protect the City from any future liability or lawsuits relating to the improvements. In addition, the homeowner would be responsible for the removal / replacement costs of said improvements in the event of any roadway work. The Agreement will be recorded with the County and will bind all future owners of the property. The Encroachment Permit shall not take effect until all terms of the Agreement are

satisfied.

### **FISCAL IMPACT**

None. The homeowner will be required to pay for the recording of the Agreement and staff time associated with processing any permits, as allowed in the City's Fee Schedule. The homeowner would be responsible for the removal / replacement costs of said improvements in the event of any roadway work.

### **ALTERNATIVES**

Determine that the proposed improvements do significantly impact the City's normal use of the easement for roadway purposes, deny the applicant's existing improvements within the roadway easement, and request applicant to redesign and reconstruct wall/fence improvements.

### **ATTACHMENTS**

- Attachment A: Vicinity Map
  - Attachment B: Site Plan & Topography Survey
  - Attachment C: Declaration of Restrictive Covenants Agreement
  - Attachment D: City Council E-5 Policy
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