



# **PARKS AND RECREATION COMMISSION AGENDA REPORT**

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MEETING DATE: APRIL 23, 2015

ITEM NUMBER:

**SUBJECT: PROPOSED DRAINAGE EASEMENT AT FAIRVIEW PARK**

**DATE: APRIL 10, 2015**

**FROM: PUBLIC SERVICES DEPARTMENT / ENGINEERING DIVISION**

**PRESENTATION BY: BALTAZAR MEJIA, PARKS PROJECT MANAGER**

**FOR FURTHER INFORMATION CONTACT: BALTAZAR MEJIA AT (714) 754-5291**

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## **RECOMMENDATION**

Review the proposed drainage easement (Attachment 1) to allow the newly constructed property at 2294 Pacific Avenue adjacent to Fairview Park to drain into an existing earthen channel and potential future underground drainage system within Fairview Park and confirm that the proposed drainage easement is consistent with the Fairview Park Master Plan.

## **BACKGROUND**

Prior to the proposed development at 2294 Pacific Avenue, the site consisted of five severely rundown apartments constructed in the 1950's. The proposed development consists of 5 single family homes. The site itself is lower than the street curb at Pacific Avenue and the existing drainage pattern is for all site water to flow to the northeast corner of the site and then into the City's Fairview Park. The water flows into an existing earthen channel in Fairview Park just northerly to the site (Attachment 2).

The request was reviewed in compliance with City Council Policy 500-11 (Attachment 3) and determined to be consistent with the Fairview Park Master Plan because it does not change any of its elements or uses.

## **DRAINAGE ANALYSIS**

### Option 1: Storm Water Pumping

The option of installing a storm water pump station was analyzed and besides being an extremely costly drainage alternative that would burden the developer and the future HOA, water pumped into Pacific Avenue will immediately drain back into Fairview Park and into the above mentioned earthen channel. This circuitous drainage pattern negates any benefit a storm water pumping station would lend to the project.

### Option 2: Preferred Drainage Alternative; Small Drainage Easement

The second option, and preferred drainage alternative, is to have the proposed drainage pattern be identical to the pre-existing pattern, and have the water exit the site at the northeast corner of the tract. This can be accomplished with a simple drainage easement from the City and this option works with the existing conditions in Fairview Park and with the proposed future installation of a City storm drain in the park. The drainage of this property is not tributary to any biological resources north of the drainage ditch.

Additionally, due to the large green areas planned into the proposed development, the proposed runoff at the northeast corner of the tract will be less than the runoff of the pre-existing condition. This alternative is the most efficient, least costly, and ties in with the City's planned storm drain line in the park. When that storm drain is constructed, the developer will construct approximately 10' of pipe for the tie-in.

If the Commission concurs that the drainage easement is consistent with the Master Plan, an encroachment permit and a "Hold Harmless Agreement" will be required. The Agreement makes the 2294 Pacific Avenue property owner, Collective Westside LLC, responsible for all drainage matters including maintenance (Attachment 4) and will be submitted to the City Council for their final approval.

### CONCLUSION - DRAINAGE

In order to implement the second and best case alternative, the developer requests a small drainage easement over the park adjacent to the northeast corner of the tract as shown on the attached easement documents. This drainage easement does not change the Fairview Park Master Plan and staff request the Commission's concurrence with this determination.



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**ERNESTO MUNOZ**  
Public Services Director



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**FARIBA FAZELI**  
City Engineer



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**BALTAZAR MEJIA**  
Parks Project Manager

#### Attachments:

1. Proposed Drainage Easement
2. Aerial of Proposed Easement
3. City Council Policy 500-11
4. Hold Harmless SD Agreement Example

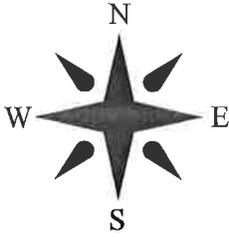
c: Chief Executive Officer  
Assistant Chief Executive Officer  
Staff  
File

**EXHIBIT 'B'**

PLAT

SCALE : 1"=40'

FAIRVIEW REGIONAL PARK  
POR. LOT A, BANNING TRACT



N'LY LINE TRACT NO. 17705

S89° 38' 37"E  
10.00'

S00° 21' 23"W  
25.00'

N00° 21' 23"E  
25.00'

P.O.B.

N89° 38' 37"W  
10.00'

LOT 1

LOT 2

LOT 3

TRACT NO. 17705

M.M. 934/5-8

E'LY LINE OF  
TRACT NO. 17705  
BANNING PLACE (VACATED)

LOT 4

LOT 5

TRACT NO. 9691  
MM 400/49-50

PACIFIC AVENUE

PREPARED BY:  
ROBIN B. HAMERS & ASSOCIATES, INC.  
234 E. 17TH STREET, SUITE 205  
COSTA MESA, CA 92627

ROBIN B. HAMERS, RCE 31720

2/13/15  
DATE



THE BEARINGS SHOWN HEREON ARE BASED UPON THE BEARING BETWEEN O.C.S. HORIZONTAL CONTROL STATION GPS NO. 6201 AND STATION GPS NO. 6197R2 BEING NORTH 72°41'29" EAST, PER RECORDS ON FILE IN THE OFFICE OF THE COUNTY SURVEYOR.

**CITY OF COSTA MESA**

**DRAINAGE EASEMENT**

DRAWN BY: MLB

DATE: 2/13/15



**2294 PACIFIC**

CITY OF COSTA MESA, CALIFORNIA  
COUNCIL POLICY

**ATTACHMENT 3**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
IMPLEMENTATION PROCEDURES FOR THE FAIRVIEW PARK MASTER PLAN	500-11	7-17-2000 REV. 1/21/03	1 OF 4

**BACKGROUND**

The City Council approved the Fairview Park Master Plan in December 1997. In February 1998, City Council, recognizing the unique qualities of the park, directed staff to prepare a policy for implementing the Master Plan.

**PURPOSE**

The purpose of this policy is to establish a process for review and approval of the elements of the Fairview Park Master Plan, as well as any amendments to the Plan that may be proposed. It is the intent of this Policy to ensure both thorough and expeditious review of Fairview Park projects. For this reason, time limits have been included for staff and committee review.

**PROCEDURE**

The intent of the following procedure is to build upon the existing Municipal Code Sections which relate to processing for master plans but which are silent on how to implement a complicated and phased project such as Fairview Park. Costa Mesa Municipal Code (CMMC) Sections 13-28(f) and 13-29(f) describe the process for new master plans, minor amendments to master plans, and substantial amendments to master plans. In addition to these requirements, the following procedure shall be followed for implementation of and amendment to the Fairview Park Master Plan.

**A. City Council Review**

Due to the increased workload on staff, the Parks and Recreation Commission, the Planning Commission, and the City Council associated with the processing of Fairview Park Master Plan amendments, the City Council shall review all applications prior to staff initiating the review process.

All proposals shall initially be submitted to the Public Services Department. The Public Services Department shall submit the proposals to the City Council which shall review the applications for amendment of the Fairview Park Master Plan and direct staff to either proceed with processing the application or to return all materials to the applicant.

**B. Lead Department**

The Public Services Department is the lead department for processing phases, projects or plans. The Parks Project Manager and the Fairview Park Plan Administrator shall oversee and coordinate all activities related to implementation of the Fairview Park Master Plan and upon direction from the City Council shall process proposals as per the following procedure:

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COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
IMPLEMENTATION PROCEDURES FOR THE FAIRVIEW PARK MASTER PLAN	500-11	7-17-2000 REV. 1/21/03	2 OF 4

**C. Processing**

**1. All Projects**

All proposals shall be submitted to or originate from the Public Services Department. Upon direction from the City Council to proceed with processing a proposal, the Public Services Department shall present the proposal in writing to the Development Services Department, Engineering and Transportation Services Divisions, Police Department and Fire Prevention Division who shall determine whether the proposal is:

- a. consistent with the Master Plan;
- b. generally consistent but has minor amendments; or
- c. inconsistent with the Master Plan.

These Departments shall recommend refinements to the project, if necessary, to meet code requirements, mitigation measures or other requirements. All recommendations shall be returned to Public Services within 7 days.

**2. Projects Consistent with the Master Plan**

Projects consistent with the Master Plan might include but not be limited to: restoration plans for the habitat areas, construction of trails, installation of utilities, construction of the bridge over Placentia Avenue, installation of the botanical garden, construction of picnic and restroom facilities, etc.

- a. Projects shall be submitted to various City departments as described in Section 13.11.
- b. All projects shall be forwarded to the Parks and Recreation Commission for comments regarding consistency with the Master Plan and refining the scope of work. Review of each project shall be limited to one Commission meeting. The Public Services Department shall consider the Commission's comments and make refinements to the project, if deemed necessary.

CITY OF COSTA MESA, CALIFORNIA  
COUNCIL POLICY

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IMPLEMENTATION PROCEDURES FOR THE FAIRVIEW PARK MASTER PLAN	500-11	7-17-2000 REV. 1/21/03	3 OF 4

- c. The Fairview Park Citizens' Advisory Committee shall be restructured as an ad hoc committee. The City Council may call upon the committee's expertise when reviewing plans, specifications, ideas, and changes to Fairview Park, on an as needed basis.
- d. Consultant contracts and budget requests shall be approved in accordance with purchasing policy. Project plans do not require Council approval.
- e. The Public Services Department is responsible for monitoring compliance with all mitigation measures approved as part of the Master Plan. The mitigation monitoring reports shall be kept up to date at least annually and made available for public review.
- f. If conflicts arise between staff and the Parks and Recreation Commission, the issue shall be clarified by City Council.

**3. Projects with Minor Amendments to the Master Plan**

- a. Projects shall be submitted to various City departments as described in section C.1.
- b. Minor changes in a master plan are defined in CMMC section 13-28(f). Projects which may involve minor amendments shall be forwarded to the Planning Division for initial review for compliance with provisions of section 13-28(f). Plans and the findings of the various City departments shall be forwarded to the Parks and Recreation Commission for comments regarding whether the changes requested are actually minor as defined by Code and for refining the scope of work, if necessary. Review of each project shall be limited to one Commission meeting. The Public Services Department shall consider the Commission's comments and make refinements to the project, if necessary.
- c. Requirements described in sections 2(c), (d), and (e) above also apply.

CITY OF COSTA MESA, CALIFORNIA  
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**4. Projects Inconsistent with the Master Plan**

- a. Projects shall be submitted to various City departments as described in Section 13.1.
- b. Substantial amendments to a master plan are described in CMMC Section 13-28(f) and normally require only Planning Commission review and approval. However, amendments to the Fairview Park Master Plan shall first be forwarded to the Parks and Recreation Commission (one meeting) for review and recommendation. The Planning Commission shall consider these recommendations and forward its recommendations to City Council for final action.
- c. Requirements described in sections 2(c), (d), and (e) above also apply.

**5. Request for Changes to the Fairview Park Master Plan**

Staff and members of the public may, from time to time, request changes, additions, or deletions to the Fairview Park Master Plan. These requests must be submitted to the City's Parks Project Manager or Fairview Park Plan Administrator in writing, along with supporting evidence to substantiate the request(s). A map showing the proposed change should accompany the request(s). The item shall then be agendaized for the next available Parks and Recreation Commission meeting for review prior to staff initiating the formal review process. The Parks and Recreation Commission shall review the request for amendment to the Fairview Park Master Plan, along with staff's recommendation, and direct staff to either proceed with processing the request in accordance with section 4 (above) or to deny the request(s) and return all material to the applicant.

Requests for a particular change, addition, or deletion will be addressed no more than once in a twelve (12) month period.

**D. Annual Report**

In December of each year, the Public Services Department shall send an annual report to the Parks and Recreation Commission describing the progress that has been made on implementation of the Fairview Park Master Plan. The report shall also describe efforts to be undertaken for the next year.

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

EXAMPLE

NAME CITY OF COSTA MESA  
 ADDRESS Engineering Division  
 CITY & P.O. Box 1200  
 STATE Costa Mesa, CA 92628-1200

(Space Above For Recorder's Use)

Exemption from Recording Fee Requested Pursuant to Government Code § 6103

**HOLD HARMLESS AGREEMENT FOR PRIVATE STORM DRAIN LATERAL CONNECTION**

This Hold Harmless Agreement for Private Storm Drain Lateral Connection ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the City of Costa Mesa, a municipal corporation ("City") and COLLECTIVE WESTSIDE, LLC the ("Permitee").

**RECITALS**

A. Permitee is the owner of that certain real property located in the City of Costa Mesa, County of Orange, State of California commonly known and described as 2294 Pacific Avenue, Costa Mesa and more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by this reference (the "Property"). The Property is sited immediately adjacent to Fairview Park.

B. Permitee has applied to the City for an encroachment permit ("Encroachment Permit") to connect its private storm drain system by means of Permitee's privately-owned lateral drains (collectively, "Laterals"), which will serve the Property, to the public storm drain system owned and maintained by City ("Storm Drain System") through a storm drain slated to be constructed by the City within a storm drain channel located within Fairview Park ("Storm Drain") as more particularly described in **Exhibit "B"**, attached hereto and incorporated herein by this reference.

C. In connection with Permitee's development of the Property, City is prepared to issue to Permitee the Encroachment permit to allow Permitee to connect its Laterals to the City's Storm Drain System within the City Storm Drain Easement as described in **Exhibit "C"**; provided that Permitee and its successors-in-interest agree to the obligations described herein so long as the encroachment continues.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are hereby incorporated by this reference and the obligations set forth herein, it is hereby agreed as follows:

1. Right to Connect Laterals to City Storm Drain. Subject to obtaining such development and building permits and other approvals necessary in connection with the Encroachment Permit, City hereby grants to Permitee the right to construct, maintain, use, operate, repair, replace and reconstruct the Laterals and to connect the laterals to the City Storm Drain System as described

herein. Permittee shall construct the Laterals concurrent with the construction of the Storm Drain and shall complete construction of the Laterals no later than six (6) months following completion of the Storm Drain. Permittee's rights hereunder are expressly made subject to and contingent upon Permittee's compliance with the following environmental mitigation measures:

A. Construction Phase On-Site Monitoring

An archaeological and native monitor shall be present during all earth moving activities. In the event that cultural resources are discovered, construction work in the area shall be halted immediately until the resource can be assessed and treatment is determined through consultation under Section 106 of the National Historic Preservation Act and in accordance with the California Environmental Quality Act ("CEQA") and the California Code of Regulations, *Title 14, §15000 et seq.* As part of the objectives, criteria, and procedures required by §21082 of the California Public Resources Code, provisions should be made for the accidental discovery of cultural resources during construction as described within §15064.5.

- Qualified archaeologists will monitor all earth moving activities in order to identify any archaeological or significant Native American features and materials that may be exposed, and to take steps to secure and protect any such features until they are adequately evaluated. The qualified archaeologist will determine if any archaeological features or materials exposed during earth moving activities warrant further investigation.
- If features or other areas of historic, Native American and/or archaeological significance are exposed, these localities shall be cordoned off so that additional investigations can be undertaken.
- Construction shall be immediately halted at the relevant location within the project area if construction personnel encounter archaeological materials, features and/or human remains during the phases of construction. Construction shall remain halted at that location until a qualified archaeologist has adequately evaluated the potential discovery and any further steps determined to be necessary to mitigate any resultant adverse effects to the properties or otherwise treatment of the discovery has been completed.

If bone fragments are uncovered during excavation, a determination will be made as to whether the bone is human or other animal. In the event human remains are encountered, the following measures will be implemented. Excavation immediately stops and the human remains are protected from the elements by covering the cultural deposit with a permeable membrane and then soil; the spot is marked with flagging.

In accordance with the California Health and Safety Code §7050.5, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code §5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. The remains will be uncovered for inspection by the coroner. If the Orange County Coroner determines the remains to be Native American, then in accordance with the Public Resource Code requirements, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be notified immediately. The most likely descendant shall then make recommendations, and engage in consultations concerning the treatment of the remains as provided in Public Resources Code §5097.98.

B. Avian Nest Surveys

If construction takes place during nesting season, nest surveys will be required to be performed by qualified personnel prior any scheduled construction.

C. Access to Fairview Park

Fairview Park contains archaeological and biological resources that are required to be protected. Access to the park outside of the easement requires prior approval from the City and applicable regulatory agencies. Ample time needs to be factored into the construction schedule as coordination with regulatory agencies may be lengthy.

2. Lateral Connection Maintenance. Permittee agrees to maintain the Lateral connection in a condition acceptable to the City, and to repair any defects or deficiencies as they occur. Any condition that may present a safety hazard to the public shall be repaired immediately upon awareness of the deficiency or within five (5) working days from notification by the City.

3. Disconnection. Permittee shall disconnect the Lateral from City's Storm Drain within thirty (30) calendar days of written notification of termination by the City. The City need not show cause for any termination or modification. Failure of Permittee to disconnect the Lateral from City's Storm Drain within the specified time will result in the City having the Lateral disconnected at Permittee's sole cost and expense, plus administrative overhead costs.

4. Water Quality Management Plan Requirements. Permittee shall implement and comply with all Best Management Practices and other requirements set forth in the City-approved Water Quality Management Plan.

5. Indemnification. In consideration of the approvals by the City as set forth in Section 1, above, Permittee hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed boards, officers, agents and employees from and against any and all claims, suits or liabilities and losses of any nature whatsoever including but not limited to reasonable attorney fees and costs, for damage to property and the improvements thereon or to persons, including death, which arise out of or are related to :

- (a) The construction, connection, use, operation, repair, replacement, maintenance or reconstruction of the Laterals;
- (b) Rain or surface water, including any type of pollutant contained therein deposited or retained upon the Property served by the Laterals as a result of any failure of the Laterals to function as intended or as desired or as the result of any failure of the Lateral connections to the Storm Drain System.
- (c) The discharge of any type of pollutant from the Property to the City Storm Drain, which discharge is not in compliance with the requirements of the applicable Water Quality Management Plan.

The aforesaid indemnity obligation shall apply regardless of the fault or negligence of the indemnitor or indemnities, excepting only that said indemnity obligation shall not apply if the claim, liability or loss arises out of the sole, active negligence of the City.

Nothing in the Agreement is intended to transfer to the City or otherwise release Permittee, the owner or their respective successors or assigns from any liability which any of them may now or

in the future have under federal, state or local laws or regulations relating to the discharge or release of any type of pollutant from or onto the Property whether or not such discharge or release is in compliance with the Water Quality Management Plan or any other City requirement.

6. Successors and Assigns. This Agreement and the covenants made herein shall continue in effect and shall be binding on all successors, assigns, heirs and legal representatives of the parties hereto. Permittee shall notify City of any such sale, transfer or assignment within thirty (30) days of said sale, transfer or assignment. Any successor or assignee of Permittee shall execute a written acknowledgement consenting to the terms, conditions and obligations of this Agreement. If a successor or assignee of Permittee's interest in the subject Property fails to comply with the requirements herein, such successor or assignee shall, upon request from the City, immediately disconnect the Laterals from the City's Storm Drain within a reasonable time from receipt of notice of same from the City. Upon the transfer or assignment by Permittee or any of its successors, assigns, heirs or legal representative of its or their interest in the Property, the rights and obligations of Permittee or such transferee hereunder automatically shall be transferred and assigned and the transferor or assignor shall be released from any further obligations hereunder, except that Permittee shall continue to be obligated to defend and indemnify City for any claims, suits or liabilities and losses, as provided for in paragraph 5 above, which arose out of Permittee's acts prior to assignment of the rights and obligations hereunder. Neither Permittee nor any transferee or assignee of Permittee shall assign its interest in the Property to any person or entity that does not have the financial capability of performing the transferor's or assignor's obligations.

7. Covenants to Run. The parties hereby covenant and agree that this Agreement shall run with the land and be binding upon themselves, their successors, assigns, heirs and legal representatives and shall continue in effect for so long as the Laterals remain connected to the City Storm Drain. The burden of the covenants herein shall be on the Property, and the benefits shall run in favor of City. This Agreement shall be recorded against the Property in the records of the Recorder of Orange County.

8. Termination. This Agreement will terminate when the encroachment has been permanently removed, except with respect to any damage or injury occurring prior to such removal and claims related thereto, which shall remain subject to this Agreement.

9. Entire Agreement; Modifications in Writing. This Agreement and the Exhibits hereto constitute the entire understanding and agreement of the parties with respect to the subject matter set forth herein and supersedes any and all previous negotiations, discussions and agreements between the parties with respect to the subject matter hereof. Each party to this Agreement acknowledges that no party, or anyone acting on behalf of any party, orally or otherwise, has made any representations, inducements, promises or agreements that are not embodied herein. This Agreement may be terminated or modified only by a written agreement executed by the parties hereto, or by their respective successors in interest.

10. Effective Date of Agreement. This Agreement shall become effective upon the date a duly executed and acknowledged original of this Agreement is recorded in the Official Records of the Recorder of Orange County.

11. Attorneys' Fees. In the event any action, arbitration or other legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court or arbitrator to be reasonable.

EXECUTED in the County of Orange, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF COSTA MESA**

**COLLECTIVE WESTSIDE, LLC**

By: \_\_\_\_\_  
Ernesto Munoz  
City Engineer

By: \_\_\_\_\_  
Robert Scanlan  
Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Brenda Green  
City Clerk of the City of Costa Mesa

\_\_\_\_\_  
Tom Duarte  
City Attorney

STATE OF CALIFORNIA    )  
  )ss.  
COUNTY OF ORANGE    )

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

(Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

Real property in the City of Costa Mesa, County of Orange, State of California, described as follows:

**PROPERTY OWNER TO PROVIDE LEGAL DESCRIPTION OF  
EASEMENT PROPERTY**

APN:

**EXHIBIT "B"**

**STORM DRAIN ENCROACHMENT PERMIT**

**EXHIBIT "C"**

**LEGAL DESCRIPTION OF THE EXISTING EASEMENT AREA**