

ENCROACHMENTS REQUIRING SPECIAL PROCEDURES **2007**

The SFPUC right of way contains a number of unique situations that warrant special handling different from other types of permitted uses and encroachments. Municipal uses of SFPUC right of way such as parks and neighborhoods which benefit from landscaping on SFPUC right of way, and bisected parcels or parcels which rely on the use of SFPUC right of way for access, are examples of uses of SFPUC lands which need to be separately addressed in order for the SFPUC Water Enterprise to effectively manage its lands for day-to-day operation, construct new facilities, and maintain security while maintaining good neighborhood relations.

1. Bisected Parcels and Parcels Lacking Access

A "Bisected" parcel is a private residential lot adjacent to the SFPUC right of way, where the adjacency to the SFPUC right of way either results in an irregular parcel size or shape or adversely affects access to the parcel. The following is recommended procedure to provide the encroaching party with continued use of the SFPUC right of way while SFPUC Water Enterprise retains access to its property and pipe lines, and monitoring of acceptable uses. The following points provide an example of a possible administrative procedure:

- General – Applicable to All Permits:
 - Contain a 30-day unilateral revocation clause.
 - Require the permittee to pay any applicable tax or assessment or insurance.
 - Permittee to indemnify the SFPUC for any third party claims caused by negligence on the part of permittee.
 - Require a payment for a specified period.
 - If affected property is sold or conveyed, the current owner will inform the new owner of the encroachment, and the new owner may be given the opportunity to enter into a similar permit with the SFPUC.

- For Fencing:

- Encroaching party will pay for their own fencing to continue to use SFPUC rights of way.
 - Fencing will be to SFPUC standards with SFPUC standard gates installed to allow access by SFPUC Water Enterprise staff.
 - Fencing will be maintained by permittee at permittee's cost.
 - The SFPUC will not do "in kind" replacement fencing if construction or maintenance causes non-SFPUC fencing to be removed. If practical, the SFPUC will give the property owner the opportunity to remove/salvage existing fencing prior to removal by the SFPUC.
 - An encroaching party may have up to 60 days from notification to use the SFPUC's construction contractor to install replacement fencing. The encroaching party will pay the cost of such installation.
 - If the encroaching party does not install fencing or replacement fencing within 60 days, the SFPUC may fence off its right of way at its cost with SFPUC standard fencing.
- For Access Issues:
 - It is the SFPUC's intention to permit access to public streets and walkways where loss of the use of SFPUC right of way would prevent such access.
 - If a driveway or walkway is removed by the SFPUC, the SFPUC will consider:

Calculating the cost to replace that portion of the driveway or walkway that satisfies minimum local City code requirements and paying the resultant cost to the adjacent property owner. The replacement cost will be determined solely by the SFPUC and will not be subject to negotiation. It will be the property owner's responsibility to replace the driveway or walkway. In all cases a recordable permit with the SFPUC will be required.

2. Municipal Uses

It is the SFPUC's intention to work with public agencies to maintain existing levels of service to the public through compatible uses of SFPUC right of way where appropriate. Portions of the SFPUC's right of way are physically incorporated into municipal uses such as parks, open space areas and schools. Most of these are permitted uses, but some are not, and some areas have had improvements built on the land which are either not consistent with the permits in place or contain vegetation/landscaping which is not in accordance with the SFPUC's R/W Vegetation Management Policy. Typically, if improvements or vegetation are removed by the SFPUC as part of an SFPUC project, in-kind replacement is not required. The following illustrates a recommended administrative procedural guideline:

- General – Applicable to All Permits:
 - If a SFPUC project requires the removal of municipal improvements, the SFPUC will consider:

Paying the depreciated value (“in-place” value) of the improvements to the appropriate public agency to replace the facilities. It will be the public agency’s responsibility to perform the replacement work and implement water conservation in any landscape replacement plan. The depreciated value (“in-place” value) will solely be determined by the SFPUC and will not be subject to negotiation.

- Time permitting; the municipality will be provided the opportunity to salvage and store its facilities off-site at its own cost prior to construction of any SFPUC project.
- A permit will be required for continuing use.
- The SFPUC will take appropriate measures to maintain erosion control and address the aesthetic appearance of its right of way.

3. Neighborhood Associations

While the SFPUC wishes to be a good neighbor to neighborhood associations, its primary concern is the safety and accessibility of its above ground and subsurface facilities. There are a number of street medians running through

neighborhoods, often planted with trees, shrubs and other flora that are not compatible with the SFPUC's R/W Vegetation Management Policy. An example of this would be a street median planted with many large trees and shrubs. These improvements present problems for maintenance, operation and construction of subsurface SFPUC facilities. The following illustrates the basis for an administrative procedure:

- General – Applicable to All Permits:

- If the SFPUC removes vegetation from its right of way, the SFPUC will consider:

Reimbursing Neighborhood Associations to replace the existing vegetation provided it is consistent with the SFPUC's R/W Vegetation Management Policy. The method for determining the replacement cost of the vegetation will be based on common nursery stock readily available. The reimbursement cost will not be based on the fully mature or exact specimen removed. The SFPUC will not pay to replace any other improvements such as stonewalls, fences, or signage. The replacement cost will be determined solely by the SFPUC and will not be subject to negotiation. It will be the Neighborhood Association's responsibility to replace the vegetation and all other improvements.

- The SFPUC may allow permitted use of its right of way for ornamental landscaping compatible with its R/W Vegetation Management Policy.
- The SFPUC may enter into permits with neighborhood associations for the planting and maintenance of compatible landscaping. The permit will require the neighborhood association to post insurance as required, and pay all cost of any landscaping installation and maintenance. All landscaping plans to be subject to approval of the SFPUC.
- If the neighborhood association has not submitted a landscaping plan acceptable to the SFPUC within 90 days from notification, the SFPUC may elect to leave the area fallow or install whatever landscaping it deems appropriate at its sole discretion.

Dispute Resolution Process

In the unlikely event that the SFPUC and the above affected parties cannot reach consensus as to valuation of impacted improvements, the SFPUC will disclose the basis for its valuation; will consider additional valuation data supplied by the affected parties; and if necessary split the cost of a mediator to help reach agreement between the parties.