



CITY OF

NEWPORT BEACH

City Council Staff Report

June 25, 2020
Agenda Item No. 1

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Jim Houlihan, Public Works Deputy Director/City Engineer,
jhoulihan@newportbeachca.gov

PHONE: 949-644-3319

TITLE: Review of Cliff Drive Encroachment Permit No. N2020-0366 at
Ensign Intermediate School

ABSTRACT:

On June 16, 2020, the City of Newport Beach Public Works Director issued Encroachment Permit No. N2020-0366 for Improvements on Cliff Drive, adjacent to Ensign Intermediate School, after making the findings set forth in Newport Beach Municipal Code (NBMC) Section 13.06.050. On June 18, 2020, Mayor Pro Tem Avery filed a call for review, pursuant to Section 13.06.070 of the NBMC, for the purpose of bringing the decision to issue Encroachment Permit No. N2020-0366 in front of the entire City Council for review.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- c) Review and uphold the Public Works Director's decision to issue Encroachment Permit No. N2020-0366.

FUNDING REQUIREMENTS:

There is no expenditure of funds related to this item.

DISCUSSION:

Background

In 2018, the Newport Mesa Unified School District (District) informed City staff that they were planning upgrades to the Ensign Intermediate School (Ensign) including, but not limited to, replacement of temporary fencing with permanent fencing, the construction of additional parking lots, the reconfiguration of existing parking lots, construction of a new pickup/drop off lot at the front of Ensign and a remodel of the front office (Ensign Project).

City Authority for School Projects

In general, school districts are exempt from local zoning and building codes under California law. Specifically, a school district's exemption from local laws is based on the legal theory that subjecting the state, in its exercise of sovereign activities, to local zoning and building code regulation constitutes a conflict with general laws and is thus prohibited. Therefore, the City's review and permitting authority is limited to improvements and/or uses that are within the City's jurisdiction. In sum, this means that the only decisions by the District related to the Ensign Project that are subject to City review/approval are those decisions that involve the public right-of-way.

City Interactions with District

Although the City's role is limited, the City's Traffic Engineer met with the District three times between November 2018 and September 2019 to discuss the Ensign Project. After receiving a preliminary design for the Ensign Project in February of 2019, and at the request of the District, City staff provided the District with comments related to removal of the median on Cliff Drive as well as driveway design widths for accessing Ensign from Cliff Drive. The comments were intended to improve the access into and out of the Cliff Drive drop-off and parking lot. Included in the District's preliminary design was the removal of 14 longstanding trees on-site as well as two trees in the City's public right-of-way.

In late January 2020, several members of the community attended the City Council meeting and made comments regarding the Ensign Project. Concerns raised included the removal of the trees and lack of public transparency and input on the project. At this meeting of the City Council, a District representative provided a quick overview of the Ensign Project at the request of Council members.

Starting in early February 2020, City and District staff began to meet and corresponded regularly by phone and email regarding the proposed improvements to the public right-of-way surrounding Ensign. On February 27, 2020, the City provided District staff with a rough alternative concept sketch for consideration for the planned drop-off on Cliff Drive (Attachment A). In addition, on March 10, 2020, the City again provided the alternative drop-off design to the District as part of the City's comments to the first submittal for the encroachment permit.

The alternative design provided to the District for consideration included moving vehicles out from the bike lane and providing a through lane during drop-off by widening the street, which would be an improvement to the operation of the existing curbside drop-off condition. This alternative would reduce the level of impact as compared to the District's design and result in no on-site trees being removed. Only nine trees in the public right-of-way would be removed, for a total of seven fewer trees needing to be removed than what was proposed by the District. To date, City staff has not received any feedback on the alternative design.

On March 9, 2020 representatives from the District and the City met to discuss, among other things, the Ensign project. At the meeting, the District representative informed the City that the District would be holding two community meetings related to the Cliff Drive on-site drop-off and parking lot.

Due to current COVID-19 pandemic, the two meetings held by the District were a "Thought Exchange" survey and a Zoom Meeting. On April 16, 2020 the District Superintendent described the results of the "Thought Exchange" survey to City staff indicating that safety of the children was the number one concern of the survey participants. The District's Zoom meeting with the public was held on May 27, 2020 and staff attended the meeting. During the meeting, the District selectively responded to questions and comments that were submitted. Questions regarding the City's alternative design concept were not addressed.

On Friday, May 29, 2020, the District Board held a Special Meeting and authorized the contractor to proceed with the District's original design for the Cliff Drive on-site drop-off and parking lot. City staff did not receive notice of the meeting and therefore did not attend.

Final Application for Encroachment Permit

On June 11, 2020 the District resubmitted plans to provide ingress and egress access to Ensign via an on-site drop-off and parking lot, which included construction of two new driveways on Cliff Drive, some related minor sidewalk and street pavement work, removal and replacement of two standard street trees, and removal of a raised center median. Other than the removal of the median, the plans were similar to the preliminary plans first seen in February 2019 with no elements of the City provided alternative design incorporated.

City staff then reviewed the final encroachment permit application and plans to determine whether an encroachment permit must be issued. Specifically, pursuant to Newport Beach Municipal Code (NBMC) Section 13.06.050, the Public Works Director is mandated to issue an encroachment permit if the Public Works Director determines that:

1. The work conforms to the requirements set forth in the driveway approach policy adopted by the City Council, as well as the Standard Specifications of the City for public work of like character;
2. The project as proposed will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties; and
3. The health, welfare and safety of the public will not be unreasonably impaired.

Upon completion of the plan review process, the Public Works Director determined that the application for the encroachment permit: (1) conformed with the requirements set forth for driveway approaches as well as the Standard Specifications; (2) the improvements to be constructed on Cliff Drive do not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, or the means of ingress and egress to and from the property affected and adjacent properties; and (3) there were no other factors that would unreasonably impair the health, welfare and safety of the public.

Because the application for the encroachment permit met each of the requirements for the issuance of the permit set forth in Section 13.06.050 of the NBMC, the Public Works Director issued Encroachment Permit N2020-0366 for the Ensign Project, and conditioned the contractor to include: (1) saw-cutting the existing widened sidewalk to match the majority of the sidewalk width on Cliff Drive; (2) installing new street trees to match the species and spacing of the existing trees; and (3) adjusting the striping in the middle of the street where the small median will be removed. A copy of Encroachment Permit N2020-0366 is attached hereto as Attachment B.

Call for Review

On June 18, 2020, Mayor Pro Tem Avery filed a call for review, pursuant to Section 13.06.070 of the NBMC, for the purpose of bringing the decision to issue Encroachment Permit No. N2020-0366 in front of the entire City Council for review.

ENVIRONMENTAL REVIEW:

As the issuance of said City Encroachment permit is associated with a larger on-site improvement project being undertaken by the Newport Mesa Unified School District and thus would be included within their CEQA review, additional CEQA review is not required. Additionally, the City permitted portion of street work by itself is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (24 hours in advance of the special meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Copy of Alternative Concept Sketch
Attachment B – Encroachment Permit No. N2020-0366