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To: Mayor and City Council

From: Irene Borba, Director of Planning & Building

**Subject: Approve revocable license for private improvements in the City street right-of-way in front of 135 Belvedere Avenue**

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**Recommended Motion/Item Description**

That the City Council approve the revocable license agreement for 135 Belvedere Avenue for improvements in the street right-of-way as part of the Consent Calendar.

**Background and Findings**

***Proposed encroachment on City property – 135 Belvedere Avenue – APNs 060-181-06, -07, -08***  
The attached license agreement requires the property owner to assume liability and maintenance responsibilities for:

Portion of the driveway, street parking, trash enclosure, fencing & gates, concrete pathway, staircase, fire department stand pipe and landscaping in the street right-of-way in front of 135 Belvedere Avenue. (Refer to attached draft Revocable License No 2019.07 and associated exhibit.)

***Background of current application***

Prior revocable licenses for the subject property included Revocable License Nos. 1 and A0406, both of which have been voided. In 2004, a revocable license was executed for the following improvements in the right-of-way: portion of driveway, trash enclosure, wood fence, stone entry walls, stone pavers and landscaping (Revocable License No. A0512), which will be voided by this new license.

A new revocable license is required to reflect proposed modifications to private improvements constructed in the Belvedere Avenue right-of-way, as noted above.

**Planning Commission**

On June 20, 2017, the Planning Commission approved, with conditions, application requests for Demolition, Lot Merger, Design Review, Exception to Total Floor Area, Variance(s), Use Permit, Accessory Dwelling Unit, Extension of the Construction Time Limit, and revocable license requests to demolish an existing residence and construct a new residence and second unit, and other site improvements on the property located at 135 Belvedere Avenue.

The project was appealed to the City Council; there were two separate appeals filed. One of the appeals was resolved prior to the Council hearing.

#### City Council

The appeal was heard by the Council on September 11, 2017. The City Council granted the appeal with conditions with respect to the Design Review approval; and denied the appeal and confirmed the decision of the Planning Commission with respect to the CEQA Mitigated Negative Declaration, Demolition Permit, Lot Merger approval, Exception to Total Floor Area, Variance(s), Use Permit, and Accessory Dwelling Unit (2nd Unit), requests to Demolish the Existing Residence and Construct a New Residence and Second Unit.

#### Other Approvals

Additionally, the property owner requested an Extension to the allowable Construction Time Limit. The Planning Commission heard and approved on April 17, 2018, an additional three (3) month CTL from 18-months to 21-months to allow for construction of the project. The Planning Commission approval was appealed to the City Council by an adjacent property owner. The decision of the Commission was upheld to allow for the additional 3-month CTL and the appeal was denied by the Council on June 11, 2018.

#### ***Compliance with Administrative Policy Manual Section 272.05, Revocable Licenses***

In accordance with Section 272.05 of the City's Administrative Policy Manual (as revised May 14, 2018), a revocable license for private use of excess street right-of-way may be granted at the discretion of the City Council when there is some benefit to the public, and provided that any proposed encroachment into the right-of-way complies with the design review requirements of Title 20 of the Belvedere Municipal Code. The policy lists the following criteria to consider when determining whether to grant a revocable license for private use of excess right-of-way. Below please find the factors and staff's analysis.

- a. *Where necessary to provide pedestrian or vehicular access from private property to the adjacent public street;*
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The proposed improvements help to provide pedestrian and or vehicle access from private property to public property. Such improvements in the right-of-way include gates and stairs, a driveway apron/access. As proposed, five (5) public parking spaces along the frontage of the property at 135 Belvedere Avenue will be provided and two areas will be designated for fire truck emergency parking. Additionally, one existing public parking space will be relocated in the public right-of-way.

- b. *Where use of the public right-of-way will permit landscaping and/or related improvements to be installed that the City Council determines will enhance the aesthetic qualities of the streetscape. Any such landscaping and/or related improvements should not significantly impede public views or views from neighboring properties, or infringe on the privacy of neighboring properties;*
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As designed, new landscaping will be provided along the property frontage in the public right-of-way. The new landscaping will enhance the aesthetic qualities of the streetscape, screen and soften the property from the street, and will not significantly

impede public views or views from neighboring properties or infringe on privacy. As designed, the proposed project will be an improvement from what currently exists and will provide for more views along the property frontage. Landscaping along the property frontage in the right-of-way includes a variety of plant species such as sword ferns, flax lilies, cotoneaster and a ligustrum hedge.

- c. Where use of the public right-of-way will permit the creation of an off-street parking area, and will thereby relieve parking or traffic congestion on the adjacent City street;

The project provides for five (5) public parking spaces along the frontage of the property at 135 Belvedere Avenue and provides two areas which will be designated for fire truck emergency parking. Additionally, one existing public parking space will be relocated in the public right-of-way to provide for safe ingress/egress from the driveway.

- d. Where the public right-of-way will be used to construct retaining walls, drainage structures or other facilities that the City considers necessary to protect or maintain the public infrastructure;

As designed, portions of retaining walls will be located in the public right-of-way, as well as a fire department stand pipe that is proposed in the vicinity of the new trash enclosure area.

- e. Where appropriate to validate already existing private improvements in the public right-of-way for the purpose of shifting the City's potential liability for injuries and damages to the private property owners using the right-of-way for private purposes.

All existing improvements currently in the right-of-way will be removed to accommodate the new improvements. This revocable license will void & replace any prior license for the property.

- f. Where necessary to protect or enhance public safety; and/or

The subject property has a steep slope and slopes downward from the street. A portion of a proposed fence is located in the right-of-way. The new fence will be located further back from its current fence location therefore allowing for more room along the street. Due to the slope of the lot, the location of the fence appears to be appropriate and will enhance public safety. The proposed vertical metal fence is 6 feet in height and would help provide safety along the street frontage for vehicles and pedestrians.

- g. Where use of the public right-of-way will provide an area for street-level refuse and recycling containers on property that would otherwise not have an area for such improvements.

A street-level refuse & recycling area is proposed within the city right-of-way. The refuse area will be screen by a solid wall fence. Due to the steepness of the slope, a refuse area in the city right-of-way seems appropriate and consistent with the revocable license criteria.

Although the proposal includes fencing in the city right-of-way, as designed (six feet, vertical metal rods/pickets), it creates an open style fence along the property frontage and provides some safety for pedestrians and vehicles from the steep slope. The proposal is an improvement over what currently exists, which includes a dilapidated solid wood fence and landscaping that has not been well maintained.

### ***Public Benefit***

The project benefits the public, as these proposed improvements will enhance the aesthetic appeal of the property frontage and will provide access to the proposed residence, garage & accessory dwelling unit. In terms of the proposed fence & pedestrian gate proposed in the right-of-way, there is a fence that exists in the right-of-way. The proposed fence, also located in the right-of-way, will be located further back from the current fence location, therefore allowing for more room along the street. The property is steeply sloped downward from the street and fencing provides safety for pedestrians and vehicles. The project provides for five (5) public parking spaces along the frontage of the property at 135 Belvedere Avenue and provides two areas which will be designated for fire truck emergency parking. Additionally, one existing public parking space will be relocated in the public right-of-way to provide for safe ingress/egress from the driveway and, as designed, the project provides for a screened trash area.

### ***Future improvements***

The license covers any future improvements within the revocable license area which receive staff or Planning Commission design review approval and which meet one or more of the criteria for approval of revocable license listed in the City's Administrative Policy Manual, Policy 272.05, as adopted by City Council resolution. Applications for substantial, potentially permanent and/or obstructive structures within the City right-of-way, which fall outside the criteria, will still be required to go to the City Council for consideration and approval/denial. Detailed records at City Hall, maintained in the Planning Department file for this address, will always be available to show exactly what structures have been approved within the license area. This will save considerable staff time that would be devoted to bringing a revised license and staff report to the City Council and in issuing, recording, and archiving a new license agreement.

### **Recommended Action**

That the City Council approve the revocable license agreement for 135 Belvedere Avenue for improvements in the street right-of-way as part of the Consent Calendar.

### **Attachments**

- Draft license agreement with attached exhibit.
- Project plans.