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NEIGHBORHOOD SERVICES DEPARTMENT
Code Enforcement Division

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July 17, 2003

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Portable Basketball Hoops in the Public Right-of-way

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION:

In order for Code Enforcement to provide more effective enforcement regarding portable basketball hoops, the City of Sacramento will need to consider revising the existing code (see attachment). It is recommended that the Law and Legislation Committee review three different types of approaches to enforcement as implemented by the cities of Roseville, Mission Viejo, and San Bruno. After the Committee's review, Code Enforcement is requesting direction for an amendment to the Sacramento City Code which will enable Code Enforcement staff to provide more effective enforcement of portable basketball hoops encroaching in the public right-of-way.

CONTACT PERSONS: Max B. Fernandez, Director Area 1, 264-7940
Robert L. Rose, Chief of Code Enforcement, 264-5947

FOR COMMITTEE MEETING OF: August 7, 2003

SUMMARY:

Sacramento City Code includes Titles 12.24.020 (see Exhibit A) and 12.24.110 (see Exhibit B) relating to obstructions generally in the public right-of-way. Title 12.24.020 prohibits signs, posts, structures or obstructions from being erected, placed or maintained on any city sidewalk. Unless otherwise provided for, any such sign, post, etc. is declared a nuisance and to be removed by the **city engineer**. Title 12.24.110

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prohibits a person, after being ordered to move by a **peace officer**, from walking, standing, sitting, lying, or placing an object on the public right-of-way such that passage is blocked for another person or a vehicle, or such that another person or a driver of a vehicle needs to take evasive action to avoid physical contact. Therefore, according to current city code, authority for enforcement regarding basketball hoops and/or other obstructions within the public right of ways resides with the city engineer or a police officer. Neighborhood Code Enforcement has been providing enforcement of Title 12.24.020 and 12.24.110 on a limited basis when basketball hoops are involved. Staff believes that the existing ordinances related to this issue are somewhat vague and are in need of revision.

Three alternative approaches for basketball hoop enforcement that have been used by other jurisdictions are: (1) the direct approach (used by the City of Mission Viejo), (2) the indirect approach (used by the City of San Bruno), and (3) the general encroachment approach (used by the City of Roseville). The most neutral and possibly least controversial approach appears to be the general encroachment approach which is recommended by the Sacramento City Attorney.

BACKGROUND:

City Council has requested information regarding enforcement of basketball hoops encroaching in the public right-of-way. Enforcement activities regarding portable basketball hoops in the public right-of-way is currently limited and minimal. According to City Code Title 12.24.020 and Title 12.24.110, enforcement authority lies principally with the Public Works and Police Departments. However, Neighborhood Code Enforcement has been providing limited enforcement and may issue a citation for persons violating 12.24.020 only under the following conditions: The owner of the basketball hoop can be determined and such person admits that he or she placed the hoop on the sidewalk, and the owner refuses to move the hoop from the sidewalk after being asked to do so. Neighborhood Code Enforcement currently has no clear jurisdiction over basketball hoops which are located within the street area of the public right of way.

Examples of three different approaches currently being used by other jurisdictions to address the basketball hoop encroachment issue are as follows:

1. The *direct approach* is used in the City of Mission Viejo (see Exhibit D - Section 14.01.310). This city has enacted an ordinance which *specifically prohibits placing or maintaining basketball hoops in the street or public right-of-way*. The Mission Viejo City Code not only prohibits basketball hoop encroachment but also provides the authority to remove the basketball hoop and a cost recovery mechanism.

2. The *indirect approach* is used in the City of San Bruno (see Exhibit E - Section 8.08.030). San Bruno's ordinance *prohibits any person from playing or participating in any game on any street*. Their ordinance also allows the police department to confiscate and impound equipment used in games played in the street.
3. One of the many jurisdictions that uses the *general encroachment approach* is the City of Roseville (see Exhibit F - Section 13.28.010 and Exhibit G - Section 13.28.020). This type of approach uses a broadly written encroachment ordinance that prohibits the placing of encroachments in the public right-of-way without obtaining a permit prior to doing so. Under the general encroachment approach, a basketball hoop encroachment is treated like any other encroachment in the public right-of-way for which a permit is required prior to placing the encroachment in the public right-of-way. However, a permit will not be issued for placing portable basketball hoops in the public right-of-way.

The City of Roseville's city code *generally* prohibits such encroachments as follows:

"It is unlawful for any person to perform any type of construction, or to place an encroachment of any kind, within the public street right-of-way without first having obtained an encroachment permit to do so from the Public Works Director/City Engineer of the City." (R.C.C. § 13.28.010)

Roseville's code also defines an encroachment as "any type of construction or work, or the placing of any object or thing, whether permanent or temporary, within a public street," and defines the term "public street" as "any public right-of-way, highway, street, sidewalk, easement or other area or thoroughfare, whether improved or unimproved, which is owned by or under the control of the City." (R.C.C. § 13.28.020(B), (E))

Using the general encroachment ordinance, Roseville's Code Enforcement staff responds to complaints by going to the neighborhood where the problem basketball hoop is located, identifying all of the properties where there is a basketball hoop on the sidewalk or in the street in front of the property, and then mailing a notice advising the property owner that a permit is required for encroachments on the sidewalk or in the street and that the City does not issue such permits for basketball hoops. The property owner then has 14 days to remove the basketball hoop. Re-inspections follow to ensure compliance. Code Enforcement will issue up to two more written warnings before taking further action which would be the issuance of a citation (only has occurred one time in the City of Roseville in the year that this city has implemented its enforcement program).

Current Sacramento City Code §12.24.020 prohibits the placement of obstructions on sidewalks and authorizes the city engineer to remove the obstructions. An option for revising this section could be to authorize the Chief of Code Enforcement or his/her designee to remove the obstructions and to add a cost recovery mechanism. However, this does not address the issue of portable basketball hoops placed on public streets or the public street right-of-way. Section 12.24.020 could be amended to exceed its current scope and include designation for enforcement and cost recovery in this area as well.

While the Sacramento City Code does imply a general prohibition against placing obstructions in the street or the public street right-of-way, (see Exhibits A-C), it does not expressly prohibit such activity. Section 12.24.110 prohibits a person from placing an object in the street or the public right-of-way, but only after the **person** has first been ordered to move by a peace officer (note that the **person** is ordered to move rather than the **person move the object**). Also of note is that the prohibition applies only if the object is placed "in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact." These conditions also limit enforcement efforts. Also, Sacramento City Code Section 3.76.010 (see Exhibit C) has been interpreted as implying a general prohibition against placing obstructions on public property, but it does not specifically do so.

The absence of an express prohibition leads to Code Enforcement staff not being able to cite any provision in the City Code that specifically prohibits placing objects on sidewalks or streets in its warning notices which results in less voluntary compliance by the basketball hoop owners. Also, without an express prohibition of placing obstructions in the public right-of-way, it is not possible to pursue criminal prosecution against non-compliant owners.

Staff requests direction on how to better address the issue of portable basketball hoops in the public right-of-way. Staff is presenting the three approaches detailed above (i.e. direct, indirect, or general prohibition) as possible options to more effectively control the problem of basketball hoops encroaching in the public right-of-way.

FINANCIAL CONSIDERATIONS:

This report has no fiscal implications at this time.

ENVIRONMENTAL CONSIDERATIONS:

This report is not considered a project and therefore has no potential for an effect on

the environment as stated by the provisions of the California Environmental Quality Act (Section 15061 (b) (3)).

POLICY CONSIDERATIONS:

This report is consistent with policies associated with the City's goal to enhance and preserve the neighborhoods.


E/SBD:

Not applicable.

Respectfully submitted,


MAX B. FERNANDEZ
Director, Area 1
Neighborhood Services Department

RECOMMENDATION APPROVED:


KEN NISHIMOTO
Deputy City Manager

Attachments

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Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.24 OBSTRUCTIONS GENERALLY

**EXHIBIT A
SACRAMENTO**

12.24.020 Signs, posts, structures, etc.

It is unlawful to erect, place or maintain on any sidewalk within the city limits any signs, posts, structures or obstructions of any kind whatsoever; except, as otherwise provided in this title.

Any such sign, post, structure or obstruction, except such as may be specifically provided for in this title, is declared to be a nuisance and shall be removed by the city engineer immediately upon its existence being ascertained. (Prior code § 38.06.062)

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.24 OBSTRUCTIONS GENERALLY

EXHIBIT B
SACRAMENTO

12.24.110 Pedestrian and vehicle interference.

No person, after first being ordered to move by a peace officer, shall walk, stand, sit, lie, or place an object on any portion of a street, sidewalk or other public right-of-way in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. (Prior code § 38.06.070-1)

Title 3 REVENUE AND FINANCE

Chapter 3.76 REVOCABLE PERMITS

EXHIBIT C
SACRAMENTO

3.76.010 Grant--Conditions--Acceptance.

The council may by resolution grant permits revocable at its will for minor or temporary purposes or privileges on public property subject to such terms and conditions as it deems necessary for the public interest. The use of the property by the permittee shall constitute acceptance and agreement to be bound by the terms and conditions of the permit. (Ord. 2000-017 § 2(k)(iv) (Exh. E) (part); Ord. 2000-013 § 1 (part); prior code § 12.04.080)

EXHIBIT D

MISSION VIEJO

Sec. 14.01.310. Unlawful to place objects in public right-of-way.

(a) It shall be unlawful for any person to place or maintain any object including, but not limited to, basketball hoops, skateboard ramps, and construction/building materials on any road, street, or public highway, public right-of-way, or public property. It shall not be a violation of this section to place or maintain upon any road, street, public highway, or public right-of-way:

(1) Any solid waste or recycling containers or bins authorized by and in accordance with the provisions of this Code;

(2) Any object necessary for the work or activity authorized by a duly issued encroachment permit pursuant to the provisions of this Code; or

(3) Any object required by police, fire, medical or tow service personnel necessary to providing service to an incident within their jurisdiction on a road, street, public highway, or public right-of-way.

(b) The director of public works has the right, but not the obligation, to remove any object on a road, street, public highway, or public right-of-way without notice to the owner or person in control of the object. Following removal of the object, the director shall prepare an invoice of the costs incurred in removing the object by the city. The director shall submit such statement to the person responsible, his or her employer, employee, or agent. Such person, his or her employer, employee, or agent shall pay the invoice within 15 days of the date of the invoice.

(c) The city may bring an action against such person, his or her employer, employee, or agent to recover the costs incurred by the city and for the costs of suit.

(d) The city may bring an action to enjoin any continued violation of subsection (a) of this section.

(Ord. No. 2000-207, § 1, 1-2-01)

Section 8.08.030 Playing games in streets prohibited.

EXHIBIT E

SAN BRUNO

Chapter 8.08 OBSTRUCTIONS AND USE RESTRICTIONS

Section 8.08.030 Playing games in streets prohibited.

No person shall play or participate in any game on any street. The police department shall have the authority to confiscate and impound for a period of not more than thirty days any equipment or sporting goods used in the playing of games prohibited by this section.

EXHIBIT F

ROSEVILLE

Chapter 13.28 CONSTRUCTION IN PUBLIC STREETS

Section 13.28.010 Permit required.

It is unlawful for any person to perform any type of construction, or to place an encroachment of any kind, within the public street right-of-way without first having obtained an encroachment permit to do so from the Public Works Director/City Engineer of the City. (Ord. 2739 § 2, 1993; Ord. 1670 § 1 (part), 1982; Ord. 1288 § 2 (part), 1975; prior code § 21.40.)

Remove highlighting.

Chapter 13.28 CONSTRUCTION IN PUBLIC STREETS

EXHIBIT G

ROSEVILLE

Section 13.28.020 Definitions.

For purposes of this chapter, the following words shall have the meanings set forth in this section:

- A. "Director" means the Public Works Director/ City Engineer of the City of Roseville.
- B. "Encroachment" means any type of construction or work, or the placing of any object or thing, whether permanent or temporary, within a public street.
- C. "Minor encroachment work" means either:
 - 1. Removal and/or replacement of curb, gutter and sidewalk for residential property along a minor residential street or a low traffic volume major residential street as determined by the Director and where the estimated cost of the work, as estimated by the Director, is less than one thousand (\$1,000) dollars; or
 - 2. Work within commercial or industrial area that does not affect the traveled right-of-way and where the estimated cost of the work, as estimated by the Director, is less than one thousand (\$1,000) dollars.
- D. "Person" means any individual, firm, copartnership, association, corporation, public district or other political subdivision.
- E. "Public street" includes any public right-of-way, highway, street, sidewalk, easement or other area or thoroughfare, whether improved or unimproved, which is owned by or under the control of the City.

(Ord. 2739 § 2, 1993; Ord. 1670 § 1 (part), 1982; Ord. 1288 § 2 (part), 1975; prior code § 21.41.)

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