

### REPORT TO COUNCIL

#### **SUBJECT**

Accept Findings of the Eruv Study and Authorize Next Steps for Implementation

#### **BACKGROUND**

On March 7, 2019, City Council ranked the 2019 Study Issue DPW 19-01 Consider the Feasibility of Establishing an Eruv in Sunnyvale (Attachment A) at the 2019 Study/Budget Issues Workshop and directed staff to move forward with this Study Issue.

In September 2019, staff began working with leaders of the Jewish Community in Sunnyvale in partnership with other community contacts affiliated with the South Peninsula Hebrew Day School to outline the eruv boundaries within Sunnyvale's city limits and identify physical characteristics of new elements proposed in the public right-of-way needed to complete the eruv.

As defined, an eruv is a Jewish term for a system that integrates a number of private and public domains and creates a larger technical private domain within the context of Jewish law. Under Jewish law, it is forbidden to carry certain items, regardless of their weight, size or purpose, from a private domain into a public domain during certain Jewish holidays, such as the Sabbath, which traditionally lasts from nightfall on Friday to nightfall on Saturday. The creation of an eruv permits observant individuals to carry these items within the eruv as an extension of the private domain and thereby allows for greater community mobility during these holidays.

#### **EXISTING POLICY**

General Plan, Chapter 2, Community Character, and Chapter 4, Community Vision:

- GOAL CC-1.6 Maintain City neighborhoods as safe, healthy places to live.
- GOAL CC-1.7 Encourage neighborhood patterns that encourage social interaction and avoid isolation.
- GOAL CC-6.1 Develop and expand cooperative working relationships with schools, civic groups, neighborhood organizations, business organizations and other established organizations to share in the promotion of heritage programs and projects.
- GOAL CC-12 Maximum Access to Recreation Services, Facilities and Amenities
- GOAL CV-1.3c Facilitate the development of relationships and partnerships among community organizations, the business community and the City to achieve common goals.

#### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

At Encroachment Permit issuance, the proposed improvements are categorically exempt from CEQA pursuant to the CEQA Guidelines Section 15301(c), for minor alterations of existing highways and streets that do not create additional automobile lanes and involving negligible or no expansion of existing or former use.

## **DISCUSSION**

While most of the proposed eruv is in Sunnyvale, which uses a series of pre-existing accepted boundaries (e.g., sound walls, fences, and channels), the actual limits extend into the neighboring cities of Cupertino and Mountain View. The boundaries of the eruv are shown on Attachment B and are generally Central Expressway and CA-237 to the north, Valley Water Storm Drain Channel to the east, I-280 to the south, and CA-85 to the west. For locations where there are breaks creating boundary discontinuations (e.g., freeway ramps, intersections, bridges, etc.) minor boundaries are then needed expressly for the eruv, often a poly monofilament line on existing streetlight poles to minimize disruption to the surrounding community. As outlined above, placement of these proposed facilities will require permits and approval from cities, as well as Caltrans, County of Santa Clara, Valley Water, and the Peninsula Corridor Joint Powers Board (Caltrain).

At the completion of the Study, staff was to identify issues and concerns related to public safety, determine an appropriate reviewing body and process for an eruv application, create design guidelines and criteria in the review of an eruv, identify maintenance needs and responsibilities that need to be addressed with the eruv application, and research best practices on the creation of an eruv. The results of the study would determine the feasibility and legality of establishing an eruv in Sunnyvale and mirrors a similar process in the creation of an eruv within the neighboring jurisdictions of Palo Alto and San Jose.

The following are staff's findings from the study:

**Legality** - Eruvs have been upheld in many jurisdictions throughout the country and there have been no successful legal challenges preventing their establishment. Moreover, eruv have been established in neighboring jurisdictions including Palo Alto and San Jose. These facilities are a minor intrusion in the public right-of-way and there is no overt religious symbolism involved.

**Concerns of Public Safety** - Debris removal, ongoing maintenance, and liability shall be the full responsibility of the permittee and will be detailed in an executed Master Encroachment Agreement.

**City Review Process** - Staff proposes to use a combination of a Master Encroachment Agreement and Encroachment Permit(s) to effectuate the eruv facilities in public right-of-way within City limits. It is anticipated that the City will need to issue encroachment permits for three to six new poles in the public right of way, and the applicant will need to obtain permits for approximately 30 poles in other agencies' jurisdiction to complete the eruv boundary. Prior to full encroachment permit release, the permittee will provide copies of all required permits necessary for the creation of the full eruv boundary, including permits from other agencies and owners. Once construction is complete, the permittee must provide a map of facilities to the City for record keeping. If maintenance of the line requires a bucket truck to access, then a standard encroachment permit would be required for traffic control review and approval.

## **Design Guidelines and Criteria -**

These design guidelines and criteria were developed by combining requirements from Eruv permits

issued by other neighboring jurisdictions, feedback from pertinent City staff and from the contractor who will be doing the installations in Sunnyvale. It is anticipated for poles needed outside of Sunnyvale jurisdiction (such as County/JPB/adjacent City/Caltrans/Valley Water), that the below or similar design guidelines and criteria will be required.

- a. Clear height restrictions: 12-feet over sidewalk, 18-feet over any vehicle travel way.
- b. Allowable line sag between poles shall not exceed 12-inches.
- c. Line material shall not be conductive or be a braided metal, must be transparent to blend with surroundings (e.g. poly monofilament "fishing" line).
- d. Posts, if used, shall be 3-inch schedule 40, galvanized steel, or as approved by Public Works.
- e. Attachment to City-owned Streetlight or Traffic Signal shall be at the top of pole (See Attachment C).

**Maintenance Needs and Responsibilities** - The permittee shall be fully responsible for ongoing maintenance of permitted improvements, including debris removal. The permittee shall provide a 24-hour, 7-day a week maintenance contact and general contact to the City. Additionally, the permittee will be performing visual inspections of the created boundary located throughout the City weekly to confirm the boundary remains intact.

**Best Practices** - The permittee shall work with City's staff regarding streetlight and traffic signal pole maintenance and shall work with telecom carriers regarding potential future small cell antenna installations on City-owned streetlight poles.

**General Timeframes/Next Steps** - The permittee may initiate the Master Encroachment Agreement (MEA) process with City staff by paying the Application for Private Use of Public Right-of-Way fee. Staff will subsequently begin drafting the MEA. Staff will generally provide the document for permittee review within three weeks of application. If minor revisions are requested by the permittee, staff will review the revisions within two weeks of receipt. Once the MEA is finalized, the permittee shall sign and deliver the original copy to staff for full execution.

After the MEA has been executed, the permittee is then able to submit an Encroachment Permit (EP) Application for work within the City's jurisdiction. The application will include plans, fee payment, and any supporting documents to the Department of Public Works. The initial EP review is generally provided within three weeks from the receipt of a complete application. Any subsequent reviews will be provided within two weeks. Precedent to issuance of the EP, permittee is required to provide documentation of receipt of encroachment permits from other agencies necessary to complete the Eruv. Upon receipt of the EP, permittee shall follow standard procedures identified for scheduling inspections, final signoff, as-builts, etc.

### **FISCAL IMPACT**

Review and execution of a Master Encroachment Agreement and Encroachment Permit(s) can be accommodated within the existing adopted City Fee Schedule.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

## **ALTERNATIVES**

1. Accept the findings of the Eruv Study and authorize the Public Works Director to execute a Master Encroachment Agreement upon the submittal of an Encroachment Permit application and the payment of the applicable fees.
2. Accept the findings of the Eruv Study and authorize the Public Works Director to execute a Master Encroachment Agreement upon the submittal of an Encroachment Permit application and the payment of the applicable fees with modifications proposed by Council.
3. Do not accept the findings of the Eruv Study and direct staff to further research the Study Issue in accordance with direction from Council.

## **STAFF RECOMMENDATION**

Alternative 1: Accept the findings of the Eruv Study and authorize the Public Works Director to execute a Master Encroachment Agreement upon the submittal of an Encroachment Permit application and the payment of the applicable fees.

Prepared by: Marlon Quiambao, Senior Engineer  
Reviewed by: Jennifer Ng, Assistant Director of Public Works  
Reviewed by: Chip Taylor, Director of Public Works  
Reviewed by: Rob Boco, Sr. Assistant City Attorney  
Reviewed by: John Nagel, City Attorney  
Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

## **ATTACHMENTS**

1. RTC No. 18-0840 - Consider the Feasibility of Establishing an Eruv in Sunnyvale DPW 19-01
2. Map of Sunnyvale Eruv Boundary
3. Picture of Monofilament Line Installed on a Streetlight