

CITY OF OAKLAND

OFFICE OF THE CITY CLERK
2006 SEP 31 AM 10:53

Agenda Report

TO: Office of the City Administrator
ATTN: Deborah Edgerly, City Administrator
FROM: Community and Economic Development Agency
DATE: September 12, 2006

RE: **Ordinance Authorizing the City Administrator to Negotiate and Execute a Five Year License Agreement with Shay and Olivia Harting and Carol Cordray With Options to Extend the License Term, to Accommodate an Existing Driveway for Ingress and Egress Located at 4683 and 4689 Benevides Avenue (APN: 024-0551-001) for Approximately 2,000 Square Feet of City Owned Parkland Located Along the Westerly Edge of Dimond Park.**

SUMMARY

City staff has prepared an Ordinance for the City Administrator to execute a license agreement between the City of Oakland and Shay and Olivia Harting and Carol Cordray (Hartings-Cordray) for the use of the 2,000 square feet of parkland located along the westerly edge of Dimond Park, adjacent to the Hartings - Cordray property in Oakland, California. The License will allow the Licensees to use the area for a portion of their driveway. The proposed license agreement has a five (5) year term commencing on July 1, 2006 and ending on June 30, 2011, with options to renew the License by mutual consent of the parties. The license agreement has been developed to meet the current City contract requirements and has been approved by the Office of the City Attorney as to form and legality. The property owners and their attorney have reviewed the agreement and after suggesting minor modifications, have agreed to its terms.

Staff recommends that City Council approve the ordinance authorizing the City Administrator or her designee to execute a license agreement between the City of Oakland and the Licensees for the use of the parkland located along the westerly edge of Dimond Park for a five-year term with options to extend for additional five years terms by mutual consent.

FISCAL IMPACT

The Licensees shall pay in advance a monthly license fee of \$350.00. The payment will generate an additional \$4200.00 annually in revenue to the City's general fund, which is deposited to the City's General Fund (1010); Director's Unit Org. (501110); Miscellaneous Concessions Account (44519). The license payment will increase by CPI plus 2% per year, not to exceed 5% per year.

BACKGROUND

Licensees have used the proposed License Area as a driveway accessing their adjacent property for a number of years without authorization. They contend, and the City denies, that Licensees

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Finance and Management Committee
September 12, 2006

have established a right to use the park property. The Hartings-Cordray now desire to divide their property into two parcels, and approval of the division requires authorized driveway access to the property. The City and Hartings-Cordray have agreed that the City will now grant a License for the restricted use of the property subject to the terms and conditions of the License Agreement.

The proposed license area totals approximately 2,000 square feet in area and is located along the westerly edge of Dimond Park adjacent to the easterly edge of the Licensees property located at 4683 and 4689 Benevides Avenue in the City of Oakland. The proposed license area is improved as driveway with brick pavers, and has been in such condition for a significant number of years.

KEY ISSUES AND IMPACTS

Granting of the License will allow the Hartings and Ms. Cordray to divide the property into two parcels and will obtain minor improvements to the License Area. The proposed license area does impact the adjacent property of the Licensees for without the access the Harting-Corday ownership cannot access their garages. The impact of the License on the use of the balance of Dimond Park is insignificant as the License Area is significantly elevated and is a small area. The licensee will pay a monthly license fee and provide insurance for the licensed area.

SUSTAINABLE OPPORTUNITIES

Economic: The revenue produced by the License will allow for improvements at other City Parks

Environmental: There are no environmental opportunities at this time.

Social Equity: There are no social equity opportunities at this time.

DISABILITIES AND SENIOR CITIZEN ACCESS

Adoption of this Ordinance will have no direct impact on disabled and senior citizen access.

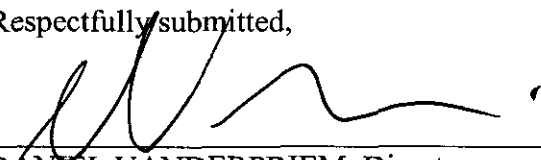
RECOMMENDATION AND RATIONALE

Staff recommends that the City Council approve the ordinance authorizing the City Administrator or her designee to execute a license agreement between the City of Oakland and the Hartings-Cordray for the use of the proposed License area for a five-year term with additional five-year consecutive options to renew.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council authorize the City Administrator or her designee to execute a license agreement between the City of Oakland and Hartings-Cordray for use of the License Area for a five-year term with additional five-year options to renew.

Respectfully submitted,



DANIEL VANDERPRIEM, Director,
Redevelopment, Economic Development and Housing
Community and Economic Development Agency

Forwarded by:
Frank Fanelli, Manager
Real Estate Services

Prepared by:
William Wilkins, Supervising Agent

APPROVED FOR FORWARDING TO THE
FINANCE AND MANAGEMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR



Oakland City Attorney

2006 AUG 31 AM 10: 53

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C. M. S.

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE YEAR LICENSE AGREEMENT WITH SHAY AND OLIVIA HARTING AND CAROL CORDRAY, WITH OPTIONS TO EXTEND THE LICENSE TERM, TO ACCOMMODATE AN EXISTING DRIVEWAY FOR INGRESS AND EGRESS AT 4683 AND 4689 BENEVIDES AVENUE (APN: 024-0551-001) ON APPROXIMATELY 2,000 SQUARE FEET OF CITY OWNED PARKLAND LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK.

WHEREAS, the City of Oakland (“Licensor”) is the owner and the Office of Parks and Recreation is the custodial agency for the real property commonly known as Dimond Park and more particularly described on Exhibit “A” attached hereto and hereby incorporated herein; and

WHEREAS, Shay and Olivia Harting and Carol Cordray (“Licensees”) are the owners of that real property and the improvements thereon, commonly known as 4683 and 4689 Benevides Avenue, in Oakland, California, and more particularly described on Exhibit “B” attached hereto and hereby incorporated herein; and

WHEREAS, a strip of land along the Easterly edge of the driveway from the end of Benevides Avenue to the garage under the home commonly known as 4689 Benevides Avenue, as described in Exhibit “C” attached hereto and hereby incorporated herein, and as shown on the plot plan attached hereto and incorporated herein as Exhibit “D”, hereinafter referred to as the “License Area,” is located on the Westerly edge of Dimond Park on the land owned by the Licensor; and

WHEREAS, Licensees contend and Licensor denies that Licensees have previously obtained any right to use the License Area for access to the homes located on the real Area described on Exhibit B; and

WHEREAS, Licensor and Licensees now desire to settle any dfferences and authorize Licensees’ right to use the License Area for access to Licensees’ property, in order to permit Licensor and Licensees to split the Area described on Exhibit “B” into two, separate legal parcels, subject to planning and other necessary reviews and approvals ; and

WHEREAS, the requirements of the California Environmental Quality Act of 1970 (“CEQA”), the CEQA Guidelines as prescribed by the Secretary of Resources. And the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied: now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: The Parks and Recreation Advisory Committee reviewed and found that it is in the City's best interest to negotiate and execute a License Agreement with the Hartings and Carol Cordray to authorize a driveway for access to the private property across and directly adjacent to the westerly border of Dimond Park.

Section 2: Licensees must agree that as consideration for the City's grant of license they shall a) pay a monthly fee, b) construct a fence and a sign and provide other improvements as agreed with City; c) assume responsibility for utilities and maintenance and associated costs, d) make no claim and take no action to establish any past, current or future rights to use the License Agreement authorized hereby; and e) perform other tasks as agreed with City Administrator or designee.

Section 3: Revenue of \$350.00 per month, paid in advance, with an annual increase equal to the amount of the Consumer Price Index plus 2%, will be placed into the City's General Fund (1010); Director's Unit (501110); Miscellaneous Concession Account (44519)

Section 4: The City Council independently finds and determines that the Project complies with CEQA, as the Project is categorically exempt from CEQA pursuant to Section 15301(existing facilities) of the CEQA Guidelines, and the City Administrator is hereby directed to cause to be filed with the appropriate agencies, a Notice of Exemption.

Section 5: The City Administrator, or her designee, is hereby authorized to take any and all actions necessary, consistent with this Ordinance, to complete the negotiations and execution of the License Agreement, and to make any amendments, modifications or extensions thereto, at no additional costs.

Section 6: The License Agreement or other appropriate instrument shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

Section 7: This Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006
PASSED BY THE FOLLOWING VOTE:

AYES BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, KERNIGHAN, AND
 PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LA TONDA SIMMONS
 City Clerk and Clerk of the Council
 of the City of Oakland, California

Order No. 431042

LEGAL DESCRIPTION

REAL PROPERTY in the City of Oakland, County of Alameda, State of California, described as follows

Lot 47, Block 5 as said lot and block are shown on the Map of "Fourth Avenue Height", filed March 23, 1910, Map Book 25, Page 43, Alameda County Records

A.P. No. 024-0551-001

Exhibit B

Exhibit C

All that certain real property being a portion of land of the City of Oakland known as Diamond Park, described as follows:

Commencing at the most northern corner of Lot 47 being on the eastern boundary of the tract shown on the map entitled "Fourth Avenue Heights," filed March 27, 1910, in Map Book 25, page 43, Alameda County Records; thence along the eastern boundary of Lot 47, South 18°17' West 24.60 feet and South 9°33' West 247 feet to the POINT OF BEGINNING; thence continuing along said eastern boundary of Lot 47, the following courses:

South 09°33' West 20.53 feet, South 03°51' West 237.70 feet
South 16°58' West 102.70 feet, and South 08°08' West 23.50 feet to the

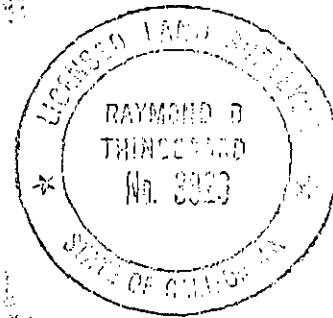
northeastern end of Benevides Avenue; thence along the northeastern end of said Benevides Avenue, South 15°19' East 30.98 feet and South 05°39' East 11.09 feet to the back of a concrete curb; thence along said curb along a curve to the right with a radius of 18.0 feet, from a tangent that bears North 84°46'51" East, through a central angle of 34°07'40", an arc distance of 10.72 feet; thence leaving said curb, along the following courses:

North 04°33'12" West 66.75 feet to the beginning of a tangential curve to the right with a radius of 47.0 feet, thence along said curve, through a central angle of 4°56'17" an arc distance of 11.52 feet, thence tangent to said curve,

North 09°29'29" East 24.54 feet, North 21°00'27" East 18.78 feet
North 15°34'53" East 19.04 feet, North 20°44'10" East 24.62 feet,
North 18°07'37" East 16.98 feet, North 24°45'19" East 20.35 feet,
North 56°25'17" West 20.74 feet, and North 52°46'52" West 5.25 feet to

the Point of Beginning.

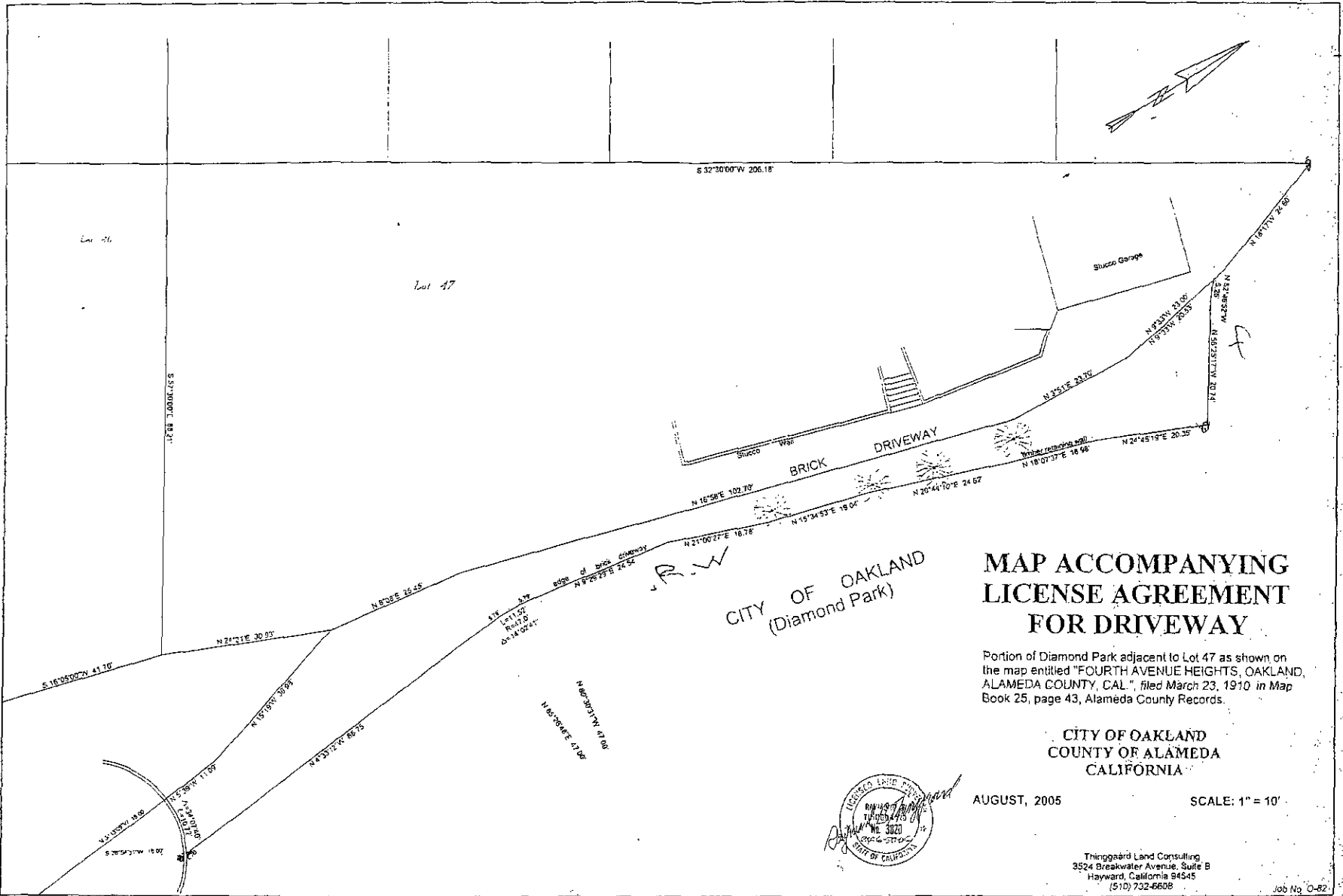
Containing 2000 square feet, more or less.



August 24, 2005
Date

Raymond B. Thinggaard
Raymond B. Thinggaard, P.E. 3820

Exhibit D



**MAP ACCOMPANYING
LICENSE AGREEMENT
FOR DRIVEWAY**

Portion of Diamond Park adjacent to Lot 47 as shown on the map entitled "FOURTH AVENUE HEIGHTS, OAKLAND, ALAMEDA COUNTY, CAL.", filed March 23, 1910 in Map Book 25, page 43, Alameda County Records.

**CITY OF OAKLAND
COUNTY OF ALAMEDA
CALIFORNIA**

AUGUST, 2005

SCALE: 1" = 10'



Thinggaard Land Consulting
3524 Breakwater Avenue, Suite B
Hayward, California 94545
(510) 732-6608

Job No O-82

NOTICE AND DIGEST

ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A FIVE YEAR LICENSE AGREEMENT WITH SHAY AND OLIVIA HARTING AND CAROL CORDRAY WITH OPTIONS TO EXTEND THE LICENSE TERM, TO ACCOMMODATE AN EXISTING DRIVEWAY FOR INGRESS AND EGRESS AT 4683 AND 4689 BENEVIDES AVENUE (APN: 024-0551-001) ON APPROXIMATELY 2,000 SQUARE FEET OF CITY OWNED PARKLAND LOCATED ALONG THE WESTERLY EDGE OF DIMOND PARK.

An ordinance has been prepared authorizing the City Administrator to negotiate and execute a five year license agreement for a private driveway across the westerly border of Dimond Park for a period of five years with additional five year options to extend the license. License fees to the City will be \$350.00 per month.