



Agenda Item #: 02/1015.23-21

## Staff Report

### City of Manhattan Beach

**TO:** Honorable Mayor Fahey and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Richard Thompson, Director of Community Development  
Rosemary Lackow, Senior Planner

**DATE:** November 19, 2002

**SUBJECT:** Consideration of a Proposed Encroachment Permit Ordinance, as Recommended by the Parking and Public Improvements Commission

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#### RECOMMENDATION:

Staff recommends that the City Council Conduct a Public Hearing, Adopt Resolution No. 5792 and Waive Further Reading and Introduce Ordinance 2039.

#### FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action. Encroachment Permit processing is an existing program administered by the Department of Community Development with assistance from the Public Works Department.

#### BACKGROUND:

On October 15, 2002 staff presented a proposed Encroachment Ordinance to the City Council (report attached). The Council directed that Staff schedule a public hearing on this date to receive public input regarding the ordinance.

The ordinance will be contained within the Municipal Code and Local Coastal Plan. In addition to adopting the ordinance, in order for it to be effective in the City's coastal area, the City Council must also amend the City's Local Coastal Plan (LCP). Resolution 5792, which transmits Ordinance 2039 to the Coastal Commission is also attached. Staff will forward it to the Coastal Commission with the adopted Ordinance for their consideration.

#### DISCUSSION

##### *Storm Water Pollution*

On September 19, 2000 the City Council adopted Ordinance 2017 which provides for storm water pollution control related to construction projects. This action amended the Municipal Code and adopted a "Standard Urban Storm Water Mitigation Plan" and requirements for compliance. The encroachment ordinance has been slightly modified to address the control of pollutants into the

ocean and require that all encroachments be in compliance with Ordinance 2017. It is anticipated that most, if not all encroachment projects would, due to their nature and small scope, be exempt from providing storm water mitigation.

*Public Notice*

Staff published a notice of this hearing in the *Beach Reporter* on October 25, 2002. The City notice describes the proposed ordinance and invites public input (copy attached).

*Commercial Use of Walk Streets*

A resident, has privately distributed several public opinion fliers regarding commercial use of walk streets such as Mr. Bill's restaurant dining patio on 13<sup>th</sup> Street. This individual was a member of the citizen advisory committee which recommended a policy in the General Plan to "discourage commercial use of walk streets". The flier contains two boxes for a fill-in "vote" directing the City Council to implement this draft policy either by 1) adopting a Municipal Code amendment that prohibits new or expanded commercial encroachments on walk streets, or 2) deleting from the General Plan the draft policy and making no changes to the municipal code. The flier does not inform of the public hearing on the proposed Encroachment Ordinance, but directs that they be sent to the City by November 12<sup>th</sup> for inclusion in the council packet.

As of November 12<sup>th</sup>, the Community Development Department received two letters and approximately sixty fliers regarding commercial walk street encroachments (long term commercial uses). Six of these support allowing commercial use of walk streets to be implemented through the proposed Ordinance. The majority request that the Council prohibit new or expanded commercial uses. Copies of all correspondence are attached.

- Attachments:
- A. Resolution 5792
  - B. Draft Ordinance 2039
  - C. Staff Report to City Council 10/15/02 with attachments (not available in electronic form)
  - D. Public Notice (not available in electronic form)
  - E. New correspondence regarding commercial use (not available in electronic form)

cc: Jim Fasola  
Don McPherson

## RESOLUTION NO. 5792

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, SUBMITTING ORDINANCE NO. 2039 TO THE CALIFORNIA COASTAL COMMISSION FOR AN AMENDMENT TO CHAPTER 3 OF THE IMPLEMENTATION PROGRAM OF THE CITY OF MANHATTAN BEACH LOCAL COASTAL PLAN (LCP) PERTAINING TO ENCROACHMENT PERMITS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA,  
DOES HEREBY RESOLVE AS FOLLOWS

SECTION 1. The City Council hereby makes the following findings:

- A. The City Council of the City of Manhattan Beach conducted a public hearing, pursuant to applicable law, on November 19, 2002, to consider a proposed amendment to Chapter 3 of the City of Manhattan Beach Local Coastal Plan (LCP) – Implementation Program (replacing existing "Encroachment Permit Guidelines"); and,
- B. The City Council adopted Ordinance 2039 at its regular meeting on December 3, 2002; to become effective on January 2, 2003, and,
- C. The subject amendment is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment, pursuant to the CEQA Guidelines Section 15061 (b) (3), in that the proposed amendments are a minor modification to the code requirements; and,
- D. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code; and,
- E. The City Council certifies that the subject amendments are consistent with and will be implemented in a manner fully in conformity with all applicable procedures and policies of the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Program-Implementation Program.

SECTION 3. This resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 4. The City Clerk shall certify to the adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED AND ADOPTED this 19th day of November, 2002

Ayes:  
Noes:  
Absent:  
Abstain:

\_\_\_\_\_  
Mayor, City of Manhattan Beach, California

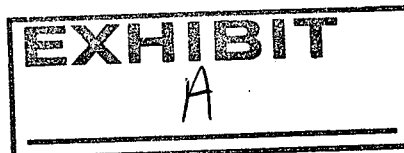
ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM.

By \_\_\_\_\_

City Attorney



**PROPOSED  
ORDINANCE 2039**

**EXHIBIT**  
*B*

## ORDINANCE NO. 2039

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, REPLACING CHAPTER 7.36 OF THE MANHATTAN BEACH MUNICIPAL CODE AND IMPLEMENTATION PROGRAM OF THE LOCAL COASTAL PLAN REGARDING PRIVATE USE OF THE PUBLIC RIGHT OF WAY.

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- B. Constant use of the public right of way for utilities and private development requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to ensure public safety and reduce disruption to the public and degradation of public facilities;
- C. Permit requirements for private use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- D. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3));
- E. The subject ordinance was reviewed by the Parking and Public Improvements Commission of the City of Manhattan Beach on May 23, July 25 and September 26, 2002 on which date the Commission recommended approval by the City Council;
- F. The proposed ordinance is consistent with the policies of Chapter 3 of the Coastal Act, and will not have an impact either individually or cumulatively on coastal resources, and do not involve any change in existing or proposed use of land or water.

SECTION 2. Chapter 7.36 of the Manhattan Beach Municipal Code and Local Coastal Plan Implementation Program is hereby replaced in its entirety as follows: (Existing Chapter 7.36 is hereby repealed)

CHAPTER 7.36 PRIVATE USE OF THE PUBLIC RIGHT OF WAY

**7.36.010 Scope and Intent.** The provisions of this Chapter shall govern use of the public right of way by private parties. The intent of these standards is to allow private use and development of the public right of way with improvements that are functional, attractive and non-obtrusive to the public, consistent with building safety and public works standards, and compatible with public facilities and surrounding developments.

**7.36.020 Definitions**

**ADJOINING PROPERTY** – means the private property located immediately adjacent to the section of public right of way to be encroached upon.

**APPLICANT** - means any person, firm, partnership, association, corporation, company, entity or organization of any kind who proposes to encroach upon a public place, right of way, sidewalk or street and who has applied for a permit for the proposed encroachment, pursuant to the provisions of this Chapter.

**DIRECTOR OF COMMUNITY DEVELOPMENT** - means the Director of Community Development of the City of Manhattan Beach or his or her designee.

**DIRECTOR OF PUBLIC WORKS** - means the Director of Public Works of the City of Manhattan Beach or his or her designee.

**EL PORTO STRAND PROPERTY** - means a property located on the Strand between 39th Street and 45th Street.

**ENCROACHMENT AREA** - means the section of public right of way located between the property line and the edge of the walkway or roadway.

**ENCROACHMENT** - means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property,

**ENCROACHMENT WORK** - means the work of constructing, placing or installing an encroachment.

**ENGINEER** - means the Manhattan Beach City Engineer or his or her designee.

**EXCAVATION** - means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

**LANDSCAPING** - means an area devoted to or developed and maintained with lawn, gardens, trees, shrubs and other plant materials and excluding decorative outdoor landscape elements such as water features, paved surfaces, potted plants and sculptural elements.

**NATURAL GRADE** means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

**NONCONFORMING** means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.

**OCCUPY** - means owning or operating any facilities that are located in Rights-of-Way.

**OPEN DESIGN FENCE** - means a fence where the primary fence material is transparent and colorless, or the open spaces between the solid segments are equal to or exceed the size of the solid segments.

**OVERHEAD STRUCTURES** - means any improvement extending over a public place, right of way or street.

**PERSON** - means any living individual, any corporation, joint venture, partnership, or other business entity.

**PUBLIC WALKWAY** - means the portion of the public right of way improved and designated by the City for pedestrian travel.

**RIGHT OF WAY** - means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

**USABLE SURFACE** - means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding 44" in width that provides access from the public walkway to private property.

**WALK STREET** - means a dedicated public street improved with a public walkway that is closed to vehicular traffic.

#### **7.36.030 Permit Required**

It shall be a violation of this Chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this Chapter shall include, but not be limited to private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. The City Council may, from time to time, by resolution set fees for issuance of encroachment permits authorized by this Chapter.

#### **7.36.040 Initiation**

The Director of Community Development shall have the authority to issue an encroachment permit consistent with the standard set forth in this chapter provided that where fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, or street alterations are to be performed, detailed plans for any such work shall be submitted to the Director of Public Works whose approval shall be required.

Applications shall be submitted to the Community Development Department with the required forms, fees, plans, and related material. Applications shall be reviewed for compliance with the requirements of this chapter, and the public's priority for use of City right-of-way as determined to be appropriate by the Director of Public Works.

#### **7.36.050 Director of Public Works Authority**

The Director of Public Works shall have the authority to prohibit or limit the placement of new or additional facilities within the right of way if there is insufficient space to accommodate the requests of applicants to occupy and use the right-of-way. In reaching such decisions, the Director of Public Works shall be guided primarily by: considerations of the public interest; the age and condition of the affected portions of the rights-of-way; the time of year and the protection of existing facilities in the right of way; and future City plans for public improvements and development projects that have been determined to be in the public interest.

#### **7.36.060 Permit Conditions**

##### **A. Discretionary Conditions**

The Director of Community Development shall have the authority to condition or restrict the permit in any way which shall protect the public health and welfare. The Director of Community Development reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The Director of Public Works has the authority to approve or reject a method of excavation or other construction methodology.

##### **B. Mandatory Conditions**

In granting an encroachment permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

1. That the encroachment shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such encroachment, such cost shall be a lien upon the permittee's adjacent real property;

2. That the encroachment and permit restrictions, conditions or limitations serving the adjoining property shall be recorded as a covenant, and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest. The covenant shall be disclosed whenever title is transferred;
3. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the encroachment and shall be maintained in good standing at all times so long as the encroachment exists, releasing the City from any and all liability whatsoever in the granting of such encroachment.
4. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the encroachment by the City.
5. That encroachments involving commercial uses shall pay an established annual or monthly fee to be set by resolution of the City Council and to be based upon the market value of the property being occupied.
6. That in cases where an encroachment is adjacent to a private property common area governed by a Home-owners Association (as in the case of an airspace condominium) the Homeowners Association shall be the applicant and subject to all permit requirements. The permit requirements shall be included as conditions of the project subdivision map and included in the covenants, conditions and restrictions (C, C and R's) recorded for the project.

#### 7.36.065 Required findings.

The Director of Community Development, in granting approval of an encroachment permit application shall make the following findings:

- A. The granting of the encroachment permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located;
- B. The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan;
- C. The proposed encroachment will comply with the provisions of this chapter, including any specific condition required;
- D. The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, except as expressly provided in this chapter;
- E. The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.
- F. For properties that are located in the coastal zone, the proposed encroachment will be consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:
  1. The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right of way adjacent to the subject property (Section 30212 (a) (2)).
  2. The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area (Section 30221)



**7.36.070 Issuance**

The Director of Community Development shall issue a written decision regarding each encroachment permit application. This decision shall recite the findings upon which the decision is based as provided in Section 7.36.065 of this chapter. If the decision grants the encroachment, it shall set forth the conditions to be imposed. The conditions set forth in Section 7.36.060(b) of this chapter shall be attached to every permit approval. The decision of the Director of Community Development shall be final ten (10) calendar days after mailing a copy of the decision to the applicant.

**7.36.080 Appeals**

Applications which are inconsistent with the "Encroachment Standards" set forth in section 7.36.150, including right-of-way frontage improvements required as a condition of approval by the Director of Public Works, must be appealed to and approved by the City Council with a recommendation from the Parking and Public Improvements Commission. A notice shall be sent to the property owners whose lots' front property lines are within 300 feet of the subject encroachment area site at least 10 calendar days prior to each body's consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such an appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

**7.36.090 Time Limit**

Any encroachment granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such encroachment, and, if not so developed and utilized, such encroachment automatically shall become null and void at the expiration of such twelve (12) month period.

The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such encroachment. The Director of Community Development, in his or her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.

**7.36.100 Inspection**

The Director of Community Development shall require that inspections be completed before commencement, and after completion of encroachment work. Inspections while encroachment work is in progress shall be completed as determined to be appropriate by the Director of Community Development or Director of Public Works.

**7.36.105 Restoration of Public Right of Way**

Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the Director of Public Works. Where excavation occurs within areas already paved, the Director of Public Works may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the Director of Public Works may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee's adjacent real property.

**7.36.110 Revocation**

The Director of Community Development or the City Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment, including but not limited to provision of liability insurance coverage to the City or if it is determined that such permit is not in the public interest. A written notice shall be mailed to the permittee of such revocation. Within ten (10) working days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be made to the Parking and Public Improvements Commission whose recommendation will be reviewed by the City Council and the Council's determination of the matter shall be final.

**7.36.120 Enforcement**

Violation of this Chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; attorney fees.

**7.36.140 Other Permits**

Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit, Business License, Conditional Use Permit, or other, City, State or County permit if otherwise required for the encroaching activity. See Chapter A.96 of the Manhattan Beach Local Coastal Program Implementation Program for applicable Coastal Development Permit requirements.

**7.36.150 Encroachment Standards****A. General Standards**

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.
3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of 30 inches of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an Encroachment Permit.
5. All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.
6. Obstructions to neighboring resident's scenic views shall be avoided.

7. Steps and Stairs, other than risers between 4 and 7 inches in height and spaced a minimum of 3 feet apart, are not permitted in the public right of way.

Exception. One set of steps comprised of three consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.

8. Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.
9. Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.
10. Commercial use of the public right of way requires City Council approval.

Exceptions. The Director of Community Development may approve the following:

- a. Sidewalk dining permits applicable to vehicular street right of ways in conformance with Section 7.36.110 of this chapter.
- b. Building projections such as eaves, awnings, signs or elements that benefit the public and comply with applicable codes.
- c. Roof access or other utility elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.

#### B. Walk Street Standards

1. Fences and railings, including required safety handrails and guardrails, are permitted provided an open design is utilized. The maximum allowable height is 42" above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a 36" maximum height (measured from adjacent curb level) is required within a distance of 5' from the street corner.
2. Retaining walls (not including walkway risers), free-standing walls and closed design fences are permitted provided the maximum allowable height is 32" above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (1) above shall not be permitted.

Exception. Retaining walls and related required safety railing that exceed the 32" limit may be constructed at the side boundaries of an encroachment area if necessary to retain a neighbor's existing grade, provided all other encroachment improvements comply with applicable encroachment standards. If subsequently such over-height walls and/or safety rails are no longer necessary due to modification of the adjoining encroachment area, the property owner shall lower the over-height wall/safety rail to conform with applicable standards. This requirement shall be included as a permit condition in the Encroachment Permit Agreement.

3. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed 42-inches as measured from the adjacent public walkway.

Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to 42-inches maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.

4. **Usable surfaces (as defined herein).** The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway. Usable surfaces are permitted as follows:
  - a. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of 12 inches as measured above or below the adjacent public walkway.
  - b. Within the rear half of the encroachment area (adjacent to private property), limited to a maximum height of either: 36 inches as measured above or below the adjacent public walkway, or 12 inches as measured above or below the natural grade, as defined herein.
5. The total combined height of fences, railings, retaining walls (including walkway risers) shall not exceed a height of 42 inches as measured from lowest adjacent finished grade.
6. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards except as permitted by the Director of Public Works.

#### C. El Porto Strand Standards

In addition to the encroachments permitted in (b) above, the following encroachments are permitted within The Strand right of way north of Rosecrans Avenue due to unusual slope and underground utility location and to provide an adequate buffer between the Strand walkway and adjoining private properties.

1. Usable surfaces are permitted within the rear half of the encroachment area at a maximum height of 72 inches measured from the adjacent public walkway, provided they are accompanied by terraced landscape planters with evenly spaced retaining walls with a maximum height of 30" each.
2. Fences and walls are permitted to be a maximum height of 42 inches above the adjacent public walkway except that planter walls required in subsection (1) above may have a maximum height of 72".
3. Corner properties bordering a parking lot entrance or exit are allowed to have walls and fences on the vehicular street side to a maximum height of 6' above adjacent curb level except that a maximum height of 3' shall be permitted adjacent to driveway/roadway intersections.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards.

#### D. Vehicular Street Standards

1. Sidewalks, curbs, parking pads, paving, and other street improvements may be required by the Public Works Department and shall be constructed consistent with City standards.

2. Fences and walls are permitted behind required or existing street improvements provided a 42" maximum height is observed, measured from the public right-of-way grade adjacent to the property line. To ensure visibility at corners a 36" maximum height is permitted within a distance of 15' from the street corner. Open-design fences or guardrails required by the Building Official to exceed the 42" maximum height are allowed on top of retaining walls if necessary to retain a neighbor's grade at a side property line.
3. Usable surfaces (as defined herein) are prohibited with the exception of landscaping that is located between required street improvements and the property line. Structural turf may be permitted in a portion of a required paved area subject to approval of the Public Works Director. Loose gravel and similar material as determined by the Public Works Department is not permitted.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular street via a non-erosive device pursuant to Public Works Department standards.

#### **7.36.160 Sidewalk Dining Encroachment Permits**

Sidewalk dining adjacent to existing restaurants may be permitted on public sidewalks within vehicular street right of ways with a sidewalk dining encroachment permit issued pursuant to this Section. The purpose of the sidewalk dining permit program is to promote restaurant and pedestrian oriented activity within the City's business areas, while safeguarding public safety and minimizing impacts to nearby residential properties. Each permit issued for sidewalk dining shall comply with the following minimum standards:

- A. All permits are subject to temporary modification or suspension at any time based on the public's priority for use of City right of way as determined to be appropriate by the Chief of Police or Director of Public Works.
- B. Title 24 of the California Government Code regarding persons with disabilities requirements for unobstructed sidewalk width (minimum 48 inches) must be maintained at all times.
- C. Applicants and their customers may not place any objects in the right of way other than tables and chairs (no umbrellas, heaters, or bikes/dogs tied to parking meters, etc.)
- D. Exterior lighting equipment that may present a tripping hazard is not permitted.
- E. Temporary electrical connections, such as extension cords, are not permitted.
- F. Alcoholic Beverages may not be served or consumed in the sidewalk dining area.
- G. Dancing is prohibited.
- H. Amplified music is prohibited.
- I. Dining activities must conclude by 10:00pm. Tables and chairs must be removed from the sidewalk by 10:30pm.
- J. All exits and means of egress from establishments and businesses must be maintained and not obstructed in any manner.
- K. Sidewalk dining activities must comply with all Use Permit and zoning requirements (parking, occupancy, etc.).
- L. Only existing tables used inside the restaurant may be used for sidewalk dining unless additional parking and zoning approval is provided in accordance with the Municipal Code.

- M. The portion of sidewalks used for dining must be cleaned regularly and consistently kept free of litter by the applicant.
- N. The applicant must provide an insurance endorsement and complete a Hold Harmless agreement, to the satisfaction of the City Risk Manager.
- O. The applicant must submit an application for a permit and pay an established permit fee as set forth by resolution of the City Council.
- P. Permits are issued to business owners rather than property owners and are not considered an entitlement to the adjacent private property. New business owners must apply for a new permit.

Permits may be modified or revoked by the City Council if the applicant repeatedly fails to comply with any of the above requirements, or if the public's priority for use of City right of way causes the previously approved sidewalk dining use to be found to be inappropriate.

SECTION 4. All other provisions of the Manhattan Beach Municipal Code not inconsistent with this ordinance shall remain unchanged and continue in full force and effect.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 8. A review of the proposed amendments per Section 2 of this Ordinance is hereby directed to occur approximately twelve (12) months after the effective date, with a hearing before the Parking and Public Improvements Commission followed by a recommendation to the City Council.

SECTION 9. The City Clerk shall cause a summary of this Ordinance to be published as provided by law. The summary shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 3rd day of December, 2002

Ayes:  
Noes:  
Absent:  
Abstain:

\_\_\_\_\_  
Mayor, City of Manhattan Beach

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By

\_\_\_\_\_  
City Attorney



Agenda Item #: 02/1015.23

(21)

## Staff Report

### City of Manhattan Beach

**TO:** Honorable Mayor Fahey and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Richard Thompson, Director of Community Development  
Rosemary Lackow, Senior Planner

**DATE:** October 15, 2002

**SUBJECT:** Presentation of a Proposed Encroachment Permit Ordinance, as Recommended by the Parking and Public Improvements Commission

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#### RECOMMENDATION:

Staff recommends that the City Council accept the presentation on a proposed Encroachment Permit Ordinance and schedule it for public hearing on November 19, 2002.

#### FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action. Encroachment Permit processing is an existing program administered by the Department of Community Development with assistance from the Public Works Department.

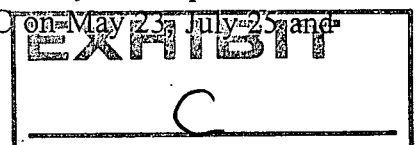
#### BACKGROUND:

Manhattan Beach adopted Ordinance 1304 on September 5, 1972, which established procedures in Section 7.36 of the Municipal Code for regulating privately constructed encroachments within the public right of way (ROW). At that time the City Council also adopted a separate set of "Encroachment Design Guidelines" that were intended to assist permit applicants in securing approval for permits from the Public Works Department (see attached).

On May 24, 1994 the Coastal Commission certified the city's Local Coastal Plan Implementation Program, which included Section 7.36 and the Encroachment Design Guidelines. On December 21, 1999 the City Council changed the title of "Encroachment Design Guidelines" to "Encroachment Standards", meaning that any variation to the standards would require City Council approval, with prior review by the Parking and Public Improvement Commission (PPIC).

The City Council directed staff to update the existing Encroachment Permit ordinance and incorporate the Encroachment Standards into the Municipal Code. This council action was based on concern that the city needed more consistent and stronger enforcement of encroachment activity.

Staff has prepared draft Ordinance 2039 with assistance from the City Attorney and Department of Public Works (see attached). The ordinance was reviewed by the PPIC on May 23, July 25, and



September 26, 2002 on which date the Commission recommended that the City Council adopt the ordinance.

Because the existing encroachment ordinance and design standards are contained in the city's Coastal Program, the city must also amend its Local Coastal Program through a public hearing process for the ordinance to be in effect in the coastal zone. The coastal zone contains almost all of the beach area including all multi-family properties and most walk streets. The city code and guidelines are identified as specific implementation measures for Policy 11.A.1 of the coastal land use plan, which states that "The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone."

#### **DISCUSSION:**

The intent of Encroachment Permits, is to allow private development of the public right of way with improvements that are functional for the adjoining property owner, attractive and non-obtrusive to the public, consistent with building safety standards and compatible with surrounding developments. The current standards contain general and detailed design regulations for walk streets, the El Porto portion of The Strand and vehicular streets. The draft ordinance for the most part incorporates the existing standards into the Municipal Code. Staff has also incorporated two existing commercial encroachment programs into the ordinance, including the sidewalk dining program, and the long term commercial use of public property, which will be discussed later in this report in more detail.

Subject to the standards, adjoining property owners may apply for an encroachment permit to construct a variety of improvements within the "encroachment area", or the portion of public property located between the property line and roadway, curb or sidewalk. On walk streets, the standards generally allow walkways, patios and decks, low fences, walls and landscaping.

On vehicular streets, the standards allow low fences and walls, landscaping, pavement and various frontage improvements, such as sidewalks, curbs and parking pads. The permitted improvements function as extensions of private yards (usually adjacent to the front) and create a transition between private and public property. Procedurally, all improvements must be depicted on a detailed plan submitted with an application. Upon approval, the owner is required to provide evidence of liability coverage extended to the City of Manhattan Beach, and record an agreement. All applications that do not comply with the standards must be approved by the City Council, upon review and recommendation by the PPIC.

Other than the walk streets the majority of streets that are affected by this ordinance are vehicular streets that have a "non-traditional" design. In the September 3, 2002 presentation to the City Council, the Public Works Director defined non-traditional streets as right of way that is not fully improved and lacking standardized features such as concrete curb and gutter and/or sidewalks. In many cases these streets also are characterized as having a much smaller roadway width. The Public Works Director provided examples of non-traditional streets as are concentrated in the "Tree" and "Dune" residential areas.



*Parking and Public Improvements Commission Review*

Prior to the July PPIC meeting, Staff mailed a notice of the proposed ordinance to several architects or designers active in Manhattan Beach and published the notice in the Beach Reporter. As a result one local architect made suggestions regarding walk street pedestrian access and patio height. A number of residents expressed strong concerns about commercial uses of walk streets adjacent to residential uses (see attached meeting minutes May 23, July 25, and September 26).

*Main Hearing Issues*

- Required Findings. The ordinance provides six new required findings, in order for an encroachment permit to be approved. These findings relate to the public health, safety and welfare; consistency with the General Plan; compliance with the Municipal Code and required conditions; and impacts on pedestrian access and safety. The findings also address Coastal Act required findings relating to shoreline access. (Sec. 7.36.065).
- Appeal Noticing. The PPIC received input that the current requirement of a 100-foot radius is not adequate. The draft ordinance changes the requirement such that all property owners whose front property lines are within 300 feet of the encroachment area would be noticed of a pending appeal. The purpose of this change is to include all properties that are nearby and where visibility of proposed encroachment area is the greatest. (Section 7.36.080.)
- Commercial Encroachments. The draft ordinance incorporates two types of existing commercial encroachment programs: sidewalk dining and long term commercial uses. The distinctions between these uses are confusing and have been clarified in the ordinance. **Sidewalk dining** is an existing administrative permit program that was approved by the City Council in 1997, in response to citizen comments in the Downtown Strategic Plan. The program applies only to restaurant owners who wish to place dining tables on the adjoining public sidewalk and under specific operating and physical conditions. The ordinance adds an intent statement to assist in reviewing these applications. (Sec. 7.36.160).

**Long-term commercial uses** include a variety of commercial encroachments which have historically been approved through the Encroachment Permit process, such as dining terraces (e.g. Uncle Bill's and Ocean View Café). Such permits are distinguished from the sidewalk dining program because they occupy public property and not the public pedestrian sidewalk. Staff has added a few other types of encroachments such as awnings and minor overhead building projections. Otherwise the ordinance reflects the current policy that the City Council (with recommendation from PPIC) approves these on a case-by-case basis. The PPIC received testimony from citizens requesting that the Commission recommend that the City Council prohibit any new commercial use of all walk streets adjacent to a residential use. The PPIC deferred this matter to the City Council as a matter of public policy, but expressed opinions that commercial use of public property, especially of walk streets should be strongly discouraged. (Sec. 7.36.150 (a) I)

- Definitions. The draft ordinance creates a new definition for a "usable surface" which includes decks, patios and lawns that are flat and can be used for outdoor living but

excludes flat walkways that provide access to the house. In the existing standards decks and patios are regulated differently and there is often confusion as to how these are distinguished from each other. Staff has suggested this change because the issues relating to decks and patios and lawns are fairly similar in terms of use. (Sec. 7.36.020)

- Design standards: general requirements. The draft ordinance would provide more flexibility with respect to steps for access from the street to the home and changes to existing nonconforming encroachments. The PPIC recommends that: one set of steps be permitted, if designed such that a vertical safety rail is not required and that existing nonconforming encroachments be allowed to remain if only minor changes are proposed in the encroachment area. The ordinance also provides more clarity with respect to avoidance of drainage problems and utility conflicts. (Sec. 7.36.150(a))
- Walk streets design standards. The main changes recommended to walk street standards include: landscaping height and height of decks/patios/lawns, "usable surfaces". Currently **landscaping** is permitted to exceed 42" from the walk street sidewalk if it "preserves vistas from neighboring properties". Staff has found this a very difficult standard to enforce and there is often much contention between neighbors due to ocean view impacts. The recommendation is to approve landscape plans that propose plants that do not exceed 42" from walk street grade, with a right to appeal. View obstruction complaints regarding existing landscaping higher than 42" will be addressed on a case by case basis.

The height limit for **patios, decks and lawns**, or "usable surfaces" reflects the current standards in that within the front half of the encroachment area (adjoining the walk street) the height is lower and in the rear half it is somewhat higher. In the front half the limit is 12" above or below the walk street grade and in the rear half the owner can choose between two height limits: either 36" above or below the adjoining walk street grade, or 12" above or below the "natural grade" which, by definition, relates to the relationship between the existing grade at the property line and the edge of the walk street sidewalk. This choice is intended to provide more flexibility to owners of older beach area homes that are one or two stories and sometimes were built at a grade raised above the improved walk street. The choice is less meaningful to owners of new three story homes because they typically excavate the encroachment area to accommodate the lowest level of the structure, which results in a finished grade more consistent with, or even below the walk street grade. The main intent is to allow for more functional patios that relate to the adjoining home, while maintaining a feeling of openness along the walk street. (Sec. 7.36.150 (b))

- Vehicular street standards. In the council presentation on September 3<sup>rd</sup>, the Public Works Director described issues relating to construction of improvements on City right of way. That presentation was from the perspective of the street and public use of the right of way. This presentation is from the perspective of private property and private use of the right of way. On September 3<sup>rd</sup> the Public Works Department received direction from the council to develop guidelines for street improvements for the non-traditional streets as found in the "Tree" and "Dune" areas. The Public Works Department currently assists Community Development by reviewing encroachment permit plans and by determining if

public use improvements such as parking pads, sidewalks and curbs are required. These public improvements are typically built in conjunction with other private improvements such as landscaping plantings, planter walls, fences or walls, or walk ways.

The attached draft ordinance would limit private development on vehicular streets, based on the principal that the purpose of a "drive street" is for vehicular use. The standards prohibit decks, patios and lawns on the vehicular streets, but would allow at grade pedestrian walkways. Other encroachments that would be allowed include relatively low fences, walls, and landscaping that are located behind street front improvements such as parking pads, sidewalks and curbs if required by the Director of Public Works. This standard is supported by the Police and Fire Departments because many private encroachments, especially on narrow roads, present significant difficulties for emergency response vehicles.

*Revocation, Enforcement and Ordinance Review*

The draft ordinance contains provisions for permit revocation (Sec. 7.36.110), legal enforcement (Sec. 7.36.120) and a one-year review (Section 8, last page). The Council can revoke an encroachment permit through an appeal hearing process if the applicant is found in non-compliance with the permit. Violation of the encroachment permit provisions is punishable as a misdemeanor, through civil action brought by the City. The draft ordinance also includes a provision that requires the City Council to review the ordinance approximately one year after its effective date, to see if any further changes are necessary.

**CONCLUSION:**

The Department of Community Development will make a presentation of the proposed ordinance with graphic examples of the provisions. As recommended by the PPIC the ordinance largely reflects existing standards and permit procedures, with clarifications and changes as appropriate. It is recommended that the Council accept the presentation and set it for public hearing on November 19<sup>th</sup>.

Attachments: A. Draft Ordinance 2093

B. Existing Chapter 7.36 of the Municipal Code (not available in electronic form)

C. Existing Encroachment Permit Standards (not available in electronic form)

D. PPIC Staff Reports and minutes, May 23, July 25, September 26, 2002 (not available in electronic form)

cc: Jim Fasola  
Don McPherson  
John Atchison

ORDINANCE NO. 2039 Draft 10-15-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, REPLACING CHAPTER 7.36 OF THE MANHATTAN BEACH MUNICIPAL CODE AND IMPLEMENTATION PROGRAM OF THE LOCAL COASTAL PLAN REGARDING PRIVATE USE OF THE PUBLIC RIGHT OF WAY.

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- B. Constant use of the public right of way for utilities and private development requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to ensure public safety and reduce disruption to the public and degradation of public facilities;
- C. Permit requirements for private use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- D. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3)).
- E. The subject ordinance was reviewed by the Parking and Public Improvements Commission of the City of Manhattan Beach on May 23, July 25 and September 26, 2002 on which date the Commission recommended approval by the City Council.
- F. The proposed ordinance is consistent with the policies of Chapter 3 of the Coastal Act, and will not have an impact either individually or cumulatively on coastal resources, and do not involve any change in existing or proposed use of land or water.

SECTION 2. Chapter 7.36 of the Manhattan Beach Municipal Code and Local Coastal Plan Implementation Program is hereby replaced in its entirety as follows: (Existing Chapter 7.36 is hereby repealed)

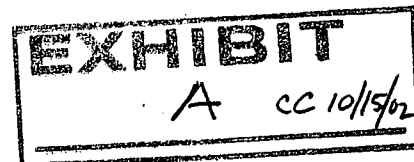
CHAPTER 7.36 PRIVATE USE OF THE PUBLIC RIGHT OF WAY

**7.36.010 Scope and Intent.** The provisions of this Chapter shall govern use of the public right of way by private parties. The intent of these standards is to allow private use and development of the public right of way with improvements that are functional, attractive and non-obtrusive to the public, consistent with building safety and public works standards, and compatible with public facilities and surrounding developments.

**7.36.020 Definitions**

**ADJOINING PROPERTY** – means the private property located immediately adjacent to the section of public right of way to be encroached upon.

**APPLICANT** - means any person, firm, partnership, association, corporation, company, entity or organization of any kind who proposes to encroach upon a public place, right of way, sidewalk or street and who has applied for a permit for the proposed encroachment, pursuant to the provisions of this Chapter.



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**DIRECTOR OF COMMUNITY DEVELOPMENT** - means the Director of Community Development of the City of Manhattan Beach or his or her designee.

**DIRECTOR OF PUBLIC WORKS** - means the Director of Public Works of the City of Manhattan Beach or his or her designee.

**EL PORTO STRAND PROPERTY** - means a property located on the Strand between 39th Street and 45th Street.

**ENCROACHMENT AREA** - means the section of public right of way located between the property line and the edge of the walkway or roadway.

**ENCROACHMENT** - means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property,

**ENCROACHMENT WORK** - means the work of constructing, placing or installing an encroachment.

**ENGINEER** - means the Manhattan Beach City Engineer or his or her designee.

**EXCAVATION** - means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

**LANDSCAPING** - means an area devoted to or developed and maintained with lawn, gardens, trees, shrubs and other plant materials and excluding decorative outdoor landscape elements such as water features, paved surfaces, potted plants and sculptural elements.

**NATURAL GRADE** means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

**NONCONFORMING** means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.

**OCCUPY** - means owning or operating any facilities that are located in Rights-of-Way.

**OPEN DESIGN FENCE** - means a fence where the primary fence material is transparent and colorless, or the open spaces between the solid segments are equal to or exceed the size of the solid segments.

**OVERHEAD STRUCTURES** - means any improvement extending over a public place, right of way or street.

**PERSON** - means any living individual, any corporation, joint venture, partnership, or other business entity.

**PUBLIC WALKWAY** - means the portion of the public right of way improved and designated by the City for pedestrian travel.

**RIGHT OF WAY** - means the surface and space in, on, above, through and below any real property in which the City of Manhattan Beach has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

**USABLE SURFACE** - means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding 44" in width that provides access from the public walkway to private property.

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**WALK STREET** - means a dedicated public street improved with a public walkway that is closed to vehicular traffic.

#### **7.36.030 Permit Required**

It shall be a violation of this Chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this Chapter shall include, but not be limited to private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. The City Council may, from time to time, by resolution set fees for issuance of encroachment permits authorized by this Chapter.

#### **7.36.040 Initiation**

The Director of Community Development shall have the authority to issue an encroachment permit consistent with the standard set forth in this chapter provided that where fixtures or structures located within public walkways or roadways, other than temporary moveable structures, are to be placed in the public right of way, or street alterations are to be performed, detailed plans for any such work shall be submitted to the Director of Public Works whose approval shall be required.

Applications shall be submitted to the Community Development Department with the required forms, fees, plans, and related material. Applications shall be reviewed for compliance with the requirements of this chapter, and the public's priority for use of City right-of-way as determined to be appropriate by the Director of Public Works.

#### **7.36.050 Director of Public Works Authority**

The Director of Public Works shall have the authority to prohibit or limit the placement of new or additional facilities within the right of way if there is insufficient space to accommodate the requests of applicants to occupy and use the right-of-way. In reaching such decisions, the Director of Public Works shall be guided primarily by: considerations of the public interest; the age and condition of the affected portions of the rights-of-way; the time of year and the protection of existing facilities in the right of way; and future City plans for public improvements and development projects that have been determined to be in the public interest.

#### **7.36.060 Permit Conditions**

##### **A. Discretionary Conditions**

The Director of Community Development shall have the authority to condition or restrict the permit in any way which shall protect the public health and welfare. The Director of Community Development reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The Director of Public Works has the authority to approve or reject a method of excavation or other construction methodology.

##### **B. Mandatory Conditions**

In granting an encroachment permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

1. That the encroachment shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such encroachment, such cost shall be a lien upon the permittee's adjacent real property;

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2. That the encroachment and permit restrictions, conditions or limitations serving the adjoining property shall be recorded as a covenant, and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest. The covenant shall be disclosed whenever title is transferred;
3. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the encroachment and shall be maintained in good standing at all times so long as the encroachment exists, releasing the City from any and all liability whatsoever in the granting of such encroachment.
4. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the encroachment by the City.
5. That encroachments involving commercial uses shall pay an established annual or monthly fee to be set by resolution of the City Council and to be based upon the market value of the property being occupied.
6. That in cases where an encroachment is adjacent to a private property common area governed by a Home-owners Association (as in the case of an airspace condominium) the Homeowners Association shall be the applicant and subject to all permit requirements. The permit requirements shall be included as conditions of the project subdivision map and included in the covenants, conditions and restrictions (C, C and R's) recorded for the project.

#### 7.36.065 Required findings.

The Director of Community Development, in granting approval of an encroachment permit application shall make the following findings:

- A. The granting of the encroachment permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located;
- B. The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan;
- C. The proposed encroachment will comply with the provisions of this chapter, including any specific condition required;
- D. The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, except as expressly provided in this chapter;
- E. The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.
- F. For properties that are located in the coastal zone, the proposed encroachment will be consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:
  1. The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right of way adjacent to the subject property (Section 30212 (a) (2).
  2. The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area (Section 30221)

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21**7.36.070 Issuance**

The Director of Community Development shall issue a written decision regarding each encroachment permit application. This decision shall recite the findings upon which the decision is based as provided in Section 7.36.065 of this chapter. If the decision grants the encroachment, it shall set forth the conditions to be imposed. The conditions set forth in Section 7.36.060(b) of this chapter shall be attached to every permit approval. The decision of the Director of Community Development shall be final ten (10) calendar days after mailing a copy of the decision to the applicant..

**7.36.080 Appeals**

Applications which are inconsistent with the "Encroachment Standards" set forth in section 7.36.150, including right-of-way frontage improvements required as a condition of approval by the Director of Public Works, must be appealed to and approved by the City Council with a recommendation from the Parking and Public Improvements Commission. A notice shall be sent to the property owners whose lots' front property lines are within 300 feet of the subject encroachment area site at least 10 calendar days prior to each body's consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such an appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

**7.36.090 Time Limit**

Any encroachment granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such encroachment, and, if not so developed and utilized, such encroachment automatically shall become null and void at the expiration of such twelve (12) month period.

The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such encroachment. The Director of Community Development, in his or her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use.

**7.36.100 Inspection**

The Director of Community Development shall require that inspections be completed before commencement, and after completion of encroachment work. Inspections while encroachment work is in progress shall be completed as determined to be appropriate by the Director of Community Development or Director of Public Works.

**7.36.105 Restoration of Public Right of Way**

Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the Director of Public Works. Where excavation occurs within areas already paved, the Director of Public Works may require temporary paving to be installed within four hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the Director of Public Works may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee's adjacent real property.



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21**7.36.110 Revocation**

The Director of Community Development or the City Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment, including but not limited to provision of liability insurance coverage to the City or if it is determined that such permit is not in the public interest. A written notice shall be mailed to the permittee of such revocation. Within ten (10) working days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be made to the Parking and Public Improvements Commission whose recommendation will be reviewed by the City Council and the Council's determination of the matter shall be final.

**7.36.120 Enforcement**

Violation of this Chapter shall be punishable as a misdemeanor as set forth in Section 1.04.010(A) of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a separate violation of such provision. In addition to any other remedies provided in this section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; attorney fees.

**7.36.140 Other Permits**

Nothing in this Chapter shall preclude a requirement for a Coastal Development Permit, Business License, Conditional Use Permit, or other, City, State or County permit if otherwise required for the encroaching activity. See Chapter A.96 of the Manhattan Beach Local Coastal Program Implementation Program for applicable Coastal Development Permit requirements.

**7.36.150 Encroachment Standards****A. General Standards**

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.
3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of 30 inches of clearance is required on each side of all water and sewer mains, unless otherwise approved by the Director of Public Works.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a vehicular street or alley pursuant to Public Works Department construction standards and shall be prohibited from flowing onto a public pedestrian walkway or sidewalk. A drainage plan shall be provided with an application for an Encroachment Permit.
5. Obstructions to neighboring residents scenic views shall be avoided.
6. Steps and Stairs, other than risers between 4 and 7 inches in height and spaced a minimum of 3 feet apart, are not permitted in the public right of way.

Exception. One set of steps comprised of three consecutive risers is permitted provided a condition does not result that requires installation of a guardrail or handrail.

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7. Existing improvements which do not conform to current standards must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.
- H. 8. Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition.
9. Commercial use of the public right of way requires City Council approval.

Exceptions. The Director of Community Development may approve the following:

1. Sidewalk dining permits applicable to vehicular street right of ways in conformance with Section 7.36.110 of this chapter.
2. Building projections such as eaves, awnings, signs or elements that benefit the public and comply with applicable codes.
3. Roof access or other utility elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.

#### B. Walk Street Standards

1. Fences and railings, including required safety handrails and guardrails, are permitted provided an open design is utilized. The maximum allowable height is 42" above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a 36" maximum height (measured from adjacent curb level) is required within a distance of 5' from the street corner.
2. Retaining walls (not including walkway risers), free-standing walls and closed design fences are permitted provided the maximum allowable height is 32" above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (A) above shall not be permitted.

Exception. Retaining walls and related required safety railing that exceed the 32" limit may be constructed at the side boundaries of an encroachment area if necessary to retain a neighbor's existing grade, provided all other encroachment improvements comply with applicable encroachment standards. If subsequently such over-height walls and/or safety rails are no longer necessary due to modification of the adjoining encroachment area, the property owner shall lower the over-height wall/safety rail to conform with applicable standards. This requirement shall be included as a permit condition in the Encroachment Permit Agreement.

3. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. To promote visual openness and conserve scenic vistas, the height of landscape plantings shall not exceed 42-inches as measured from the adjacent public walkway.

Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to 42-inches maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of

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the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.

4. Usable surfaces (as defined herein) are permitted as follows:

1. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of 12 inches as measured above or below the adjacent public walkway.
2. Within the rear half of the encroachment area (adjacent to private property) limited to a maximum height of either:
  - a. 36 inches as measured above or below the adjacent public walkway or;
  - b. 12 inches as measured above or below the natural grade, as defined herein.

The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway.

5. The total combined height of fences, railings, retaining walls (including walkway risers) shall not exceed a height of 42 inches as measured from lowest adjacent finished grade.
6. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards except as permitted by the Director of Public Works.

C. El Porto Strand Standards

In addition to the encroachments permitted in (b) above, the following encroachments are permitted within The Strand right of way north of Rosecrans Avenue due to unusual slope and underground utility location and to provide an adequate buffer between the Strand walkway and adjoining private properties.

1. Usable surfaces are permitted within the rear half of the encroachment area at a maximum height of 72 inches measured from the adjacent public walkway, provided they are accompanied by terraced landscape planters with evenly spaced retaining walls with a maximum height of 30" each.
2. Fences and walls are permitted to be a maximum height of 42 inches above the adjacent public walkway except that planter walls required in subsection (A) above may have a maximum height of 72".
3. Corner properties bordering a parking lot entrance or exit are allowed to have walls and fences on the vehicular street side to a maximum height of 6' above adjacent curb level except that a maximum height of 3' shall be permitted adjacent to driveway/roadway intersections.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular alley or street via a non-erosive device pursuant to Public Works Department construction standards.

D. Vehicular Street Standards

1. Sidewalks, curbs, parking pads, paving, and other street improvements may be required by the Public Works Department and shall be constructed consistent with City standards.
2. Fences and walls are permitted behind required or existing street improvements provided a 42" maximum height is observed, measured from the public right-of-way grade adjacent to the property line. To ensure visibility at corners a 36" maximum height is permitted within a distance of 15' from the street corner. Open-design fences or guardrails required by the Building Official to exceed the 42" maximum height are allowed on top of retaining walls if necessary to retain a neighbor's grade at a side property line.

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3. Usable surfaces (as defined herein) are prohibited with the exception of landscaping that is located beyond required street improvements. Structural turf may be permitted in a portion of a required paved area subject to approval of the Public Works Director. Loose gravel and similar material as determined by the Public Works Department is not permitted.
4. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular street via a non-erosive device pursuant to Public Works Department standards.

#### 7.36.160 Sidewalk Dining Encroachment Permits

Sidewalk dining adjacent to existing restaurants may be permitted on public sidewalks within vehicular street right of ways with a sidewalk dining encroachment permit issued pursuant to this Section. The purpose of the sidewalk dining permit program is to promote restaurant and pedestrian oriented activity within the City's business areas, while safeguarding public safety and minimizing impacts to nearby residential properties. Each permit issued for sidewalk dining shall comply with the following minimum standards:

- A. All permits are subject to temporary modification or suspension at any time based on the public's priority for use of City right of way as determined to be appropriate by the Chief of Police or Director of Public Works.
- B. Title 24 of the California Government Code regarding persons with disabilities requirements for unobstructed sidewalk width (minimum 48 inches) must be maintained at all times.
- C. Applicants and their customers may not place any objects in the right of way other than tables and chairs (no umbrellas, heaters, or bikes/dogs tied to parking meters, etc.)
- D. Exterior lighting equipment that may present a tripping hazard is not permitted.
- E. Temporary electrical connections, such as extension cords, are not permitted.
- F. Alcoholic Beverages may not be served or consumed in the sidewalk dining area.
- G. Dancing is prohibited.
- H. Amplified music is prohibited.
- I. Dining activities must conclude by 10:00pm. Tables and chairs must be removed from the sidewalk by 10:30pm.
- J. All exits and means of egress from establishments and businesses must be maintained and not obstructed in any manner.
- K. Sidewalk dining activities must comply with all Use Permit and zoning requirements (parking, occupancy, etc.)
- L. Only existing tables used inside the restaurant may be used for sidewalk dining unless additional parking and zoning approval is provided in accordance with the Municipal Code.
- M. The portion of sidewalks used for dining must be cleaned regularly and consistently kept free of litter by the applicant.
- N. The applicant must provide an insurance endorsement and complete a Hold Harmless agreement, to the satisfaction of the City Risk Manager.

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- O. The applicant must submit an application for a permit and pay an established permit fee as set forth by resolution of the City Council.
- P. Permits are issued to business owners rather than property owners and are not considered an entitlement to the adjacent private property. New business owners must apply for a new permit.

Permits may be modified or revoked by the City Council if the applicant repeatedly fails to comply with any of the above requirements, or if the public's priority for use of City right of way causes the previously approved sidewalk dining use to be found to be inappropriate.

SECTION 4. All other provisions of the Manhattan Beach Municipal Code not inconsistent with this ordinance shall remain unchanged and continue in full force and effect.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 8. A review of the proposed amendments per Section 2 of this Ordinance is hereby directed to occur approximately twelve (12) months after the effective date, with a hearing before the Parking and Public Improvements Commission followed by a recommendation to the City Council.

SECTION 9. The City Clerk shall cause a summary of this Ordinance to be published as provided by law. The summary shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 15<sup>th</sup> day of October, 2002

Ayes:  
Noes:  
Absent:  
Abstain:

\_\_\_\_\_  
Mayor, City of Manhattan Beach

ATTEST:

\_\_\_\_\_  
City Clerk

## Chapter 7.36

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## ENCROACHMENT PERMIT

## Sections:

- 7.36.010 Authority to grant.
- 7.36.020 Findings necessary to granting an encroachment.
- 7.36.030 Mandatory conditions imposed upon encroachments.
- 7.36.040 Procedure.
- 7.36.050 Revocation.
- 7.36.060 Encroachment violation.
- 7.36.070 Violations: Misdemeanors.
- 7.36.080 Violations: Additional remedies.

**7.36.010 Authority to grant.**

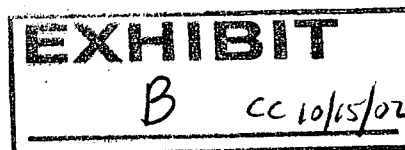
Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this chapter occur from its strict literal interpretation and enforcement, a permit to encroach into a planned or existing public right of way may be granted upon such terms and conditions as are deemed necessary. The authority to grant or deny such permit application is vested in the Director of Public Works.

(§ 1, Ord. 1304, eff. October 5, 1972)

**7.36.020 Findings necessary to granting an encroachment.**

The Director of Public Works, in granting approval of an encroachment permit application, shall make a finding that in the evidence presented, all five (5) of the following conditions exist in reference to the property being considered.

- A. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications;
  - B. That any encroachment granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated;
  - C. That the granting of the encroachment will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the subject property is located; and
  - D. That the granting of such encroachment will not adversely affect the general plan of the City.
- (§ 1, Ord. 1304, eff. October 5, 1972)
- E. That, in the coastal zone, such encroachment:
    - 1. is located within a right of way that has been improved with a paved sidewalk or pedestrian or vehicular accessway or stairway;
    - 2. does not encroach into the area of the right of way occupied by such improved paved sidewalk or pedestrian or vehicular accessway or stairway;
    - 3. does not reduce public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway, does not reduce the vehicular access along the improved alley and is consistent with the Access Maps and policies of the certified Local Coastal Program; and,



4. that the applicant for such encroachment has received a coastal development permit for the encroachment consistent with Chapter 2 of the Local Implementation Program, Section A.96.  
(Ord. No. 1898, Amended, 04/14/94)

**7.36.030 Mandatory conditions imposed upon encroachments.**

In granting an encroachment under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

- A. That the encroachment shall be removed by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such encroachment, such cost shall be a lien upon the subject property;
- B. That the encroachment be recorded by the City in the office of the County Recorder;
- C. That the encroachment shall be a covenant running with the land and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest;
- D. That a certificate of insurance in amounts and form satisfactory to the City Attorney shall be filed with the City upon the granting of the encroachment and shall be maintained in good standing at all times so long as the encroachment exists, releasing the City from any and all liability whatsoever in the granting of such encroachment; and
- E. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the encroachment by the City.

(§ 1, Ord. 1304, eff. October 5, 1972)

**7.36.040 Procedure.**

- A. **Applications.** An application for an encroachment into a planned or existing public right of way shall be filed by the owner of the property for which the encroachment is sought or by an authorized representative of the owner. Such application shall be made to the Director of Public Works and shall be on forms furnished by the Department of Public Works.
- B. **Filing fee.** A uniform fee, established by Council under separate resolution, shall be required upon the filing and investigation of the application for encroachment or transfer of an encroachment permit to defray administrative costs incurred by the City in processing the application. Such fee shall be nonrefundable and shall include the costs of recordation of the encroachment, if granted.

(§ 28, Ord. 1458, eff. June 17, 1976)

- C. **Investigation.** An investigation shall be conducted by all departments of the City having an interest in, or jurisdiction over, the matter. Upon the receipt of an application pursuant to the provisions of this chapter, the Director of Public Works shall transmit the application to all affected departments for written reports of findings and recommendations. All such written reports shall be submitted to the Director of Public Works for consideration when making a decision on the application.
- D. **Director of Public Works findings and decision.** The Director of Public Works shall make a written decision. Such decision shall recite the findings upon which he bases his decision. If the decision is favorable to the granting of the encroachment, it shall set forth the conditions to be imposed. The conditions set forth in Section 7.36.030 of this chapter shall be attached to every permit approval.
- E. **Appeal.** The decision of the Director of Public Works shall be final ten (10) days after mailing a copy of his decision to the applicant. Within said ten (10) day period, the applicant may appeal the decision of the Director of Public Works to the Council to review a denial of the application any conditions attached to an approval other than those set forth in Section 7.36.030 of this chapter. Upon consideration of such appeal, the Council may approve, modify, or disapprove the application for

encroachment. The Council may add, delete, or modify the conditions attached to the encroachment permit. The action of the Council shall be final.

F. **Time limit for development.** Any encroachment granted pursuant to the provisions of this chapter shall be developed and utilized within a period not to exceed six (6) months from and after the date of the granting of such encroachment, and, if not so developed and utilized, such encroachment automatically shall become null and void at the expiration of such six (6) month period.

G. **Extension of time.** The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such encroachment. The Director of Public Works, after due consideration, shall either grant or deny the extension of time for such development and use.

(§ 1, Ord. 1304, eff. October 5, 1972)

#### **7.36.050 Revocation.**

The Director of Public Works or the Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment or if it is determined that such permit is not in the public interest. A written notice shall be mailed to the permittee of such revocation. Within ten (10) days of mailing of such notice of revocation to the permittee, a written appeal of such action may be filed. Any such appeal shall be reviewed by the Council and its determination of the matter shall be final.

(§ 1, Ord. 1304, eff. October 5, 1972)

#### **7.36.060 Encroachment violation.**

It shall be unlawful for any person to construct or maintain, or cause to be constructed or maintained, any encroachment in violation of the provisions of this chapter.

(§ 1, Ord. 1552, eff. April 19, 1979)

#### **7.36.070 Violations: Misdemeanors.**

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred and no/100ths (\$500.00) Dollars or be imprisoned in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(§ 2, Ord. 1552, eff. April 19, 1979)

#### **7.36.080 Violations: Additional remedies.**

As an additional remedy, the construction or maintenance of any encroachment in violation of any provision of this chapter, shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by City forces or by a duly authorized contractor to the City. In addition to the summary abatement of an encroachment violation, such a public nuisance may be prosecuted civilly in a court of competent jurisdiction.

(§ 3, Ord. 1552, eff. April 19, 1979)

(Ord. No. 1880, Amended, 06/17/93)



# ENCROACHMENT PERMIT STANDARDS

The Manhattan Beach City Council in adopting Ordinance No. 1304 on September 5, 1972, established procedures for the regulation of encroachments within the public right of way. The following outline of encroachment design standards has been developed to assist permit applicants in obtaining approval from the Community Development Department.

The intent of these standards is to allow private development of the public right of way with improvements that are functional for the adjoining property owner, attractive and non-obtrusive to the public, consistent with building safety standards, and compatible with surrounding developments.

Approval of encroachments which deviate from these standards can only be granted by the City Council through an appeal process.

## I. GENERAL STANDARDS

- A. **Structures** as defined by the Uniform Building Code are prohibited from encroaching within the public right of way with the exception of fences, walls, and decks which are in compliance with these standards.
- B. **Landscaping** is permitted in accordance with an approved landscape plan. Artificial landscape materials are prohibited.
- C. **Utility and Visual Obstructions** shall generally be avoided so as to maintain access to underground utilities and to protect vistas from neighboring properties.
- D. **Steps and Stairs** are not permitted in the public right of way.
- E. **Existing Improvements** which do not conform with these standards must be removed or brought into conformance if the adjoining structure is remodeled or if any new construction is proposed in the public right of way. Existing improvements that have been made non-conforming by changes to these standards may remain provided the non-conforming element is not increased or expanded.
- F. **Repair or Replacement** of existing/non-conforming improvements is permitted only if the improvement has been made non-conforming by changes to these standards.

## II. PEDESTRIAN WALK STREET STANDARDS

- A. **Fences** and railings are permitted provided an open design is utilized. The maximum allowable height is 42" above the adjacent walkway. To insure pedestrian to vehicle visibility at corners, a 36" maximum height (measured from adjacent curb level) is required within a distance of 5' from the corner.
- B. **Retaining walls**, free-standing walls and closed design fences are permitted. The maximum allowable height is 32" above the adjacent walkway.

NOTE: A minimum of 30 inches of clearance is required on each side of all water and sewer mains.

EXHIBIT

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cc 10/15/02

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- C. **Landscaping** such as trees which exceed a height limitation of 42" from the adjacent sidewalk may be permitted in conjunction with an approved landscape plan which preserves vistas from neighboring properties. Upon receiving a complaint of a view obstruction from a resident whose view is affected, the offending landscaping shall be trimmed and maintained at a height that maintains vistas of neighboring properties. Landscaping may not project over or onto the walkway.

A minimum of 1/3 of the encroachment area must be landscaped.

- D. **Decks** are permitted provided they do not exceed a 12" maximum height above the existing natural grade and do not project into the public right of way more than 1/2 the distance between the front property line and edge of sidewalk. Railings are permitted provided that they are of open design.
- E. **Patios** are permitted provided they do not exceed 12" above or below the adjacent sidewalk level.
- F. **Parking or driving** on walk streets is strictly prohibited by the Municipal Code.

### III. VEHICULAR STREET STANDARDS

- A. **Fences and walls** are permitted provided a 42" maximum height is observed. To insure visibility at corners a 36" maximum height is enforced within a distance of 15' from the corner. Open-design fences are allowed on top of retaining walls if necessary to retain a neighbor's grade at a side property line.
- B. **Landscaping** is permitted.
- C. **Ground cover** such as pavement or mortared brick is permitted.
- D. **Sidewalks, curbs, and other frontage improvements** are permitted subject to design approval by the Community Development Department.

### IV. EL PORTO STRAND STANDARDS

In addition to the Walkstreet Standards listed above,

- A. **Fences and walls** are permitted provided they do not exceed a maximum height of 42 inches above the adjacent walkway.
- B. **Decks** are permitted provided they do not exceed a maximum height of 72 inches above the adjacent walkway. They must not project into the public right of way more than 1/2 the distance between the front property line and edge of the walkway and must be accompanied by terraced retaining walls with a maximum height of 30" each.
- C. For corner properties bordering a parking lot entrance or exit, walls and fences are allowed on the vehicular street side to a maximum height of 6' above adjacent curb level.

### V. EXCEPTIONS

Plans which are not consistent with these standards may be approved by the City Council through an appeal process.

**Minor Exception** - an improvement that exceeds a standard parameter by an amount found by staff to be insignificant. To be approved, the improvement must be found to be consistent with the intent of the standards and owners of neighboring properties must be notified.

**Neighborhood Compatibility Exception** - an improvement that exceeds a standard parameter but is found to be consistent with existing improvements in the area. To be approved, the improvement must be found to be consistent with the intent of the standards and owners of neighboring properties must be notified.

When providing notice to owners of neighboring properties, a notice will be sent to the owners within 100 feet of the subject site. The notice will describe the proposed non-conformity, make the plans available for review, and set a deadline for registering objections.

## VI. PROCESS FOR APPROVING ENCROACHMENT PERMITS

Plans for encroachments into the public right of way must be submitted to the Community Development Department along with an Encroachment Permit Application. Plans which are determined to be consistent with these standards are approved administratively. Plans which are determined to be not consistent with these standards can only be approved by the City Council through an appeal process.

## VII. DEFINITIONS/CLARIFICATIONS

**Adjoining Property** - The private property located immediately adjacent to the section of public right of way to be encroached upon.

**El Porto Strand Property** - a property located on the Strand between 39th Street and 45th Street.

**Encroachment Area** - the section of public right of way located between the property line and the edge of the walkway or roadway.

**Existing/Non-Conforming** - a previously constructed improvement which is not consistent with the above guidelines.

**Minor Exception** - a proposed or existing improvement that exceeds a standard parameter by an insignificant amount. To be approved, the improvement must be found to be consistent with the intent of the standard and owners of neighboring properties must be notified.

**Natural Grade** - a straight line from the edge of the walkway/roadway grade to the original front property line grade.

**Neighborhood Compatible Exception** - a proposed or existing improvement that exceeds a standard parameter but is found to be consistent with existing improvements in the area, consistent with the intent of the standard, and owners of neighboring properties must be notified.

**Open Design** - a fence is considered to be of open design if the spaces between the vertical segments are equal to or exceed the width of the segments.

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**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
MEMORANDUM**

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Rosemary Lackow, Senior Planner

**DATE:** May 23, 2002

**SUBJECT:** Proposed Encroachment Permit Ordinance

**RECOMMENDATION**

That the Commission accept public input, discuss this matter and direct staff to make any revisions to the draft Ordinance deemed appropriate.

**BACKGROUND**

As a part of the 2000-2001 City Council Work Plan, staff was directed to review and codify existing encroachment permit standards. Staff has prepared a draft Ordinance that will replace and update Chapter 7.36 (Encroachment Permits) of the Municipal Code. The draft Ordinance expands the current Chapter 7.36 by including specific encroachment standards that currently are not contained in the code but apply as a separate set of administrative permit policies.

Upon completion of the Parking and Public Improvements Commission (PPIC) review, the ordinance will be presented to the City Council for additional public input and adoption.

**DISCUSSION**

The purpose of the Encroachment Permit Standards is "to allow private development of the public right of way with improvements that are functional for the adjoining property owner, attractive and non-obtrusive to the public, consistent with building safety standards and compatible with surrounding developments." Pursuant to these standards, walk street property owners may apply for an Encroachment Permit to construct a variety of improvements such as patios, fences, walls and decks on portions of adjoining right of way. The Encroachment Standards also allow owners on vehicular streets to construct low fences and walls, landscaping, pavement, and various frontage improvements such as sidewalks and curbs, subject to city approval.

The permitted improvements effectively function as extensions of private front yards for the homeowner's exclusive use. As a condition of every permit, homeowners must enter into a formal "Encroachment Permit Agreement" and one of the terms of the agreement requires owners to extend their homeowner's insurance to cover the City's liability.

**EXHIBIT**  
D cc 10/15/02

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The proposed ordinance is intended to clarify and codify existing standards. A brief summary is as follows:

#### Walk Street Residential Standards

- **Fences** of open design permitted, up to 42 inches in height, measured from the public sidewalk.
- **Walls or fences** of solid design permitted, up to 32 inches in height, measured from the public sidewalk grade.
- **Landscaping** is required, minimally occupying 1/3 of the encroachment area. Vegetation exceeding 42-inches in height is permitted provided view obstructions do not occur.
- **Usable flat surfaces** such as patios, decks and lawns permitted, up to 12-inches above or below the existing natural grades (as defined) if located within the rear half of the encroachment area, adjoining the private property line. If these elements are located within the front half of the encroachment area, the 12-inches (above or below) is measured from the grade of the adjoining walk street public sidewalk.
- **Landings** at maximum width of 44-inches are permitted to provide access from walk street, but stairs are prohibited.

In addition, the ordinance provides that the combined height of fences, railings, retaining walls cannot exceed 42-inches as measured from the lowest adjacent finished grade. To address topographic conditions along the Strand in El Porto, the height of usable surfaces such as decks and patios is permitted up to 72 inches above the Strand, provided they are accompanied by planter terraces created by retaining walls which are 30" maximum in height.

#### Vehicular Street Residential Encroachment Standards

- **Fences and walls**, open or solid design are permitted, up to 42 inches in height, or up to 36 inches if located within 15 feet of a street corner. Safety rails or open fences may be constructed in excess of the 42-inch limit if necessary to retain a neighbor's grade at a side property line.
- **Sidewalks**, curbs, and other frontage improvements may be required.
- **Landscaping** and hardscape treatments (pavement, mortared brink) are permitted beyond required frontage improvements.

Unlike on the walk streets, the list of permitted improvements for vehicular streets does not include usable surfaces, such as decks and patios. Staff has included a provision that clarifies that parking pads are among the street frontage improvements that may be required as a condition of the Encroachment Permit.

#### Encroachment Permit Exceptions

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Staff proposes that the existing provisions for "Neighborhood Compatibility" and "Minor Exception" applications be eliminated. The parameters for granting such exceptions are somewhat vague and subjective and the City Council has not supported recent applications. The Council has demonstrated recently that its goal is to ensure that all new construction comply with adopted standards. If a project proposes to exceed these standards, then it should be reviewed at a public meeting and approved by City Council. Therefore, under the proposed ordinance, all Encroachment Permits for improvements that do not comply with the standards would be automatically referred to the PPIC for a recommendation and City Council for a final decision.

#### Sidewalk Dining Program

Sidewalk dining was identified as a desired enhancement of the downtown village character in the Downtown Strategic Plan. In July, 1997 the City Council approved an administrative permit program that allows restaurant owners to conduct dining activities on sidewalks in the City's business areas. The permit is subject to several operating conditions. Businesses that cannot meet the required conditions must seek permit approval from the City Council, after a review and recommendation by the PPIC.

The program has been in place for over four years, with eight permits issued. The program has been well received by residents and visitors and business owners and the current regulations are proposed to be codified in the draft ordinance.

#### Long-Term Commercial Uses

Some long-term commercial uses have been approved through the Encroachment Permit process. Staff has administratively approved minor encroachments, such as 12-inch projections over sidewalks for awning signs as permitted in the building and zoning codes.

The City Council has approved three Encroachment Permits in the downtown area that authorize outdoor restaurant dining floor area (Uncle Bill's, Oceanview Cuisine and Chipotle). Two other permit requests have been denied by the City Council, including a downtown walk street request that involved alcohol consumption, and another in the north end of Highland Avenue for an outdoor dining patio, also on a walk street. Such permits are distinguished from the sidewalk dining program because they occupy public right of way that is not part of a public pedestrian sidewalk. Such permits are subject to a monthly fee based on square footage of public land being used (currently \$1/per square foot).

These types of encroachments can only be approved by the City Council and are reviewed on a case-by-case basis due to the fact that locations can vary widely with respect to nearby uses and physical conditions. The associated commercial use must address parking requirements as part of the land use approval, as applicable, of the adjoining private property use.

Similar to the residential encroachments, all types of commercial encroachments must execute an Encroachment Permit Agreement and extend their insurance to cover the City's liability.

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## Local Coastal Program

Chapter 7.36 of the Municipal Code and the Encroachment Permit Standards are contained in the City's Local Coastal Plan (LCP) as a specific implementation measure for Policy 1.A.1 of the coastal land use plan, which provides that "The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone." Therefore any changes to Chapter 7.36, as is proposed, will require amendment of the City's Local Coastal Program. An application for an LCP amendment will be submitted after the City Council adopts the ordinance.

## CONCLUSION

The attached draft ordinance codifies the existing walk street and vehicular street residential encroachment standards, with minor changes that serve to clarify or update policy based on recent Encroachment Permit reviews by the City Council. The ordinance is expected to undergo further changes, based on public input and discussion by the PPIC. At this time it would be appropriate for the PPIC to conduct a public review, accept public input and continue the discussion to a future meeting to enable Staff to make appropriate revisions.

## Attachments:

1. Draft Ordinance
2. Current Municipal Code (7.36 – Encroachment Permit)
3. Current Encroachment Permit Standards

with others misusing this designated space. He voiced his agreement with Commissioner Liggett's comments reminding residents that the area in front of their homes is open for public use. Commissioner Berks stated that he would like staff to look into the feasibility of a parking pad, loading zone or a permit driven restrictive parking lane as alternatives, noting that if the Commission did approve a handicapped parking space, he would want it limited to resident use and for a six month trial basis. He concluded by stating that he believes the City should do all they can to accommodate Mr. Sandman with accessible parking.

#### Action

A motion was MADE and SECONDED (Miller/Saunders) to direct staff to formulate guidelines to govern the processing of handicapped parking requests; based on the those guidelines review Mr. Sandman's request for a designated parking space in conjunction with exploring the alternatives suggested relative to the feasibility of creating a parking pad, loading zone or a permit driven restrictive parking designation to provide accessible parking; and determine if the issue of handicapped parking throughout the City warrants further study.

AYES: Saunders, Berks, Miller, Liggett and Chairman Davy  
NOES: None  
ABSENT: None.  
ABSTAIN: None.

### 3. Proposed Encroachment Permit Ordinance

Senior Planner Rosemary Lackow presented the staff report explaining that per direction from the 2000-2001 City Council Work Plan, staff has prepared a draft ordinance that will replace and update Chapter 7.36 (Encroachment Permits) of the Municipal Code. She stated that the draft ordinance expands the current Chapter 7.36 by including specific encroachment standards that currently are not contained in the code but apply as a separate set of administrative permit policies. Senior Planner Lackow stated that staff is requesting that the Commission hold discussion on the proposed changes, accept public review and continue the discussion to a future meeting to enable staff to make appropriate revisions.

The Commission held discussion with Senior Planner Lackow clarifying a number of issues relating to minor exceptions; the west of strand encroachment issue; the importance of proactive enforcement rather than complaint driven enforcement; height limits; landscaping requirements being subject to a 42 inch height limit unless approved through a landscape plan; the term "air space" condominium; outdoor dining standards; and the importance of including "scope and intent" under each section to clarify the City's purpose.



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### Audience Participation

As a property owner located next to commercial property, **Suzanne Lerner, 124 10<sup>th</sup> Street**, addressed the Commission relative to her concerns with the allowance of commercial encroachments, noting her active participation against the Bacchus establishment's request for an encroachment permit. She stated that the City of Manhattan Beach should not become a "Third Street Promenade" and needs to preserve walkstreets and the residents' quality of life. Ms. Lerner concluded by stating that there are enough bars and restaurants in the downtown area without allowing more commercialization onto the walkstreets and asked that the Commission approve an ordinance that does not allow walkstreet encroachments.

Commissioner Miller pointed out to Mr. Lerner that during the Downtown Strategic Plan meetings, a number of individuals voiced their support in allowing consideration of these types of encroachments.

**Martha Andreanni, 10<sup>th</sup> Street and Ocean**, commented that she did participate in the Downtown Strategic Plan meetings and was in favor of an outdoor dining program that did not encroach on the City's sidewalks and was contained within the owner's property. She stated that she also opposed the Backus request and that the current situation with Ocean View and Uncle Bill's allows the opportunity for "hindsight" and how future encroachments should not be allowed on walkstreets. Ms. Andreanni concluded by stressing the importance of merchants and residents co-existing.

**Jackie May, 10<sup>th</sup> and Highland Avenue**, remarked that many residents are unaware of the City's standards and that the notification radius should be more than 100 feet, suggesting 500 feet.

**George Kaufman, 100 Block of 10<sup>th</sup> Street and Ocean**, also voiced his concern with commercial encroachments near residential areas, stating that this issue should be addressed and coordinated with current General Plan discussions. He agreed with the need for clearly indicating the City's intent and purpose in the ordinance and asked that the Commission be vigilant when dealing with walkstreet encroachments.

**Jim Fasola, 8<sup>th</sup> Street and Highland Avenue**, stated that as a local architect he is concerned with the effects the proposed ordinance will have on compliance issues for residential development, submitting photographs to the Commission depicting such instances. He stated that he is in favor of an ordinance that clearly spells out the rules but that it needs to allow flexibility as well.

At the request of the Commission, Mr. Fasola expanded on the following suggestions that he has suggested under Section 7.36.140 Other Permits:

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a. General Standards F - should allow two contiguous steps

b. Walkstreets Standards - (A) the maximum allowable height should be more than 42 inches, suggesting 54 inches; (B) the rear maximum allowable should be 44 inches; (D) the front and rear half maximums should be 36 inches and 18 inches respectively, with front requirements adhering more to the street and the back adhering more to the neighborhood.

### Discussion

Commissioner Saunders thanked Mr. Fasola for his participation, noting that more study and review of this ordinance is necessary. He stated that he would like to see more "pleasing" walkstreets areas without obstructions and is concerned with the Downtown's Outside Dining Program and its expansion to other areas in the City, as it can negatively impact the walkstreets, citing 13<sup>th</sup> Street as an example.

Commission Berks asked that Mr. Fasola's suggestions be studied as they may minimize appeals. He commended staff for their work on this ordinance, agreeing that it needs some refining.

Commissioner Liggett talked of the importance of commercial and residential interfacing in the downtown area as a "nice mix" of the two is what, he believes to be the best scenario.

Commissioner Miller requested further study be given to the issues of compliance and exceptions, as the appeal process is costly, and the outcome uncertain. Commission Miller also voiced his agreement with a speaker's comment that this issue should be addressed and coordinated with current General Plan discussions.

Chairman Davy remarked that the proposed ordinance represents a "good start"; that the public input is appreciated; and that the ordinance requires further study. He stated that he too is concerned with commercial encroachments and would like further study on this area in particular.

### 4. Parking Revenue Update

Management Analyst Osborne stated that information on parking meter collections is included in the Commission's packet and inquired how often the Commission would like to review this information.

Referencing his conversation with a former Commission member regarding the agreement made with the Downtown Business and Professional Association relative to the merging and responsibilities of the former Parking Place Commission and the PPIC, Commission Miller voiced his concern on whether the PPIC is fulfilling their "mission"

relative to the oversight of parking issues in the City. He asked that staff look into this matter and report back to the Commission.

#### **H. COMMISSION BUSINESS**

Acknowledging that this is Commissioner Berks' last meeting, the Commission and Management Analyst Osborne thanked him for his dedicated work on the PPIC.

Management Analyst reported that the City Council has invited Commissioner Berks to the June 4<sup>th</sup> Council Meeting where he and fellow outgoing commissioners will be recognized. He relayed that Council will also be recognizing the PPIC Commission that evening, asking members to attend the June 4<sup>th</sup> City Council Meeting at 6:30 p.m.

#### **I. ADJOURNMENT**

The meeting was adjourned at 9:50 p.m.

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**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
MEMORANDUM**

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Rosemary Lackow, Senior Planner

**DATE:** July 25, 2002

**SUBJECT:** Proposed Encroachment Permit Ordinance

**RECOMMENDATION**

That the Commission accept public input, discuss this matter and recommend that the City Council adopt the enclosed draft Ordinance.

**BACKGROUND**

On May 23, 2002 the Parking and Public Improvements Commission conducted a hearing regarding a draft Ordinance that is intended to replace existing Chapter 7.36 of the Municipal Code, entitled "Encroachment Permits". The main purpose of the proposed ordinance is to update and codify standards and procedures for regulating private improvements and uses within the public right of way. The Parking and Public Improvements Commission accepted public testimony, discussed the draft ordinance and directed Staff to make revisions and bring back the ordinance for further review and a recommendation to the City Council (see minutes attached).

**DISCUSSION**

The public input received by the Commission at its May 23<sup>rd</sup> meeting focused on two main issues. First, the Commission was requested by a small group of residents to recommend that the code prohibit commercial use of walk streets when adjacent to a residential property, except for passive uses such as landscaping. Secondly the Commission received input from a local architect, requesting that the residential walk street improvement standards be more flexible, particularly to allow more functional patios and more efficient access walkways.

Staff has revised the draft ordinance. The following are the major changes to the May 23<sup>rd</sup> draft ordinance:

- **Noticing of encroachment appeals.** The Parking and Public Improvements Commission received some testimony that the current requirement of a 100-foot radius is not adequate. Staff recommends that the requirement be changed such that all property owners whose front

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property lines are within 300 feet of the encroachment area would be noticed. Staff believes that this type of notification would include all properties that are close and where visibility of proposed encroachment area is the greatest. (Section 7.36.080. pg. 2)

- **Access walkways – walk streets.** As suggested to the Commission, Staff has added a provision that allows an owner to build one set of three consecutive steps that do not require a safety handrail or guardrail. Currently only single steps adjoining minimum three foot long landings are permitted in the walk street right of way. This provision will allow access to a higher elevation door to be over a shorter distance, without as many landings (Section 7.36.150. F. pg. 6)
- **Changes/repairs to nonconforming encroachments.** Staff has added language to clarify that significant changes or major alteration would cause an existing nonconforming encroachment to be abated and that nonconforming encroachments that have become deteriorated may be repaired or replaced with a comparable encroachment. (Section 7.36.150 G. and H. pg. 6)
- **Commercial use of public right of way.** Consistent with current policy the draft ordinance is unchanged with regard to commercial dining patios on walk streets in that all such requests require City Council approval. As an exception, certain uses or improvements may be administratively approved such as the existing sidewalk dining program. Staff has expanded the exceptions (that do not require council approval) to include minor building projections into the right of way. (Section 7.36.150. I. pg. 6)
- **Walk street landscaping height/ view obstructions.** Staff has rewritten the walk street landscaping provisions to reflect and clarify current policy. Landscaping is required within walk street encroachment plans, and is limited to 42 inches in height, measured from city sidewalk grade. However, landscaping is allowed to exceed 42 inches if neighbor views are not impaired. Staff believes that this policy is based on the recognition that there are walk streets (primarily in the south end of the beach area) where, due to a more flat topography, ocean views are not an issue and lush vegetation properly situated can greatly beautify the public right of way.

Staff has added additional provisions to clarify enforcement of walk street landscaping complaints. The Commission may want to discuss certain aspects of this policy, including what types and whose views should be protected. (Section 7.36.150.b.C., pg. 6)

- **Walk street patio height measurement.** The previous draft provided that patios, decks or lawn areas, referred to as “usable surfaces” be limited to a height of 12 inches above the walk street sidewalk, if located within the front half of the encroachment area, and 12 inches above “existing natural grade” if located within the rear half of the encroachment area. The Parking and Public Improvements Commission received testimony that these limits result in smaller less functional patios or terraces.

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Staff believes that the use of "existing natural grade" for measuring patio height is difficult to enforce because it establishes an imaginary line as a reference point. Staff is proposing that the walk street sidewalk be used as a reference point for measuring usable surface height for the entire encroachment area, which will simplify and assist in consistent enforcement. However Staff suggests that, to compensate for this change, the limit for height or depth of a usable surface in the rear half of the encroachment area should be increased to 36 inches. An increase in the height limit from 12 inches to 36 inches, but measured from the adjacent walk street sidewalk grade will give more flexibility for most properties and will result in installation of wider and more functional patios.

As shown on the enclosed graphic submitted by architect Jim Fasola, Staff believes that this proposed change would not result in overly high or incompatible conditions between next door properties. The visual openness of the walk street should be preserved because the proposed standards also prohibit conditions from being created that require safety railings on top of the usable surfaces. However, Staff recognize that, under the proposed change, some properties that have a significant slope between the walk street sidewalk and property line may have more design flexibility based on the current form of patio height measurement. However, Staff believes that such properties are less common and such projects would be reviewed as appeals. (Section 7.36.150.b.D. pg. 7)

### **PUBLIC INPUT**

Staff has mailed the enclosed meeting notice to several architects or designers active in Manhattan Beach and has published the notice in the Beach Reporter. In addition to the enclosed graphic, Staff has received two letters from residents, including one containing 20 signatures, requesting that the Parking and Public Improvements Commission recommend that the City Council prohibit commercial use of walk streets adjacent to residential uses (see attached).

### **CONCLUSION**

The attached revised draft ordinance generally clarifies and codifies the existing walk street and vehicular street residential encroachment standards, with minor changes. Subject to further public input and consideration, Staff recommends that the Parking And Public Improvements Commission recommend adoption of the attached proposed to the City Council.

#### **Attachments:**

1. PPIC Minutes 5/23/02
2. Draft Ordinance (revised)
3. Graphic: Usable surfaces (2 pages)

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4. Letters received (Andreani, McPherson)
5. Public Notice

Commissioner Miller asked that staff further analyze red curbing, diagonal parking, Rosecrans Avenue parking and the construction of a roundabout as it might alleviate U-turns, also stressing the importance of holding joint meetings with the neighborhood on this issue.

Commissioner Liggett thanked staff for their work on this issue and for supplying a number of possible remedies for further study. He stated that would like further study on a roundabout and would like staff to work with neighborhood on this issue. Commissioner Liggett added that this issue might be the perfect one to send to the Neighborhood Traffic Management Program.

Per inquiry from Commissioner Ackland, Traffic Engineer Zandvliet stated that it would take approximately one month to set up discussions/workshops with the neighborhood on this issue and approximately three months before the issue was ready to return to the Commission.

#### 4. Proposed Encroachment Permit Ordinance

Senior Planner Rosemary Lackow presented the staff report relating to a draft ordinance that will replace the existing Chapter 7.36 (Encroachment Permits) of the Municipal Code for the main purpose of updating and codifying standards and procedures for regulating private improvements and uses within the public right of way. She reviewed the public input received by the Commission at its May 23<sup>rd</sup> Meeting relative to commercial use of walk streets and walkstreet improvements standards, indicating that staff has revised the draft ordinance and is requesting that the Commission hold discussion on the proposed changes, accept public review and continue the discussion to enable staff to make appropriate revisions.

Senior Planner Lackow then reviewed the following major changes to the May 23<sup>rd</sup> submitted draft ordinance relating to noticing of encroachment appeals; access walkways – walk streets, changes/repairs to nonconforming encroachments; commercial use of public right of way; walkstreet landscaping height/view obstruction; and walk street patio height measurement;

#### Audience Participation

Wayne Partridge, 3520 The Strand, voiced his opposition to staff's position on commercial use of walkstreets, stating that as the proposed ordinance does not specifically address the issue, it is essentially endorsing the "status quo". Mr. Partridge conveyed that he believes the Commission has been directed and charged to address the encroachment issue and has the responsibility to follow through with that charge. He urged the Commission to address this important issue and include provisions to forbid high intensity use that impact neighborhoods and only allow low intensity use (i.e. landscaping) to beautify the neighborhood. Mr. Partridge added that if the commercial use was not prohibited, the notice requirement should be changed to 500 feet.

Commission Miller pointed out the commercial use of walkstreets was decided on through a Citywide political process (Downtown Strategic Plan) and that one has to realize that although



there is opposition to such use, there is also support. He stated that although the Commission has expressed their views on this issue, the issue needs to be addressed through a Citywide approach.

**Gifford Gast, 35<sup>th</sup> and Highland Avenue**, concurred with Mr. Partridge's comments, stating that residents have been combating commercial use in walkstreets, especially in the North End, for twenty years. He talked of requests from Hillary's Hole in the Wall and the Deli, indicating that opposition entailed hours and hours of resident's involvement through petitions and participation in City meetings. Mr. Gast asked the Commission to address this issue and prohibit such use.

**George Kaufman, 121 10<sup>th</sup> Street**, also voiced his concern and opposition to commercial encroachments near residential areas, asking that the Commission indicate whether or not they are addressing this issue. He asked that the Commission prohibit such use, as residents are tired of having to watch for these type of permit requests and then participate through a long process of opposition to maintain the City's village atmosphere

In regard to Walk Street Standard, Section D Usable Surfaces, Subsection E, **R.L. Peters, 400 The Strand**, inquired if adjacent property owners can request modification on current non-conforming walls to meet these standards.

Senior Planner Lackow relayed that the situation would be governed by what rules were in effect at the time of the permit issuance.

**Jackie May, 10<sup>th</sup> and Highland Avenue**, stated that a notice process should also be in place for permits that are in compliance, which will ensure residents are informed of what is being planned in their area.

**Jim Fasola, 8<sup>th</sup> Street and Highland Avenue**, talked of the difficulty of using "existing natural grade" as a measuring point and asked for clarification of noticing encroachment appeals. Mr. Fasola relayed that the proposed changes to the draft ordinance allow more flexibility and is better than what is currently in place. He concluded by stating that he enjoys and supports outside dining in the City.

**Martha Andreani, 117 10<sup>th</sup> Street**, voiced her opposition to commercial encroachments as it diminishes open space. She stated that the walk streets are a precious, dwindling resource and beatifying landscaping is more appealing than dining tables. Ms. Andreani talked of the comradery between merchants and residents during the Downtown Strategic Plan meetings, noting that outside dining discussions were focused on establishments utilizing their own property, referencing Fonzi's, The Kettle and Wahoo. She concluded by thanking the Commission and staff for their work on this important issue, noting that there are 14 walkstreet located next to commercial properties that need "protection".

#### Discussion

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Commission Saunders stated that clarification is needed in the definition of sidewalk dining as well as in sidewalk dining section itself.

Commissioner Ackland talked of the comments made regarding commercial encroachments, noting that the residents are growing "weary" in their fight against such instances. She stated that she hope the City will address and put this issue to rest, relaying that she would support more stringent standards to limit the occurrence of appeals. She also asked that staff review the Restoration of Public Right of Way section, to include some type of time frame requirement to ensure the restoration is completed in a timely and prompt manner.

Commissioner Liggett relayed that he believes the City's village atmospheres involves different pieces and come from a nice mix of commercial and residential, clarifying that the commercial boundaries within the City have not changed in a number of years. He stated that he believes it is reasonable for stricter standards regarding commercial use, however, outlawing such use needs to be left to the City Council.

Commissioner Miller reiterated that this issue is not a City Council issue, but a community issue that stems from the Downtown Strategic Plan and involves both support and opposition. He stated that the PPIC is not the appropriate body to address the issue, suggesting that it be possibly be reviewed through the City's General Plan. Commissioner Miller requested that staff further study the noticing requirement issue as it relates to those in compliance; whether it would be appropriate to allow use of current and/or new standard measure requirements for Walkstreet Standards - Usable Surfaces; and that the Vehicular Street Standards - A and B be reviewed for clarity.

#### **Action**

The Commission directed staff to review the comments made and bring back the draft ordinance for further discussion and consideration.

#### **E. COMMISSION BUSINESS**

None.

#### **I. ADJOURNMENT**

The meeting was adjourned at 10:55 p.m.

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**CITY OF MANHATTAN BEACH  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
MEMORANDUM**

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Rosemary Lackow, Senior Planner

**DATE:** September 26, 2002

**SUBJECT:** Proposed Encroachment Permit Ordinance

**RECOMMENDATION**

That the Commission accept public input, discuss this matter and recommend that the City Council adopt the enclosed draft Ordinance.

**BACKGROUND**

On May 23 and July 25, 2002 the Parking and Public Improvements Commission conducted hearings regarding a draft Ordinance that is intended to replace existing Chapter 7.36 of the Municipal Code, entitled "Encroachment Permits". The purpose of the proposed ordinance is to update and codify standards and procedures for regulating private improvements and uses within the public right of way.

**DISCUSSION**

The public input received by the Commission at its two previous meetings have focused mainly on the issues of commercial use of walk street right of way and residential walk street design standards. The Commission discussed the draft ordinance and directed staff to further study a number of issues and prepare additional changes as necessary. The Commission also came to a consensus that policies relating to long term commercial uses of public right of way should be addressed by the City Council (see attached minutes).

In response to discussion and direction from the Commission, the following are the major changes that have been made to the draft ordinance as presented on July 25, 2002.

**Walk Street Retaining Wall Height (Ord. Section 7.36.150 (b) B, page 6)**

Staff has encountered a number of situations on the walk streets where an owner proposes to lower the grade of a pre-existing steeply sloped encroachment area. This typically occurs when a one or two story home constructed on a raised foundation is being replaced by a new three story

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home where the first level is built into the slope. These homes usually are designed with living areas at the first level with doors opening to a patio or terrace. By lowering the encroachment area grade, the new encroachments often can meet the height limits for patios, planter walls and fences. However, in many cases tall retaining walls and/or safety rails are necessary at the side boundaries of the encroachment area to retain a neighbor's encroachment area, which also has a steep slope.

Staff proposes that there be an exception to the 32-inch retaining wall height limit to address these types of situations. The proposed exception would allow retaining walls to be built in excess of 32-inches (measured from the walk street sidewalk) only along the sides of the encroachment area and only if necessary to retain a neighboring encroachment area or provide required safety railing. The over-height wall would be required to be removed or lowered at the owner's expense in the future if the neighboring encroachment grade is similarly lowered. This provision would be incorporated as a special permit requirement included in the Encroachment Permit Agreement.

This provision is located on page 6 of the ordinance (newly added text underlined below):

- B. Retaining walls (not including walkway risers), free-standing walls and closed design fences are permitted provided the maximum allowable height is 32" above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (A) above shall not be permitted.*

*Exception. Retaining walls and related required safety railing that exceed the 32" limit may be constructed at the side boundaries of an encroachment area if necessary to retain a neighbor's existing grade, provided all other encroachment improvements comply with applicable encroachment standards. If subsequently such over-height walls and/or safety rails are no longer necessary due to modification of the adjoining encroachment area, the property owner shall lower the over-height wall/safety rail to conform with applicable standards. This requirement shall be included as a permit condition in the Encroachment Permit Agreement.*

**Walk street landscape height (Ord. Section 7.36.150 (b) C, page 6)**

Regulation of the height of landscaping as relating to views is one of the most difficult and controversial encroachment issues in the beach area. The current standards allow landscaping, including trees that exceed 42" as measured from the walk street sidewalk grade "in conjunction with an approved landscaping plan that preserves vistas from neighboring properties". If a neighbor's view is impacted by a planting that exceeds 42" under the current standards, the "offending landscaping" must be trimmed and maintained at the 42" height limit.

The Commission has requested that staff consider alternatives to this standard. Staff believes that the code would better serve the goal of avoiding neighbor view impacts if the standard for landscaping height were strictly 42" maximum, measured from the walk street sidewalk and

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requests for taller vegetation would be subject to the appeal process. The benefit of this proposal is that neighbors would be aware of the proposal in advance and would have an opportunity to voice an opinion.

Staff has revised this section of the ordinance accordingly, and retained the provision that grants authority to the Director of Community Development to require trimming of any existing vegetation that exceeds 42" upon receipt of a view impact complaint.

The revised language is found on pages 6 and 7 of the ordinance (new text underlined):

*C. Landscaping is permitted subject to approval of a landscape plan submitted with an Encroachment Permit. Landscaping shall cover a minimum of one-third of the encroachment area and shall not project over or onto the public walkway. In order to promote visual openness and conserve scenic vistas, the height of mature landscape plantings shall not exceed 42-inches as measured from the adjacent public walkway. If a grade is at 42" or taller, minimal height planting such as grass or low growing ground cover is permitted.*

*Landscape plantings shall be maintained in substantial conformance with the approved plan. If it is determined that a resident view is impaired, the Director of Community Development shall direct the owner of the property adjacent to the encroachment landscaping to trim the over-height landscaping to 42-inches maximum. Should the property owner fail to act, the Director of Community Development may cause the landscaping to be trimmed, with the expense borne by the property owner. The owner of the property who receives such notice to trim may appeal the decision of the Director of Community Development pursuant to Section 7.36.070 of this chapter.*

#### **Height of Usable Surfaces (Ord. Section 7.36.150 (b) D, page 7)**

Under the draft ordinance, a definition of "usable surfaces" is proposed which includes decks, patios and lawn areas, or relatively flat surfaces that can be used for outdoor living or passive recreation. Under the current encroachment standards, patios are permitted on walk streets at a height of 12" maximum above or below the adjoining walk street sidewalk grade and decks are permitted within the rear half of the encroachment area at a height of 12" above existing "natural grade" which is defined as "a straight line from the edge of the walkway/roadway grade to the original front property line grade."

At the July 25 hearing, staff proposed a new usable surfaces height limit of 36" to be measured above or below the adjoining walk street grade as opposed to "natural grade". The Commission voiced concern that this change may pose compliance difficulties for properties that have steep grades within the encroachment areas and requested that Staff evaluate having both standards in the code.

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Staff has determined that both standards could exist in the code and would provide the design flexibility necessary to create more functionally sized decks and patios in the rear half of the walk street encroachment areas. The ability to build a patio or deck 12" above or below "natural grade" as opposed to walk street elevation would benefit lots with steep slopes. Conversely, lots that have a more flat topography would benefit from applying the new 36" height limit measured from the walk street grade. Steep lots which have grades proposed to be lowered at the front would not be able to construct excessively tall walls, by taking advantage of the "natural grade" method of measurement due to other constraints in the proposed code. For example, paragraph E. under the usable surfaces standards, would not allow a combination of fence, wall or safety rail height that exceeds 42" as measured from the lowest adjacent grade within the encroachment area.

Therefore Staff has revised the walk street usable surfaces standard, paragraph D, as follows (new text underlined):

*D. Usable Surfaces (as defined herein) are permitted as follows:*

1. *Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of 12 inches as measured above or below the adjacent public walkway.*
2. *Within the rear half of the encroachment area (adjacent to private property) limited to a maximum height of either:*
  - a. 36 inches as measured above or below the adjacent public walkway, or;
  - b. 12 inches as measured above or below the natural grade, as defined herein.

The intent of this standard is to ensure that the elevation of encroaching outdoor living areas located nearest the public walkway be consistent with the public walkway.

**Vehicular Street Standards (Ord. Section 7.36.150 (d) C, page 8)**

At the July 25 hearing, the Commission requested that staff review and clarify vehicular street standards. Staff believes that the intent of the standards is to allow much more limited private development on vehicular street and therefore recommends that usable surfaces be prohibited. This would allow pedestrian walkways but prohibit decks and patios. Other encroachments that would be allowed include relatively low fences, walls and landscaping that are located behind street frontage improvements such as parking pads, sidewalks and curbs if required by the Director of Public Works.

Staff has accordingly revised paragraph C of the vehicular street encroachment standards as follows (new text underlined):

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- C. Usable surfaces (as defined herein) are prohibited with the exception of landscaping that is located beyond required street improvements. Structural turf may be permitted in a portion of a required paved area subject to approval of the Public Works Director. Loose gravel and similar material as determined by the Public Works Department is not permitted.

#### **Public Sidewalk Dining (Ord. Section 7.36.160, page 8)**

The Commission requested that Staff clarify the provisions regarding public sidewalk dining permits. These permits, which are issued to restaurants are subject to specific performance standards and apply only to vehicular right of ways that are improved with standard public sidewalks. The Director of Community Development may administratively approve the sidewalk dining permits. In contrast, encroachment permits for long term commercial use of public property apply to commercial uses which may include (but are not limited to) restaurants which seek approval to expand onto an adjoining "unimproved" portion of a walk street or vehicular right of way. The long term commercial use permits require City Council approval.

Staff believes that the proposed ordinance is clear, but has slightly revised the first paragraph of this ordinance section as follows (added text underlined):

#### **7.36.160 Sidewalk Dining Encroachment Permits**

*Sidewalk dining adjacent to existing restaurants may be permitted on public sidewalks within vehicular right of ways with a sidewalk dining encroachment permit issued pursuant to this Section. The purpose of the sidewalk dining permit program is to promote restaurant and pedestrian oriented activity within the City's business areas, while safeguarding public safety and minimizing impacts to nearby residential properties. Each permit issued for sidewalk dining shall comply with the following minimum standards....*

#### **Restoration of Public Right of Way (Ord. 7.36.105, page 4)**

This section addresses a permittee's obligation to restore the right of way upon completion of authorized permit work. The Commission requested that Staff review this section and determine if it would be appropriate to include specific time frames for restoring the right of way. The Public Works Department has requested that this section remain as currently drafted because it is desirable to be able to apply a variety of time frames, depending on the urgency of a situation.

#### **Public Works Department Council Presentation**

On September 3, 2002 the Director of Public Works made a presentation to the City Council, outlining several issues related to construction of improvements on city right of way in certain residential areas including the "Tree Section" west of Sepulveda Boulevard or the "Dune Section" which is located west of Sand Dune Park. These areas do not uniformly have standard street improvements such as vertical curbs and concrete sidewalks. The City Council was

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requested to provide staff with direction as to whether uniform standards or guidelines should be developed for street improvements in such areas.

This issue relates to the proposed ordinance that is before the Parking and Public Improvements Commission in that encroachment permits may be required for non-standard private improvements within vehicular right of ways. The City Council received the presentation and provided some input that will be helpful to Staff in reviewing applications for encroachment permits. Feedback from the Council included the following:

- Parking pads are encouraged within the right of way; Public Works will develop a list of approved pavement treatments.
- Turf block, or "grass-crete" should be permitted adjacent to side yards on corner lots, but without irrigation.
- Sidewalks are encouraged only in areas with vertical curbs.
- Trees should be preserved.

The Public Works Department will provide a follow-up report to the City Council as to the development of guidelines for neighborhoods such as the "Tree Section" and "Dune Section". A copy of the Public Works Staff Report and related City Council minutes are attached for reference.

### **CONCLUSION**

No new written public input has been received regarding the proposed ordinance. Subject to further public input, Staff recommends that the Parking and Public Improvements Commission recommend adoption of the ordinance to the City Council.

#### **Attachments:**

1. PPIC Minutes 7/25/02
2. Draft Ordinance (revised)
3. Public Works Staff Report to City Council 9/03/02
4. City Council Minutes 9/03/02



ABSENT: Davy

ABSTAIN: None

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Commissioner Ackland commented that no possible alternative solutions have yet been suggested by the neighbors, and she does not feel an additional meeting would help to reach any resolution. She said she feels it should be the responsibility of the neighbors rather than staff to organize a neighborhood meeting.

#### 4. Proposed Encroachment Permit Ordinance

Senior Planner Rosemary Lackow summarized the staff report. She said that the purpose of the proposed Ordinance is to update and codify procedures for regulating and permitting private improvements within the public-right-of way. She indicated that staff has made further revisions to the draft Ordinance since the item was previously discussed, and staff is recommending that the Commission forward the Ordinance to the City Council for their review. She pointed out that there is a provision included that the Ordinance be reviewed by the Commission and City Council one year after its adoption. She said that further revisions to the Ordinance by staff include that an exception be granted for retaining wall heights in instances where a new development would bring down the grade along their sides; that vegetation, including trees, be a maximum of 42 inches as measured from the walk-street grade; that the height of useable surfaces in the rear half of the encroachment area be 36 inches above the adjacent walk-street grade or 12 inches above natural grade; that useable surfaces be prohibited within the right-of-way on vehicular streets; that the sidewalk dining program pertains to the traditional public sidewalk; and that the language remain in the restoration in the public right-of-way remain as written.

#### Audience Participation

There was no one in the audience wishing to speak on the item.

#### Commission Discussion

Regarding 7.36.030 on page 2 of the Ordinance, Commissioner Saunders stated that he would like clarification of the language in the Ordinance to state that no outdoor tables would not be placed on the sidewalk in front of the encroachment area.

Regarding 7.36.040 on page 3 of the Ordinance, Commissioner Saunders suggested that the intent that both the Director of Public Works and the Director of Community Development need to sign off to issue encroachment permits be made more clear.

In response to a comment from Commissioner Saunders regarding Items A and B under 7.36.060, Senior Planner Lackow suggested that item A be revised to read "... such cost shall be a lien upon the permittee's adjacent property."

Commissioner Miller requested that the language be clarified with the City Attorney.

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Commissioner Saunders requested that the same change as to 7.36.060 defining permittee's property also be applied to 7.36.105 on the first paragraph of page 5.

Regarding 7.36.110, Commissioner Saunders requested that the time allotted to respond to a notice of a decision revoking an encroachment permit be lengthened from 10 days to 10 working days in order to allow the permittee sufficient time to request an appeal.

Regarding 7.36.150, item E under "General Standards," Commissioner Ackland commented that she would prefer that the word "avoided" be revised.

Regarding the sidewalk dining encroachment permits on page 8, Commissioner Miller commented that he feels the language of the Ordinance extends the standard for sidewalk dining outside the area covered by the downtown strategic plan. He indicated that there is a presumption in the Ordinance that the commercial owner outside the downtown area would have the same standard for sidewalk dining as has been deemed appropriate for businesses within the area covered by the Downtown Strategic Plan. He commented that he feels that allowing sidewalk dining outside the downtown area is a decision for the City Council.

Commissioner Saunders commented that he would have a large concern if sidewalk dining were expanded beyond the downtown area.

#### **Action**

A motion was MADE and SECONDED (Miller/Ackland) to **APPROVE** forwarding of the draft Ordinance along with the comments of the Commissioners.

AYES: Ackland, Liggett, Miller, Saunders  
NOES: None  
ABSENT: Davy  
ABSTAIN: None

The Commissioners agreed to discuss items 6 and 7 on the agenda prior to the discussion of Sand Dune Park.

#### **6. Encroachment Permit Appeal – 225 8<sup>th</sup> Street**

Management Analyst Osborne summarized the staff report. He indicated that the proposal does not meet the encroachment standards and cannot be approved administratively because the home sits well above the level of the walk-street. He indicated that nonconformities on the site include a series of retaining walls at the west end of the property which exceed the height limit of 32 inches above the walk-street and a series of steps located within City property. He indicated that the nonconformities are necessary because of the terrain of the site, and staff feels there is justification for approving the appeal. He commented that staff does not see a large amount of liability with the steps.

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He also stated that staff received a letter from the neighbor of the property above the subject lot which indicates that he does not object to the retaining walls exceeding the height limit. He indicated that staff supports the proposal as submitted.

### **Audience Participation**

**Arpad Pallai**, 218 8<sup>th</sup> Street, indicated that there are no measures that could be done to bring the walls into conformance, and he does not feel the retaining walls are detrimental to the neighbors.

**Chris Griffin**, 225 8<sup>th</sup> Street, said that the request would allow him to preserve the property. He commented that the proposal is not detrimental to any of the neighbors, and they wish to have the retaining walls in order to provide a flat area for a yard.

Management Analyst Osborne commented that the fact that the neighbors support the proposal lessens staff's concerns.

In response to a question from Commissioner Miller, Mr. Griffin said that he would agree to trim the two trees referred to in the letter of **William and Patricia Citta**, the residents at 229 8<sup>th</sup> Street.

### **Action**

A motion was MADE and SECONDED (Miller/Ackland) to **APPROVE** the Encroachment Permit Appeal with the condition that the applicant agree to trim the two trees referenced in the letter of residents at 229 8<sup>th</sup> Street.

AYES: Ackland, Liggett, Miller, Saunders  
NOES: None  
ABSENT: Davy  
ABSTAIN: None

### **7. Request for Installation of Red Zone – 44<sup>th</sup> Street**

Management Analyst Osborne summarized the staff report. He said that the City received a request for installation of a red zone on the south side of 44<sup>th</sup> Street adjacent to 122 ½ 44<sup>th</sup> Street. He commented that the request was brought by a resident on the north side of 44<sup>th</sup> Street who feels that it is extremely difficult for him to maneuver his car out of his driveway when vehicles are parked across the street. He said that the City staff's internal parking committee determined that the system in place to limit parking on 44<sup>th</sup> Street is sufficient and recommended denial of the request for the red zone. He stated that a petition was then filed, and the item has been brought before the Commission for consideration of an appeal.

### **Audience Participation**



City Hall

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Manhattan Beach, CA 90266-4795

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## PUBLIC HEARING NOTICE

**Re: Proposed Ordinance 2039, amending the Manhattan Beach Municipal Code and Local Coastal Plan Implementation Program Regarding Encroachment Permits**

The City Council of Manhattan Beach will conduct a public hearing regarding a proposed ordinance that would amend Chapter 7.36 of the Manhattan Beach Municipal Code and Chapter 3 of the Implementation Program of the Manhattan Beach Local Coastal Plan regarding Encroachment Permits. The purpose and intent of the proposed ordinance is to codify existing design standards and permit procedures for various private improvements that property owners request to construct or install within the public right-of-way adjoining their private property. The encroachment regulations are applicable to right-of-way throughout the city, including the coastal zone. Examples of such encroachments include:

- Residential improvements located on walk-streets and vehicular streets. Such improvements, include, but are not necessarily limited to: fences, walls, patios, decks, walkways and landings and landscape planting.
- Commercial building projections, such as awnings, signs and architectural elements.
- Restaurant dining on sidewalk adjacent patios or portions of public sidewalks.

The proposed ordinance is exempt from the requirements of the California Environmental Quality Act based on a determination that it has no potential for having a significant effect on the environment. The proposed amendment is considered a minor modification of existing regulations and standards.

The public is invited to attend the hearing and give input to the City Council.

The hearing will be held:

November 19, 2002  
City Council Chambers, City Hall  
1400 Highland Avenue  
6:30 p.m.

Further information :

Contact Rosemary Lackow, Senior Planner  
 (310) 802-5515, e-mail: [rlackow@cityymb.info](mailto:rlackow@cityymb.info)  
 The project file is available for review at the Community Development Department at City Hall. A staff report will be available for review at the Civic Center Library on Saturday, 11/16/02 or at the Community Development Department on Monday, 11/18/02 or city website: <http://www.cityymb.info>

Liza Tamura, City Clerk  
 Notice dated: October 25, 2002

Fire Department Address: 400 15<sup>th</sup> Street, Manhattan Beach, CA 90266 FAX (310) 802-5201  
 Police Department Address: 420 15<sup>th</sup> Street, Manhattan Beach, CA 90266 FAX (310) 802-5101  
 Public Works Department Address: 3621 Bell Avenue, Manhattan Beach, CA 90266 FAX (310) 802-5301  
 City of Manhattan Beach Web Site: <http://www.ci.manhattan-beach.ca.us>

