

ORDINANCE NO. 20-xxxx

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH  
AMENDING MUNICIPAL CODE CHAPTER 7.36 OF TITLE 7  
REGARDING PRIVATE USE OF THE PUBLIC RIGHT OF  
WAY

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

SECTION 1. Section 7.36.030 (Permit Required) of Chapter 7.36 is hereby amended to read as follows:

“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. Any work performed in the public right of way requires a separate permit pursuant to the requirements set forth in Chapter 7.16 of this Code.”

SECTION 2. Section 7.36.050 (Director of Public Works Authority) of Chapter 7.36 is hereby amended to read as follows:

“The Director of Public Works shall have the authority to prohibit or limit the placement of new or additional encroachments 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.”

SECTION 3. Section 7.36.060 subsection (B)(1) of Chapter 7.36 is hereby amended to read as follows:

“1. That the encroachment shall be removed or relocated with complete restoration of the area to its original condition in accordance with City standards or at the direction of the City Engineer 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;”

SECTION 4. Section 7.36.065 subsection (E) of Chapter 7.36 is hereby amended to read as follows:

“The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the street, sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.”

SECTION 5. Section 7.36.065 subsection (F) of Chapter 7.36 is hereby amended to read as follows:

“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).”

SECTION 6. Section 7.36.150 subsection (A) of Chapter 7.36 is hereby amended to read as follows:

**“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 Section 7.32.080(E) of the Municipal Code. Artificial landscape materials, except artificial turf grass approved by the Director of Community Development, are prohibited.
3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of thirty inches (30”) 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 four and seven inches (4" to 7") in height and spaced a minimum of three feet (3') apart, are not permitted in the public right of way. Steps and Stairs that lead to and/or function as primary access to a building/facility cannot be located within any encroachment area/public right of way.  
**Exception.** One (1) set of steps comprised of three (3) 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."

**SECTION 7.** Section 7.36.150 subsection (D) of Chapter 7.36 is hereby amended to read as follows:

**"Vehicular Street Standards:**

1. Street improvements, including (but not necessarily limited to) sidewalks, curbs, gutters, parking pads and paving may be required by the Public Works Department for the purpose of maintaining or improving conditions related to drainage, visibility, access, maneuverability or public parking, and, if required, shall be constructed in compliance with City standards.
2. Fences and walls are permitted as follows:
  - a. Location. Compliance is required with Public Works Department standards established in MBMC 9.72.015. A minimum set back of either two feet (2') or four feet (4') is required behind existing or required street improvements, depending on the existing and/or planned public street improvements.
  - b. Height. Fences and walls may not exceed a maximum height of forty-two inches (42"), measured from the existing public right of way grade at the fence or wall location. Open-design fences or guard rails required by the Building Official to exceed the forty-two inch (42") maximum height are allowed on top of retaining walls if necessary to retain a neighbor's grade

at a side property line. Fences and walls located near the intersection of streets or driveways may be subject to lower height requirements to ensure traffic visibility.

3. Ground cover such as pavement (including brick or other decorative surfaces) and landscaping is permitted on the existing right of way grade. Decks or similar structures are prohibited.
4. Street Corner Visibility. To ensure visibility at street corners a thirty-six inch (36") maximum height is applicable to all fences, walls or landscape plantings within a distance of fifteen feet (15') from the street corner as per MBMC 3.40.010 (Traffic Sight Obstructions). A height less than thirty-six inches (36") may be applicable due to unusual slope conditions.
5. Significant alteration of the existing right of way grade is prohibited, unless determined to be necessary to accommodate a required public street improvement.
6. Loose gravel and similar material as determined by the Public Works Department is not permitted.
7. Drainage from a private collection system that discharges a concentrated flow shall be directed to a public vehicular street right of way location via a non-erosive device pursuant to Public Works Department standards subject to review and approval of the City Engineer.
8. Landscaping is permitted subject to approval of a landscape plan pursuant to Chapter 7.32.080 E and may be submitted with permits as set forth in Chapter 7.16 and Chapter 7.32 of this Code."

SECTION 8. Section 7.36.160 subsection (B) of Chapter 7.36 is hereby amended to read as follows:

"Title 24 of the California Government Code regarding persons with disabilities requirements for unobstructed sidewalk width (minimum forty-eight inches (48")) must be maintained at all times. Any vertical projections above the sidewalk area must have a minimum height clearance of eighty-four inches (84")."

SECTION 9. Section 7.36.170 subsection (A) of Chapter 7.36 is hereby amended to read as follows:

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 streets 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 elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.

Note: Any work performed in the public right of way requires a separate permit pursuant to the requirements as set forth in Chapter 7.16 of this Code.

SECTION 10. CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION. The City Council determines that this ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the “CEQA Guidelines”). It can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the regulations established hereby, may have a significant effect on the environment, and the action taken herein is not a “project” within the meaning of CEQA.

SECTION 11. INTERNAL CONSISTENCY. Any provisions of the Municipal Code, or any other resolution or ordinance of the City, to the extent that they are inconsistent with this Ordinance are hereby repealed, and the City Clerk shall make any necessary changes to the Municipal Code for internal consistency.

SECTION 12. SEVERABILITY. If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or their application and, to this end, the provisions of this Ordinance are severable.

SECTION 13. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

PASSED, APPROVED AND ADOPTED March 17, 2020.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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RICHARD MONTGOMERY  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk

APPROVED AS TO FORM:

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QUINN M. BARROW

City Attorney