

### 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.

- A. "Adjoining property" means the private property located immediately adjacent to the section of public right of way to be encroached upon.
- B. "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.
- C. "Director of Community Development" means the Director of Community Development of the City of Manhattan Beach or his or her designee.
- D. "Director of Public Works" means the Director of Public Works of the City of Manhattan Beach or his or her designee.
- E. "El Porto Strand Property" means a property located on the Strand between 39th Street and 45th Street.
- F. "Encroachment area" means the section of public right of way located between the property line and the edge of the walkway or roadway.
- G. "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.
- H. "Encroachment work" means the work of constructing, placing or installing an encroachment.
- I. "Engineer" means the Manhattan Beach City Engineer or his or her designee.
- J. "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.
- K. "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.
- L. "Natural grade" means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

- M. "Nonconforming" means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.
- N. "Occupy" means owning or operating any facilities that are located in rights of way.
- O. "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.
- P. "Overhead structures" means any improvement extending over a public place, right of way or street.
- Q. "Person" means any living individual, any corporation, joint venture, partnership, or other business entity.
- R. "Public walkway" means the portion of the public right of way improved and designated by the City for pedestrian travel.
- S. "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.
- T. "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 forty-four inches (44") in width that provides access from the public walkway to private property.
- U. "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. 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.

#### 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 encroachments 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 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;
  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 Homeowners 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 street, 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 three hundred feet (300') of the subject encroachment area site at least ten (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; and 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 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 functions 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.

## **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 forty-two inches (42") above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a thirty-six inch (36") maximum height (measured from adjacent curb level) is required within a distance of five feet (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 thirty-two inches (32") above the adjacent public walkway. Conditions requiring guardrails that exceed the height permitted in subsection (B)(1) above shall not be permitted.

**Exception.** Retaining walls and related required safety railing that exceed the thirty-two inch (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 pursuant to Section 7.32.080(E) and shall be 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 forty-two inches (42") 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 forty-two inches (42") 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 twelve inches (12") 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: thirty-six inches (36") as measured above or below the adjacent public walkway, or twelve inches (12") 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 forty-two inches (42") 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. **EI Porto Strand Standards:** In addition to the encroachments permitted in subsection 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 seventy-two inches (72") measured from the adjacent public walkway, provided they are accompanied by terraced landscape planters with evenly spaced retaining walls with a maximum height of thirty inches (30") each.
  - 2. Fences and walls are permitted to be a maximum height of forty-two inches (42") above the adjacent public walkway except that planter walls required in subsection (C)(1) above may have a maximum height of seventy-two inches (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 six feet (6') above adjacent curb level except that a maximum height of three feet (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.
  - 5. Landscaping is permitted subject to approval of a landscape plan pursuant to Section 7.32.080(E) and shall be submitted with an encroachment permit.
- D. **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~~ two feet (22') 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~~ shall be submitted with ~~an encroachment permits~~ as set forth in Chapter 7.16 and Chapter 7.32 of this Code.

#### 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. 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.

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 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 \(84"\)](#)
- 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 10:00 p.m. Tables and chairs must be removed from the sidewalk by 10:30 p.m.
- 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.

7.36.170 - Long-term commercial use encroachment permits.

A. 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.](#)

B. Commercial use of a walk street is prohibited. Existing long-term uses conducted on a walk street under the authority of an Encroachment Permit approved prior to January 21, 2003 may continue to operate provided the use is not expanded or intensified. Expansion of intensification includes but is not necessarily limited to: increase of floor area or expansion of hours of operation, or addition of alcohol beverage service.