

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

TO: Parking and Public Improvements Commission

FROM: Richard Thompson, Director of Community Development *UBJ FOR R.T.*
Esteban Danna, Associate Planner *ED*
Angelica Ochoa, Assistant Planner *AO*

DATE: February 28, 2013

SUBJECT: Consideration of Code Amendments Regarding the Private Use of the Public Right of Way (Encroachments)

RECOMMENDATION

Staff recommends that the Parking and Public Improvements Commission conduct a public meeting to discuss the proposed code language revisions and make a recommendation to the City Council.

BACKGROUND

As part of the City of the Manhattan Beach Strategic Plan, City Council requested that Staff review the tree regulations for walk streets per Title 7.36 of the Manhattan Beach Municipal Code (MBMC). Specifically, regulations related to view obstruction and "grandfathering" of trees. Also, as a result of review and inspections of residential encroachment developments on a regular basis, Staff has discovered that other encroachment standards need review and discussion by the Parking and Public Improvements Commission and City Council. Code language for the necessary adjustments to Title 7.36 of the Manhattan Beach Municipal Code (MBMC) as well as the Local Coastal Program (LCP) is drafted by the City Attorney and Staff and is included as Attachment A. This language is still being refined and further modifications may be required.

DISCUSSION

The amendments to Title 7 will clarify the City's right to remove existing improvements, landscaping, or trees in encroachment areas. It also provides more specificity on view and landscaping height, and adds more information on how planter grades are measured.

Rights to Encroachment Improvements, Landscaping, and Trees

It is common in Manhattan Beach for residents that live adjacent to an unimproved right-of-way area (encroachment area) to believe that they have "grandfathered" rights to private improvements, landscaping, or trees on public property. The proposed code amendment aims to clarify this common misconception.

Encroachment areas constitute private use of public property. Residents adjacent to such areas, regardless of whether or not they have an encroachment permit or entered into an encroachment agreement with the City, do not have any right to the encroachment. The City has the right to require removal of any improvement, landscaping, or trees since it is located in the public right of way. The proposed amendment language clarifies this in Section 7.36.150(A)(1-3) in Attachment A.

Views

Section 7.36.150 (9) indicates that "Obstructions to neighboring resident's scenic views shall be avoided." The language "neighboring resident's" is proposed to be deleted to broaden this standard, as suggested by the City Attorney. Additionally Section 7.36.150 (B)(3) has been revised to delete the word "resident" so that view impairment may not necessarily be limited to resident's views. Language has also been added to allow flexibility for the Director to allow landscaping greater than 42" in height if openness, scenic vistas and views are preserved. This clarifies the City's administrative procedure and allows the Director to determine if and when a scenic view is obstructed and when it is appropriate to follow through on enforcement. This also addresses the comment submitted by Planning Commissioner Paul Gross. (Attachment C).

Planter Grades

One of the purposes of the encroachment standards is to keep all private improvements to encroachment areas as low as possible, to promote views through the public right-of-way and to promote a sense of openness within the neighborhood. For this reason, grades may not be significantly artificially altered in encroachment areas. The standards allow walls in walkstreet encroachments to go up to 32 inches in height. These walls are often combined to create planters. The grade inside planters is usually filled up to the top of the planter wall, with landscaping then planted inside. The height of the combination of planter and plants can then far exceed the maximum height for landscaping (42 inches at maturity) as measured from the bottom of the wall.

In order to avoid this situation, Staff proposes to include planter grades into the definition of "usable surfaces" in Section 7.36.020. Section 7.36.150(D) is proposed to be amended as well to address the same issue on drive-street encroachments. This amendment limits the planter grade in the same manner as other grades within the encroachment area and works to achieve the goal of maintaining a low profile and promote scenic vistas.

Complaints and Appeals

As a result of previous complaints and subsequent appeals to the Parking and Public Improvements Commission (PPIC) and the City Council, Staff has discussed with the City Attorney who is eligible to file a complaint regarding an encroachment and who can file an appeal. Any member of the public may file a complaint about an encroachment area. However, Staff is responsible to determine if the complaint is valid and if encroachment standards are being violated.

When the City determines that a complaint is valid the adjacent property owner or tenant can appeal the City's action to the PPIC. Appeals are only allowed to be filed by the adjoining property owner or tenant as they are responsible for the adjoining encroachment area. No Code Amendment is required to implement this existing administrative policy and practice.

Public Input

A public notice for the proposed amendments was published in the Beach Reporter newspaper (Attachment B). Staff also emailed notice to a Community Development Department mailing list that includes approximately 70 architects, designers, contractors, and other interested parties. The City's website also sends out an email containing the PPIC's agenda to those who sign up to receive email notices. Staff received one comment from Planning Commissioner Paul Gross (Attachment C).

CONCLUSION

The purpose of the amendments to MBMC Title 7 is to clarify the City's rights over encroachment improvements, landscaping, and trees. It also simplifies and clarifies the "scenic views" language and how planter grades are measured. Staff recommends that the Parking and Public Improvements Commission conduct a public meeting to discuss and make a recommendation on the draft Code language and concepts provided by the City Attorney and Staff. The Code language is draft at this point, other Sections may also require revisions for consistency and future amendments may be presented. The recommendation will then be forwarded to the City Council for final action.

Attachments:

- A. Proposed Encroachment Amendment Language**
- B. Public Notice**
- C. E-mail comment from Paul Gross**

Proposed Encroachment Amendments

PPIC Meeting

February 28, 2013

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.

EXHIBIT A
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"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 or graded surface intended for active recreation, passive occupation or pedestrian access including but not limited to lawns, planters (including walls and soil within the planter walls), 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.

"Walk street" means a dedicated public street improved with a public walkway that is closed to vehicular traffic.

7.36.150 - Encroachment standards.

A. General Standards:

1. If the owner of adjoining property does not have a valid encroachment permit, the City may remove the encroachment at any time, at the owner's expense.
2. The owner of the adjoining property does not have any rights to existing improvements, landscaping, or trees located in the public right of way, whether or not an encroachment permit was obtained or required.
3. As noted in Section 7.36.030, a permit is required for all encroachments. The issuance of a permit does not confer any proprietary interest in the City's public property.
14. 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.
25. 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.
36. 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

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all water and sewer mains, unless otherwise approved by the Director of Public Works.

47. 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.

58. All encroachments shall be in conformance with Title 5, Chapter 5.84 of the Municipal Code pertaining to storm water pollution control.

69. Obstructions to neighboring resident's scenic views shall be avoided.

710. 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.

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.

811. 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.

912. 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. The Director of Community Development may allow landscaping greater than 42" in height if it is determined that visual openness will be provided, scenic vistas will be conserved and there is no view impairment. 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. El 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 two feet (2') is required behind existing or required 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, **including planters**, 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 shall be submitted with an encroachment permit.



AMENDMENTS TO ENCRDACHMENT DEVELOPMENT STANDARDS

The Parking and Public Improvements Commission (PPIC) will conduct a public meeting to discuss and make a recommendation to the City Council on an amendment to Title 7 (Public Works) of the Manhattan Beach Municipal Code. The amendment relates to the private use of public property such as walk streets and undeveloped areas next to vehicular streets.

PARKING AND PUBLIC IMPROVEMENTS COMMISSION

- PUBLIC MEETING -

WHEN: February 28, 2013 at 6:30 pm
WHERE: Council Chambers, City Hall
1400 Highland Avenue, Manhattan Beach

Interested parties are encouraged to attend and participate.
The Staff Report will be available at www.citymb.info
on February 22, 2013 after 5 pm.

For additional information, please contact Esteban
Danna, Associate Planner at (310) 802-5514
or email at edanna@citymb.info.

EXHIBIT B
PPIC Mtg. 2/28/13

Esteban M. Danna

From: Paul Gross <pjgross@msn.com>
Sent: Sunday, February 17, 2013 6:23 PM
To: Esteban M. Danna
Subject: Walk Streets

Esteban,

I saw the notice for a walk street encroachment review by PPIC.

Please consider modifying the 42" plant height ordinance so it is different where there are views and where there are not views. Specifically, the flat walk streets east of Crest from 10th St south to Hermosa have many full grown trees on the public property that hurt no one and probably help every property owner and maybe the city. There is no view issue here. Nearly everywhere else the 42" limit for plants and everything else is as essential to preserve views as are structure height limits. These height limits are as close as we come to a view ordinance and have significant monetary value that owners, buyers, and sellers count on.

By having the same rules in the flat section, and allowing a forest, we are weakening our ability to enforce the 42" where it is needed and makes sense. This is particularly true when there is a view issue just a few yards away from the forest on the same walk street. This typically happens as you go west across Crest. If you don't do this, someone sometime is going to ask for the forest to be cut down and then what do you do.

Thank you for considering this. I will be happy to explain some background from when I was on PPIC.

Paul

EXHIBIT C
PPIC Mtg. 2/28/13