

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

**TO:** Parking and Public Improvements Commission

**FROM:** Richard Thompson, Director of Community Development  
Esteban Danna, Associate Planner  
Angelica Ochoa, Assistant Planner

UB FOR P.T.

**DATE:** March 28, 2013

**SUBJECT:** Proposed Code Amendment Regarding the Private Use of the Public Right-of-way (Encroachments)

**RECOMMENDATION**

Staff recommends that the Parking and Public Improvements Commission (PPIC) conduct the continued public hearing and recommend that the City Council amend the Municipal Code regarding encroachments.

**BACKGROUND**

As part of the City of 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, the Council requested review of the regulations related to view obstruction and the "grandfathering" of trees.

While the Code does not require a hearing before the PPIC on such an amendment, Staff scheduled the hearing, which was continued to this meeting, to give the PPIC and the public an opportunity to provide input on proposed changes, clarifications and re-codifications of existing regulations. As a result of Staff's review and inspections of residential encroachment developments, Staff has discovered that other encroachment standards need review. Staff has drafted language for the PPIC to consider (Attachment A). Upon receiving the PPIC's recommendations, staff will present the recommendations to the City Council, as well as other clean-up language to modernize and streamline the Code.

At its February 28, 2013 regular meeting, the PPIC received public testimony and discussed the proposed changes. The Commission directed Staff to further develop the proposed language based on the public testimony and Commissioner comments.

**DISCUSSION**

The role of the Commission is to provide a forum for public comments as well as for the Commission itself to provide comments. These comments will be forwarded directly to the City Council who will determine final code language for the amendment.

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

### ***Rights to Encroachment Improvements, Landscaping, and Trees***

Encroachment areas constitute private use of public property. Adjoining residents, regardless of whether or not they have an encroachment permit or have 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.

At the prior meeting, the Commission asked Staff to clarify whether the proposed changes would be retroactive or proactive. Retroactivity / proactivity does not apply because the proposed language does not change the fact that private citizens have never been entitled to “grandfathered” rights for private improvements in the public right-of-way. The proposed language merely incorporates this concept into the Code in order to provide further clarification.

### ***Views***

Existing Section 7.36.150(A)(9) indicates that “Obstructions to neighboring resident’s scenic views shall be avoided.” The language “neighboring resident’s” is proposed to be deleted for clarification purposes. Upon discussion, the Commission felt that the word “avoided” needed to be changed to “prohibited.” Staff discussed the Commission’s recommendation but concluded that the term “avoided” has been part of the code language for many years and Staff has not encountered any problems associated with it.

Language has also been added to allow flexibility for the Director to allow landscaping greater than 42” in height if openness is promoted and scenic vistas are conserved. To further clarify what scenic vistas are, Staff added examples. These include ocean, beach, sunset, horizon, Santa Monica Bay, Santa Catalina, and the Palos Verdes Peninsula. This revision addresses some comments submitted by residents at the previous public meeting (Attachment C).

### ***Planter Grades***

Among the revisions, Staff proposes to add language that limits artificial grade alterations in encroachment areas. The definition of “usable surfaces” in Section 7.36.020 has been changed. Section 7.36.150(D) is proposed to be amended as well to address the same issue on drive-street encroachments. The Commission did not recommend further development to this section of the amendment.

### ***Complaints and Appeals***

As a result of previous complaints and subsequent appeals to the 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 notify the City about a potential Code violation in the encroachment area. Staff is responsible for determining if encroachment standards are being violated. If the City determines there is a Code violation, it will seek compliance with the Code. The adjoining property owner can appeal the City’s determination.

***Exclusive vs. Non-exclusive Use of an Encroachment***

Upon discussion, the PPIC requested additional information on whether or not the adjoining property owner holds exclusive rights to use the public right-of-way through the encroachment permit. It is the opinion of the City Attorney that the permit is exclusive to the individual or individuals who have entered into the encroachment agreement with the City.

***Public Input***

A courtesy public notice for the proposed amendments was published in the Beach Reporter newspaper as a ¼ page advertisement on March 21, 2013 (Attachment B). Publication of a public hearing continuation is not required as, by law, the Commission's motion to continue the hearing is considered sufficient notice. 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 to approximately 700 recipients containing the PPIC's agenda to those who sign up to receive email notices. Staff did not receive written comments at the writing of this report.

At its February 28, 2013 regular meeting, the Commission and some residents expressed concern that there was insufficient notice sent regarding the public meeting. The minimum notice requirements were satisfied through the newspaper advertisement and exceeded through other notifications described above.

**CONCLUSION**

The purpose of the amendments to MBMC Title 7 is to clarify the City's and public's rights over private improvements in the public right-of-way (encroachment improvements, landscaping, and trees). It also simplifies and clarifies the "scenic views" language and how planter grades are measured. Staff recommends that the PPIC conduct the continued public hearing, discuss the proposed amendments, 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 and other Sections may also require revisions for consistency. The City Council will consider the PPIC's comments as well as the public's comments in determining final code language for the amendment.

**Attachments:**

- A. Draft Encroachment Amendment Language
- B. Public Notice
- C. Correspondence

**Proposed Encroachment Amendments**

**PPIC Meeting**

**March 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.



"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.

#### **7.36.080 - 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.

## 7.36.150 - 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. This includes improvements, landscaping, or trees installed prior to the City's adoption of encroachment standards.
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 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.;~~

a. ~~The related structure on the adjoining property is significantly remodeled or reconstructed exceeding fifty percent (50%) of the total estimated cost of reconstructing the entire nonconforming structure, or~~

b. ~~Any new significant construction is proposed in the public right of way.~~

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, or with significant construction in the public right-of-way.

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.

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.

Exception. Upon application, the Director of Community Development may allow landscaping greater than 42" in height subject to conditions to ensure that visual openness is promoted and scenic vistas are conserved. In considering the application, the Director may consider views including but not limited to the following: the ocean, beach, sunset, horizon, Santa Monica Bay, Santa Catalina, and the Palos Verdes Peninsula. 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 7.36.080 of this chapter.

3. 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.
4. 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.
5. 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 ENCROACHMENT DEVELOPMENT STANDARDS**

The Parking and Public Improvements Commission (PPIC) will continue 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:** March 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](http://www.citymb.info)  
on March 22, 2013 after 5 pm.

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

**EXHIBIT B**  
PPIC Mtg. 3/28/13

Gary Osterhout

2/28/13

**Comments to PPIC on Code Amendments – Private Use of Right-of-Way**

Overall:

The city needs to put its “complaint only” policies in a formal document so everyone understands what it is, why it is used and how it is supposed to work.

Currently, most interpret it as “if its not bothering anyone, its OK.” Which is not the right approach.

Further, I was basically told that if I rescinded my complaint, the City would not enforce a very obvious encroachment. Thus, I was put in a very leveragable position over my neighbor, where I could actually negotiate the degree of encroachment on city property, so in effect I was negotiating for the city.

Actually, this all lead to a large degree of animosity between my neighbor and myself, as I could not get any guidance on the particulars from the City—despite several requests.

My study of “complaint only” policies throughout the country reflects that such policies are put in place because the City does not have the ability to identify all code infractions. So there is strict enforcement once a complaint is made. And such enforcement can’t be logically done any other way. To suggest otherwise is the city shirking its duty toward code enforcement.

But what other cities have, is a very proactive education campaign on code enforcement, so people really know what the rules are. There are also campaigns where an entire street or area is canvassed, and individuals are notified of potential violations on an educational level. City websites contain pages describing the “complaint only” policy and its particulars. In addition to the rules, they discuss the roles of the code enforcement officers, who they report to, and any grievance procedures.

**[Staff Report Section on Complaints and Appeals.]**

- A. Similarly lacking in accountability, the staff report references that “Staff is responsible to determine if the complaint is “valid.” This assertion is not in the MuniCode and I don’t know where this provision is found in any administrative documents.
  - Also, what is meant by “valid.” That is an ambiguous term without accountability. A definition of what a valid complaint is needs built into a public document. Under my interpretation of a “complaint only” construct, it would seem that a complaint is rejected only when malicious AND frivolous—not either, but both.
- B. No doubt there are interpretative differences between the Community Development Department and an encroaching resident as to the interpretation of the rules. I don’t think we currently have the structure that allows such a resident to get an adequate hearing or responsible review. The PPIC should review and comment to the Councilmember if you deem the encroachment permit application pricing of \$1,495 might be impeding our goals that a resident should get a hearing before the PPIC in such a situation.

**EXHIBIT C**  
**PPIC Mtg. 3/28/13**

- C. Rights to appeal by non-adjacent resident. The staff report says "Appeals are only allowed to be filed by the adjoining property owner or tenant as they are responsible for the adjoining encroachment area." Why doesn't someone impacted by the decision that is not the adjoining property owner have any appeal rights, and should that cost \$1,495 to get a review?

In my opinion, this all needs to be developed before you go into Code changes, because it is the fundamental structure for the whole program.

In addition, there are a lot of concepts and rules included in the City's publication "Construction and Landscaping on Public Property," that should be formally brought into the Code in whole, or the publication brought into the Code by reference. I speak specifically to the concept of "lowscape" on vehicular streets.

Specifics (generally in line with the Staff Report or proposed MuniCode changes):

#### **Rights to Encroachment Improvements, Landscaping and Trees**

1. The proposed rule does not clarify the common misconception of the belief that "grandfathered" rights exist. If clarity is desired, I would suggest putting in the specific wording that "there are no grandfathered provisions to this section." Or, "this section now and historically applies to all prior, current, existing and future encroachments."
2. The Code should specify that all rights of way are a common good, accessible by all.
3. The owner of an adjacent property on which a street tree has been historically growing should not have to incur any costs for removal, if such removal is at the pleasure of the city. If the resident wants to remove it, and the city allows that, then the resident should incur the cost.
4. I suggest that the Encroachment Standards, 150.A.11 (old #8) be reviewed. This has been controversial wording as it suggests to some that nonconforming improvements are only subject to change when the adjacent property changes. This is further complicated as there does not seem to be a nonconformity exception in the right-of-way standards (except to the extent a encroachment permit has been issued). Perhaps additional wording such as "...will absolutely be enforced regardless of complaint or existence of a prior permit."

#### **Views**

1. The term "scenic view" should be defined. Right now I am not certain of the difference between visual openness, scenic views and view impairment. Yet all three terms are used, suggesting that a difference exists and can be found. I urge precision in this usage.
2. I find the phrase "Obstructions to scenic views shall be avoided" ambiguous. What is this intended to say?
3. I disagree that the new language clarifies administrative procedures.
4. I disagree that the Director determines if and when a scenic view is obstructed and when it is appropriate to follow through on enforcement. I believe that is why the PPIC exists.



While I find it a suboptimal alternative, the rule should then be so precisely worded that the discretion is narrowed. Then there should be some transparent oversight to the decision made under such discretionary authority, as in timely reporting to, and review by, the PPIC. There is likely simple language that can cover the situation described by Paul Gross.

#### Vehicular Street Standards

1. D.5. references "Significant alternation of the existing right-of-way grade, including planters, is prohibited, unless determined to be necessary to accommodate a required public street improvement."
  - a. There needs to be some accountability/transparency behind the term "unless determined to be necessary." Example – what was allowed to be built. Should also accommodate car doors and parking.
  - b. Review "required" public street improvement—is a city street tree "required?"

Public Input. I do not understand why when we publish notices in the local newspapers we do not also do so on our city website.