

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Rob Osborne, Management Analyst

DATE: June 20, 2006

SUBJECT: Uphold the Parking and Public Improvements Commission Recommendation to Deny a Request to Maintain Basketball Goal Structures in the Public Right of Way adjacent to 558 31st Street and 568 31st Street

RECOMMENDATION:

It is recommended that the Council pass a motion to approve the Parking and Public Improvements Commission recommendation to deny the request to maintain basketball goal structures in the public right of way adjacent to 558 31st Street and 568 31st Street.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

The City's Code Enforcement Division recently received complaints regarding basketball goal structures that were permanently installed in the public right of way on 30th Street, adjacent to 558 31st Street and 568 31st Street. As the Municipal Code prohibits unauthorized encroachments into the public right of way as well as the playing of athletic activities on a public roadway, the owners of the two properties were required to remove the structures from City property. The owners each filed an appeal, seeking to maintain the goals in the public right of way. The appeals were reviewed by the PPIC at a public meeting on May 25, 2006.

The goal at 568 31st Street was recently knocked down by a post office vehicle. The owner is seeking permission to reinstall the structure.

DISCUSSION:

As described in the attached report staff does not support the appeals. By granting them the City would effectively be facilitating the use of a vehicular roadway for athletic use, primarily by children. While 30th Street is a cul-de-sac and traffic volumes are very low, the potential safety hazard associated with ball-playing in a roadway is substantial. In addition, there is no provision

for an exception from this code section. In order to grant permission for basketball playing on 30th Street, the City would have to consider amending the Municipal Code.

At the Commission meeting testimony was provided by the two appellants and three other residents. The Commission agreed with staff's findings and voted (3-0, Osterhout abstained, Lang absent) to recommend denial of the appeals.

Meeting notices were sent to all properties bordering the 500 block of 30th Street.

ALTERNATIVES:

1. **APPROVE** the recommendation of the Parking and Public Improvements Commission.
2. **REMOVE** this item from the Consent Calendar and provide staff with direction.
3. **SCHEDULE** this item for discussion at the July 5, 2006 meeting.

- Attachments:
- A. Photos of hoops
 - B. Excerpt from PPIC minutes of 5/25/06
 - C. PPIC report dated 5/25/06, with attachments
 - D. Meeting notice, 6/6/06



558 31st Street – Existing Structure



568 31st Street – Recently Damaged and Removed

Parking and Public Improvements Commission

May 25, 2006

Page 2

1. Request to Maintain Basketball Goal Structures in the Public Right of Way - 558 and 568 31st Street.

Noting the close proximity of his residence to this location, Chairman Osterhout announced he would be abstaining from discussion and action on this item.

Management Analyst Osborne presented staff's report and recommendations to deny the appeals to maintain basketball goal structures in the public right of way adjacent to 558 and 568 31st Street.

Audience Participation

David Hadley, 558 31st Street, stated that they are not asking the City to issue a permit or formally sanction the basketball hoop, but rather direct staff to just not pursue its removal. He spoke on the City's selective enforcement policy and the many other instances of non conformance, including basketball hoops, being allowed within the City. As his home is the last home before the greenbelt, the location of the basketball hoop does not interfere with through traffic and he is not aware of any neighbor opposition. He asked that the City allow common sense to prevail and not enforce the removal of this basketball hoop.

In response to questions from the Commission, Mr. Hadley clarified that if a car is parked in the parking space next to the basketball hoop, the kids don't play; that the driveway is not feasible for basketball due to its slope; that a temporary hoop would take up too much space; that installation of a basketball hoop at Sand Dune could be considered but it would be for public use; and that there are 8 foot gates that open to the greenbelt.

Jeff Di Rado, 568 31st Street, clarified that it was his basketball hoop that received the complaint. He talked of the City's selective enforcement policy, sharing that he was told this complaint was the first in the City's history, and that a petition in support of the basketball hoops was signed by 18 properties on the block. The locations of the basketball hoops allow parents to see their children safely play and guidelines and instituted hours of play are established to ensure the neighborhood is not negatively impacted. This is the safest and best location for the basketball hoops and he would appreciate it if staff "looks the other way" like they do on the many other instances throughout the City.

Sharing that he has lived on this friendly and social street for more than 30 years, **Dave Wachfogel, 31st Street**, voiced his support of retaining the basketball hoops. Children play the street all over the City and if this location can provide a sensible and safe location, let it be.

14

Parking and Public Improvements Commission

May 25, 2006

Page 3

In response to Commission Saunders, Mr. Wachfogel acknowledged the Commission's dilemma, but asked that they consider what is good for the residents.

Irene Latchford, Marine Avenue, questioned the placement of a "*Children at Play*" sign posted along Marine Avenue if the City is said to not be encouraging children to play in the street.

Traffic Engineer Zandvliet explained that the sign is not City issued and should be removed.

Sarah Geller, Blanch Road, shared that her insurance policy carries the City as an additional insured to allow encroachment for a garden, and asked if such a policy could be used in this matter.

Discussion

Commissioner Seville-Jones stated that she has viewed the area and although she wants to encourage children to play and is not troubled with the noise, she is concerned with the potential loss of parking due to location of the basketball hoop. The issue before the Commission is a compliance issue not an encroachment permit process where insurance and other matters could be addressed. As a fellow resident she is troubled by one person's complaint causing all this, but the Commission does not have the authority to approve. It would be the role of the City Council to look at alternatives to address this issue (making the street a walk street, parking reconfiguration, etc.).

Commissioner Powell stated that he would have liked to have found a way to allow the basketball hoops to remain or find some other alternative, but cannot find a legal requisite finding to allow it. The Commission is obligated to abide by the Code and it is not in their jurisdiction to waive the encroachment process. He is not inclined to approve, agreeing with Commissioner Seville-Jones that it would be in the City Council's purview to make this possible.

Commissioner Saunders voiced his agreement with his fellow commissioners, stating that the Commission cannot disregard the Code. Other creative solutions could be explored and he encouraged the parties involved to do so. Commissioner Saunders stated that he would support staff's recommendation.

Action

A motion was MADE and SECONDED (Seville-Jones/Powell) to approve staff's recommended denial of the appeals to maintain basketball goal structures in the public right of way adjacent to 558 and 568 31st Street.

AYES: Saunders, Seville-Jones and Powell

DRAFT

Parking and Public Improvements Commission

May 25, 2006

Page 4

NOES: None

ABSENT: Lang

ABSTAIN: Chairman Osterhout


DRAFT


14

CITY OF MANHATTAN BEACH

DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Parking and Public Improvements Commission

FROM: Richard Thompson, Director of Community Development 

BY: Rob Osborne, Management Analyst 

DATE: May 25, 2006

SUBJECT: Request to Maintain Basketball Goal Structures in the Public Right of Way – 558 and 568 31st Street

RECOMMENDATION

Staff recommends that the Commission recommend denial of the appeals to maintain basketball goal structures in the public right of way adjacent to 558 and 568 31st Street.

BACKGROUND

In March 2006 the City's Code Enforcement Division received complaints regarding basketball goal structures that were permanently installed in the public right of way on 30th Street, adjacent to 558 31st Street and 568 31st Street. As the City's Municipal Code prohibits unauthorized encroachments into the public right way as well as the playing of athletic activities on a public roadway, the owners of the two properties were required to remove the structures from City property. The owners each filed an appeal, seeking to maintain the goals in the public right of way. A petition in support of the appeals was signed by residents of 18 properties on the block.

The goal at 568 31st Street was recently knocked down by a post office vehicle. A portion of the support pole remained in place temporarily, but was removed by the City as it was felt to present a safety hazard. In this case the owner is seeking permission to reinstall the structure.

DISCUSSION

Staff strongly recommends denial of the appeals. The Municipal Code Sections violated by unauthorized installation of a basketball goal in the public right of way on a vehicular street are as follows:

- Section 4.12.010** Prohibits any kind of ball-playing activity on a public street.
- Section 7.36.030** Prohibits installation of structures on public property without authorization from the City through the issuance of an encroachment permit.
- Section 7.36.150** Limits the height of structures in the public right of way to a maximum of 42 inches. The basketball goals reach a maximum height of approximately nine feet.

Staff's primary concern is violation of Section 4.12.010. The area utilized to play basketball using the subject hoops is the 30th Street roadway. By granting the requested appeals the City would effectively be facilitating the use of a vehicular roadway for athletic use, primarily by children. While 30th Street is a cul-de-sac and traffic volumes are very low, the potential safety hazard associated with ball-playing in a street is substantial. It could also expose the City to a potential liability. In addition, there is no provision for an exception from this code section. In order to grant permission for basketball playing on 30th Street, the City would have to amend the Municipal Code to remove this section entirely.

In addition to concerns about athletic activities in a roadway, the presence of the structures themselves presents a potential safety issue. While the north side of 30th Street does not contain consistent sidewalks, the hoops are located in area that can be traversed by pedestrians as well as vehicles. As mentioned previously one of the hoops was recently hit and damaged by a vehicle. The complaints received by the City mentioned the goals projecting over the roadway and the occasional obstruction of a parking space as concerns. While a majority of residents in the area signed the appellants' petition, there may be other concerns that have not been voiced.

One of the appellants has commented that basketball goals in the public right of way are fairly common in Manhattan Beach. Long-standing City policy has been to enforce violations of this type on a complaint basis, rather than a proactive basis. Code Enforcement staff will pursue any other violations that are reported.

Meeting notices were sent to all properties bordering the 500 block of 30th Street.

Attachments

Photos

Letter from Jeff & Nancy Di Rado

Letter from David & Suzanne Hadley

Petition

Municipal Code section 4.12.010

Municipal Code section 7.36

Meeting notice



558 31st Street – Existing Structure



568 31st Street – Recently Damaged and Removed

14
April 24, 2006

Jeff and Nancy Di Rado
568 31st Street
Manhattan Beach, CA 90266

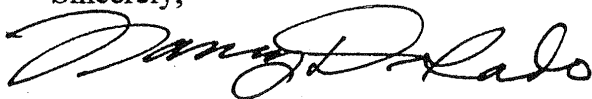
Rob Osborne
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Dear Mr. Osborne,

This letter is to formally request a hearing before the Parking and Public Improvements Commission regarding the basketball hoop we installed at the back of our home which was unknowingly installed on public property.

Find enclosed a petition signed by the residents who are directly affected by the basketball hoop. It is my understanding, per Jacqueline Harris, that the petition waves the appeal fee. We would like to present our case and the facts to the commission and request an encroachment permit.

Sincerely,



Nancy Di Rado
Jeff Di Rado

April 24, 2006

Mr. Robert Osborne
Management Analyst
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

To be hand-delivered

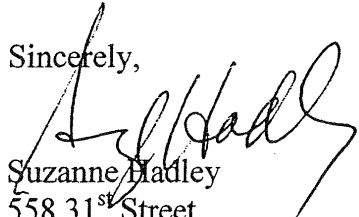
Dear Mr. Osborne:

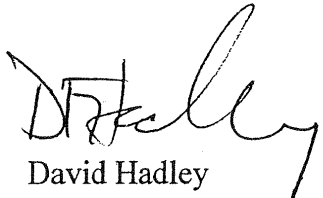
This letter represents part of the response of the undersigned to the letter dated March 30, 2006 from Jacqueline Harris to us, a copy of which is attached for your convenience. As the attached letter from Ms. Harris indicates, the city has asked us to remove a basketball hoop that we have erected behind our home on 558 31st Street. When we received the March 30 letter, we requested an extension because of the short timeline indicated in the letter and because of spring break, etc. We received an extension through April 24 over the phone from Ms. Harris.

Specifically, we would like to request a hearing with the Parking & Public Improvements Commission on this issue. In connection with our request for such a hearing, we have included with this letter a petition signed by substantially all of the residents of the affected block (that is, residents of 30th Street and of the south side of 31st Street between the "green belt" and Blanche Avenue). In this petition, all of those closest to the basketball hoops in question (at 568 31st Street and 558 31st Street) have indicated that they do not oppose the hoops.

Thank you for your attention to this matter. Given the April 24 deadline on our extension from the city on this issue, we will follow up with you shortly to ensure that you have received this. If you have any questions, please contact us per the below.

Sincerely,


Suzanne Hadley
558 31st Street
Manhattan Beach, California 90266
310-546-2722


David Hadley
hadley@dfhadley.com

cc: Ms. Jacqueline Harris (w/o attachments)



City of Manhattan Beach

Community Development

Phone: (310) 802-5500

FAX: (310) 802-5501

TDD: (310) 546-3501

March 30, 2006

David Hadley
558 31st St.
Manhattan Beach, CA 90266

RE: Structure at 558 31st St., Manhattan Beach, CA 90266

Dear Mr. Hadley:

It has come to the City's attention that you are maintaining the above referenced property in violation of the Manhattan Beach Municipal Code. Specifically, you have installed a structure in the public right of way at the rear of the above referenced property (on 30th St.) without permission from the city.

The City of Manhattan Beach is desirous of obtaining your voluntary compliance in this matter. You have 10 days from the date of this letter to remove the entire structure. However, if the structure is not removed by April 9, 2006 City's Public Works Department will remove it and bill you for the costs incurred.

If you have any questions or need any additional information, please contact me at (310) 802-5538. Thank you for your cooperation.

Sincerely,

Jacqueline Harris
Code Enforcement Officer
Community Development Department

C: Richard Thompson, Director of Community Development
Robert Osborne, Management Analyst
Robert Wadden, City Attorney
Neil Miller, Director of Public Works
Juan Price, Maintenance Superintendent

Thank you, neighbor, for reading this petition about basketball hoops in Manhattan Beach.

- We the undersigned are residents of 30th and 31st Streets in Manhattan Beach.
- We realize that both permanent and portable basketball hoops by residents in the public right-of-way are in violation of the MB municipal code.
- There are currently hundreds of basketball hoops in MB that violate the MB municipal code.
- We state our support of, or opposition to, the basketball hoops currently in place on 30th Street.

This information will be submitted to the city of Manhattan Beach as part of an appeal process to request permission for the existing hoops on 30th Street to remain in their current locations. Thank you for stating your position on these basketball hoops.

DATE	NAME	ADDRESS	PHONE NUMBER	SIGNATURE	OPOSED	NOT OPOSED
4/10/06	Suzanne Harley	558-31 st St, MB 90266	546-2722	<i>[Signature]</i>		X
4/10/06	MICHAEL SPIFFERMAN	558-30 th ST, M.B. 90266	575-1818	<i>[Signature]</i>		X
4/10/06	Karen Arensdorf	562 30 th St M.B. 90266	546-5091	<i>[Signature]</i>		X
4/10/06	JOHN ARENSDORF	" " " "	" "	<i>[Signature]</i>		X
4/10/06	Ben Sedman	570 30 th Street MB	546-2800	<i>[Signature]</i>		X
4/10/06	Steve Astate	590-30 th St. MB	545-5223	<i>[Signature]</i>		X
4/10/06	CHRIS DELMON	566 30 th St. MB	918-6601	<i>[Signature]</i>		X
4/10/06	Brian Welles	566 30 th St, MB	310-574-2644	<i>[Signature]</i>		X
4/10/06	MARK WILSON	576-30 th St MB	546-6439	<i>[Signature]</i>		X
4-10-06	Dina Wilson	576 30TH	546-6439	<i>[Signature]</i>		X

PETITION

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DATE	NAME	ADDRESS	PHONE NUMBER	SIGNATURE	OPPOSED	NOT OPPOSED
4/10/06	JOSEPH ERNEST	582 30th MB	310-545-8373	<i>Joseph Ernest</i>		X
4/10/06	JOHN SIDNEY	584 30th ST MB	310-545-0436	<i>John Sidney</i>		X
4.10.06	BRIAN DUNNE	560.31st St. MB	310.546.6444	<i>Brian Dunne</i>		X
4/10/06	Debbie Seider	570 30th St. MB	620-546-2801	<i>Debbie Seider</i>		X
4.10.06	KATHLENE SOLOMON	570 31st St MB	310-200-7790	<i>Kathlene Solomon</i>		X
4-10-06	DAVID SOLOMON	570 31st ST MB	310 546 1686	<i>David Solomon</i>		X
4-10-06	Nancy Di Rado	568 31st St MB	310 545 7986	<i>Nancy Di Rado</i>		X
4-10-06	JEFF DiRADO	568 31st ST MB	310 545 7488	<i>Jeff DiRado</i>		X
4/11/06	Patrick McDivitt	566 31st St MB	310-546-4541	<i>Patrick McDivitt</i>		X
4/11/06	Frankie Read	586 30th St MB	310 545 3898	<i>Frankie Read</i>		X

FKREAD@aol.com

PETITION

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DATE	NAME	ADDRESS	PHONE NUMBER	SIGNATURE	OPPOSED	NOT OPPOSED
4/11/06	Tom Tourant	582 31st Street	546 5204	<i>[Signature]</i>		X
4/11/06	Janelle Darnest	583 31st Street	546-5204	<i>[Signature]</i>		X
4/12/06	DAVID HADLEY	558 31st Street	546-2722	<i>[Signature]</i>		X
4/13/06	JUDITH MAYER	562-31st St	545-8263	<i>[Signature]</i>		X
4/18/06	Gina Smith	586 31st St	545-7100	<i>[Signature]</i>		X
4/18-06	JAN SMITH	586 31st St	555-7100	<i>[Signature]</i>		X
4-18-06	P. Shohin	568 30th St	498-0440	<i>[Signature]</i>		X
4-18-06	S. SHAFAT M	568 30th St	498-0442	<i>[Signature]</i>		X
4/19/06	JAY PATRICK	584 31st	546-9972	<i>[Signature]</i>		X
4/19/06	Laurie Patrick	584-31st	546-2972	<i>[Signature]</i>		X

Chapter 4.12**AMUSEMENTS—BALL PLAYING****Sections:****4.12.010 Places to play ball defined.****4.12.010 Places to play ball defined.**

It shall be unlawful for any person to throw, bat, catch or kick, dribble, shoot, put, putt, or drive any baseball, hardball, softball, football, soccer ball, tennis ball, basketball, shotput, golf ball or any kind of ball-like device which is used primarily in athletic activity on any public street, place or alley in the city; provided, however, that the provisions of this chapter shall not apply to any public ball field or public ball ground in any public park or playground in the city or to any "walk street" as defined in Section 14.01.070 of this Code.

(§ 1, Ord. 386, as amended by § 1, Ord. 924, eff. October 4, 1962; § 1, Ord. 1323, eff. September 6, 1973; §2, Ord. 2044, eff. March 4, 2003)

Chapter 7.36

PRIVATE USE OF THE PUBLIC RIGHT OF WAY

Sections:

7.36.010	Scope and intent.
7.36.020	Definitions.
7.36.030	Permit required.
7.36.040	Initiation.
7.36.050	Director of Public Works Authority.
7.36.060	Permit conditions.
7.36.065	Required findings.
7.36.070	Issuance.
7.36.080	Appeals.
7.36.090	Time limit.
7.36.100	Inspection.
7.36.105	Restoration of public right of way.
7.36.110	Revocation.
7.36.120	Enforcement.
7.36.140	Other permits.
7.36.150	Encroachment standards.
7.36.160	Sidewalk dining encroachment permits.
7.36.170	Long-term commercial use encroachment permits.

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.020 Definitions.

“Adjoining property” means the private property located immediately adjacent to the section of public right of way to be encroached upon.

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

“Director of Community Development” means the Director of Community Development of the City of Manhattan Beach or his or her designee.

“Director of Public Works” means the Director of Public Works of the City of Manhattan Beach or his or her designee.

“El Porto Strand Property” means a property located on the Strand between 39th Street and 45th Street.

“Encroachment area” means the section of public right of way located between the property line and the edge of the walkway or roadway.

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

“Encroachment work” means the work of constructing, placing or installing an encroachment.

“Engineer” means the Manhattan Beach City Engineer or his or her designee.

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

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

“Natural grade” means a straight line from the edge of the improved public walkway/roadway grade to the existing front property line grade.

“Nonconforming” means a previously permitted and constructed improvement which is not consistent with the standards of this chapter.

“Occupy” means owning or operating any facilities that are located in rights of way.

“Open design fence” means a fence where the primary fence material is transparent and colorless, or the open spaces between the solid segments are equal to or exceed the size of the solid segments.

“Overhead structures” means any improvement extending over a public place, right of way or street.

“Person” means any living individual, any corporation, joint venture, partnership, or other business entity.

“Public walkway” means the portion of the public right of way improved and designated by the City for pedestrian travel.

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

“Usable surface” means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding 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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.050 Director of Public Works Authority.

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

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.060 Permit conditions.

- A. **Discretionary Conditions.** The Director of Community Development shall have the authority to condition or restrict the permit in any way which shall protect the public health and welfare. The Director of Community Development reserves the right to require phasing of construction projects or limit the hours of construction to reduce the adverse impacts on the public health, safety and welfare. The Director of Public Works has the authority to approve or reject a method of excavation or other construction methodology.
- B. **Mandatory Conditions.** In granting an encroachment permit under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:
1. That the encroachment shall be removed or relocated by the permittee at no cost to the City upon thirty (30) days' written notice to the permittee from the City, and should any cost be incurred by the City in the removal of such encroachment, such cost shall be a lien upon the permittee's adjacent real property;
 2. That the encroachment and permit restrictions, conditions or limitations serving the adjoining property shall be recorded as a covenant, and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest. The covenant shall be disclosed whenever title is transferred;
 3. That a certificate of insurance in amounts and form satisfactory to the City Risk Manager shall be filed with the City upon the granting of the encroachment and shall be maintained in good standing at all times so long as the encroachment exists, releasing the City from any and all liability whatsoever in the granting of such encroachment.
 4. That the applicant shall expressly agree to each of the conditions imposed, including any which may be in addition to the foregoing, as a prerequisite to the granting of the encroachment by the City.

- 7.36.065
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.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.065 Required findings.

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

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

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.150 Encroachment standards.

A. General Standards:

1. Structures as defined by the City's Building Code or other encroachments are prohibited from encroaching within the public right of way unless in compliance with these standards or approved by the City Council.
2. Landscaping is permitted without an encroachment permit in accordance with an approved landscape plan pursuant to Chapter 7.32 of the Municipal Code. Artificial landscape materials are prohibited.
3. Utility obstructions shall be avoided so as to maintain access to underground utilities. A minimum of 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.
Exception. One 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 (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 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

- 71
- 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 (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 (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.

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 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.

(§ 1, Ord. 2039, eff. February 18, 2003)

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.
- 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.).



City Hall

1400 Highland Avenue

Manhattan Beach, CA 90266-4795

Telephone (310) 802-5000

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May 11, 2006

***** PUBLIC MEETING NOTICE *****

Re: Basketball Goals – 30th Street

Dear Resident/Property Owner:

In response to complaints, the City recently required removal of basketball goals that were permanently installed in the public right of way on 30th Street, adjacent to 558 and 568 31st Street. The City's Municipal Code prohibits unauthorized encroachments on public property as well as the playing of athletic activities on a public roadway. The owners of the two properties have each filed an appeal, seeking to maintain or replace the goals in the public right of way.

The appeals will be reviewed by the Parking and Public Improvements Commission at a public meeting on Thursday, May 25, 2006. The meeting will be held in the City Council Chamber, 1400 Highland Avenue, and will begin at 6:30 p.m. Interested parties are encouraged to attend the meeting and provide input.

If you have any questions or would like additional information, please call 802-5540 or E-mail rosborne@citymb.info

Sincerely,

Rob Osborne
Management Analyst
Community Development Department



14

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795

Telephone (310) 802-5000 FAX (310) 802-5001

June 6, 2006

***** PUBLIC MEETING NOTICE *****

Re: Basketball Goals – 30th Street

Dear Resident/Property Owner:

On May 25, 2006, the Parking and Public Improvements Commission reviewed requests to maintain basketball goal structures in the public right of way on 30th Street, adjacent to 558 and 568 31st Street. The Commission voted to recommend denial of the requests.

The City Council will review this recommendation at a public meeting on Tuesday, June 20, 2006. The meeting will be held in the City Council Chamber, 1400 Highland Avenue, and will begin at 6:30 p.m.

The issue will be on the portion of the agenda known as the “Consent Calendar”, meaning that it will not automatically be discussed. If it is not requested to be discussed by either a member of the audience, a City staff person or a Councilmember, the recommended action will be approved without discussion. At a point at the beginning of the meeting the Mayor will ask the audience if they would like any items to be removed from the Consent Calendar. If you do not agree with the recommended action for this item, be sure to request that it be removed at that time. It will then be discussed during the portion of the agenda entitled “Items Removed from the Consent Calendar”, toward the end of the meeting.

If you would like any additional information please call 802-5540.

Sincerely,

Rob Osborne
Management Analyst
Community Development Department