

Appendix A – Oceanfront Encroachment Policy (New)

CLUP Polices Implemented
Coastal Land Use Plan Policy
3.1.3-2. Continue to restrict the nature and extent of improvements that may be installed over public rights of way on the oceanside of beachfront residences and to preserve the City's right to utilize oceanfront street easements for public projects.
3.1.3-3. Limit the maximum oceanward extent of encroachments to the following encroachment zones:
A. Santa Ana River to 52nd Street. A maximum of 15 feet oceanward of the rear (ocean facing) property line within the oceanward prolongation of the side property lines.
B. 52nd Street to 36th Street. A maximum of 10 feet oceanward of the rear (ocean facing) property line within the oceanward prolongation of the side property lines.
C. 36th Street to E Street. Between A Street and a point 250 feet southeast of E Street, up to the inland edge of the Oceanfront Boardwalk (7 to 8 feet oceanward of the rear property line) and within an oceanward prolongation of the side property lines.
D. E Street to Channel Road. No encroachments are permitted from a point 250 feet southeast of E Street to Channel Road, with the exception of landscaping trees existing prior to October 22, 1991 and groundcover.
3.1.3-4. Limit encroachments within encroachment zones as follows:
A. Prohibit any structural, electrical, plumbing or other improvements that require issuance of a building permit.
B. Prohibit pressurized irrigation lines and valves.
C. Prohibit any object that exceeds 36 inches in height, with the exception of landscaping.
D. Prohibit any encroachments that impact public access, recreation, views and/or coastal resources.
E. Require landscaping to be designed and maintained to avoid impacts to public access and views.
F. Restrict landscaping in dune habitat areas to native vegetation.
3.1.3-5. Require annual renewal of encroachment permits and a fee.
3.1.3-6. Require encroachment permits to specify that the property owner waives and gives up any right to contest the validity of the oceanfront street easement, and that the encroachment permit is revocable, without cause, if the City proposes to construct public improvements within that zone.
3.1.3-7. Require encroachment permits to specify that the construction of any seawall, revetment or other erosion control devices, if necessary, shall occur within, or as close as feasible to, private property.
3.1.3-8. Incorporate into the implementation plan regulations specifying the types of improvements permitted within encroachment zones, a prohibition on improvements that could impair or restrict public access or views, procedures for the encroachment permit applications, City administration of the policy, and other appropriate provisions.
3.1.3-9. As mitigation for any impact on beach access resulting from the encroachments:
A. Maintain 33 street ends between 36th Street and Summit to provide an average of 2 parking spaces per street, and additional spaces where feasible.
B. Meter West Newport street end parking spaces in the same manner as the West Newport Park in order to encourage public use of the spaces.
C. Maintain a hard surface walkway perpendicular to Seashore Drive at Orange Avenue. The walkway shall extend oceanward a sufficient distance to allow a view of the surfline by an individual seated in a wheelchair. At least one handicapped parking space shall be designated at the Orange Avenue street end and at least one other handicapped parking space at one other West Newport street end.
D. Require a minimum of 85 percent of the fees generated by encroachments will be used for the construction and maintenance of improvements which directly benefit the beach-going public such as parking spaces, restrooms, vertical or lateral walkways along the beach and similar projects.

INTENTIONALLY LEFT BLANK

Appendix A – Oceanfront Encroachment Policy

- I. **Purpose.** This document establishes a procedure for approval of permitted encroachments, removal of prohibited encroachments, limiting the extent of encroachments, and clarification of improvements permitted within each encroachment zone.

- II. **Definitions.** For the purpose of this Section, the following words and phrases shall be defined as specified below:
 - A. Existing encroachment shall mean any encroachment or improvement installed or constructed before May 31, 1992.
 - B. New encroachment shall mean any encroachment or improvement installed or constructed after May 31, 1992.
 - C. Improvements or Encroachments shall mean any object or thing:
 1. Within or oceanward of any encroachment zone described in this policy;
 2. Within or oceanward of the north edge of the Oceanfront Boardwalk, between 36th Street and A Street; or
 3. Oceanward of any residential parcel from a point 250 feet southeast of E Street to Channel Road.
 - D. Encroachment permit shall mean the permit issued by the Public Works Director authorizing the maintenance or installation of encroachments or improvements within the encroachment zones described in this policy.
 - E. Application shall mean any application for an encroachment permit pursuant to the provisions of this policy and the Local Coastal Program.
 - F. Oceanfront Boardwalk, Oceanfront Walk, or sidewalk, shall mean the concrete walkway along the oceanside of ocean front residential properties between 36th Street and a point approximately 250 feet southeast of E Street.

- III. **Encroachment Zones.** Subject to compliance with the provisions of this policy:
 - A. The owner of any ocean front residential parcel between the Santa Ana River and 52nd Street may install improvements on the oceanside of the parcel up to a maximum of 15 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.

- B. The owner of any oceanfront residential parcel between 52nd Street and 36th Street may install improvements on the ocean side of the parcel up to a maximum of 10 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel.
- C. The owner of any oceanfront residential parcel between A Street and a point 250 feet southeast of E Street install improvements up to the sidewalk and within an oceanward prolongation of the property lines on the side of the parcel.

IV. **Prohibited Encroachments.**

- A. Encroachments and improvements are prohibited oceanward of private property between 36th Street and A Street provided, however, the northerly edge of Oceanfront Boardwalk in this area is not always coincident with the oceanward private property line and improvements northerly of the north edge of the sidewalk are not considered encroachments or prohibited by this policy.
- B. Encroachments, including irrigation systems, and improvements are prohibited oceanward of any ocean front parcel from a point 250 feet southeast of E Street to Channel Road, provided existing trees which have been planted and maintained in conformance with City Council policy, and ground cover such as ice plant or indigenous plants are not considered to be an encroachment, and will not require a permit pursuant to this policy, but the City reserves the right to remove, trim or otherwise, control the type and extent of any such landscaping.
- C. Any existing encroachment or improvement for which no application has been filed on or before May 31, 1992, and any new encroachment or improvement for which no application is filed prior to installation is prohibited.
- D. Any new or existing encroachment or improvement which, on or after July 1, 1992, is not in conformance with this policy is prohibited.
- E. Any new or existing encroachment or improvement for which there is no valid permit.

V. **Permitted Encroachment/Improvements.** Subject to compliance with the provisions of this policy, the following improvements are permitted within the encroachment zones described in Section III:

- A. Patio slabs or decks no higher than six inches above grade or the finished floor grade of the adjacent residence. The Public Works Director may approve minor dimensional tolerances for patio slabs and decks only upon a finding that the improvement is consistent with the spirit and intent of this policy and the cost of strict compliance is disproportionate to the extent of the nonconformity. Determination of grade will be made as provided in Section X.
- B. Walls and/or fences less than 36 inches in height above grade or the finished floor grade of the existing residence. The Public Works Director may approve minor dimensional tolerances for walls and/or fences upon a finding that the improvement is consistent with the spirit and intent of this policy and the cost of

strict compliance is disproportionate to the extent of the nonconformity. Determination of grade will be made as provided in Section X.

- C. Existing improvements which were constructed in conjunction with development for which a building permit was issued may be approved by the Public Works Director upon a finding that the improvement is consistent with the spirit and intent of this policy and the cost of strict compliance is disproportionate to the extent of the nonconformity.
- D. In no event shall the Public Works Director approve a permit for an encroachment or improvement that varies more than 12 inches from the horizontal dimensional standards of this policy.

VI. Prohibited Improvements.

- A. Except for perimeter walls and/or fences less than 36" in height, any structural, electrical, plumbing or other improvements which require issuance of a building permit.
- B. Pressurized irrigation lines and valves.
- C. Any object which exceeds 36 inches in height, exclusive of the following:
 - 1. Trees planted by the City of Newport Beach or private parties pursuant to written policy of the City Council of the City of Newport Beach; or
 - 2. Any landscaping or vegetation within the encroachment zone subject to the following:
 - a) The vegetation or landscaping was installed prior to the first effective date of this policy;
 - b) The vegetation or landscaping does not block views from adjoining property;
 - c) The vegetation or landscaping does not function as screen planting as defined in Tire 20 of the Newport Beach Municipal Code; and
 - d) The vegetation or landscaping does not impair or affect the health, safety or welfare of persons using the oceanfront Walk, nearby property owners, or residents of the area.
 - e) New plant materials that have been approved under a separate California Coastal Commission permit.

Notwithstanding the provisions of this Subparagraph, the City reserves the right to reduce the height of any existing landscaping at any time, upon a determination by the Public Works Director, and after notice to the owner of property on which the vegetation or

landscaping exists, that a reduction in height is necessary or appropriate given the purposes of this policy.

VII. **Permit Process.**

- A. An encroachment permit shall be required for all permitted improvements. The application shall be filed with the Public Works Department on a form provided by the City. The application shall be signed by the owner of the property, or an agent of the owner if the application is accompanied by a document, signed by the owner, granting the agent the power to act for the owner with respect to the property. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed improvements and objects within the encroachment zone. Applications with incomplete information and/or inadequate drawings will not be accepted.
- B. Applications for existing encroachments must be filed on or before May 31, 1992. Applications for new encroachments shall be filed before any encroachment or improvement is installed. No new encroachments or improvements shall be installed without an encroachment permit.
- C. Upon receipt of the application, the Public Works Director shall, within fifteen (15) days after the date of filing, determine if the application is complete or if additional information is necessary or appropriate to an evaluation of the application. In the event the application is incomplete or additional information is necessary, written notice to that effect shall be sent to the property owner within twenty (20) days after the application is filed.
- D. With respect to applications for existing encroachments, an inspection shall be conducted of all improvements within the encroachment zone before a permit is issued by the Public Works Director. With respect to applications for new encroachments, an onsite inspection will be conducted after installation of the improvements to insure conformity with provisions of the permit and this policy.
- E. The Public Works Director shall approve the permit upon a determination that the encroachments proposed to be constructed, or to remain, are permitted by this policy, the applicant has agreed to abide by all of the terms and conditions imposed on the permit, and the applicant has paid all fees required by this policy.
- F. The Public Works Director shall have the authority to condition his/her approval of the encroachment permit as necessary or appropriate to insure compliance with the provisions of this policy. The Public Works Director shall have the specific authority to condition approval of an encroachment permit on the removal of nonconforming improvements within a specified period of time.
- G. The Public Works Director shall notify the applicant of his/her decision within sixty (60) days after the application is filed and the decision of the Public Works Director shall be final.

VIII. **Term.**

- A. Except as provided in this Section, annual encroachment permits shall expire on June 30 of each calendar year.
- B. Encroachment permits issued prior to June 30, 1992 shall expire June 30, 1993.

IX. **Renewal.**

- A. Annual renewal fees shall be due and payable on or before May 31 preceding the annual term of the permit. For example: Annual renewal fees due on May 31, 2001, are for the period July 1, 2001 through June 30, 2002.
- B. The Public Works Director shall approve annual renewal if:
 - 1. The applicant has complied with all standard and special conditions of approval;
 - 2. The applicant has constructed only those improvements and encroachments authorized by the permit;
 - 3. The applicant is in compliance with all of the provisions of this policy.

X. **Standard Conditions.**

- A. The Public Works Director shall impose standard conditions of approval on all encroachment permits. These standard conditions shall include, without limitation, the following:
 - 1. The obligation of permittee to comply with all of the provisions of this policy and all conditions imposed upon the permit.
 - 2. The right of the Public Works Director to revoke any permit after notice and hearing if the permittee is in violation of this policy or conditions to the permit.
 - 3. The right of the City to summarily abate encroachments or improvements which are prohibited by this policy or conditions on the permit upon ten (10) day's written notice.
 - 4. The obligation of permittee to pay all costs incurred by the City in summarily abating any prohibited improvement.
 - 5. The obligation of permittee to defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of the improvements or encroachment.
 - 6. Permittee's waiver of any right to contest the City's street and public access easement over property within or oceanward of the encroachment zones.

7. The right of the Public Works Director or his designee to inspect improvements within the encroachment zone without notice to the permittee.
 8. The right of the City to cancel or modify any, or all, encroachment permit(s) upon a determination by the City Council to construct a public facility or improvement within or adjacent to the encroachment zone.
- B. The construction of any seawall, revetment or other device necessary to control erosion, shall occur as close to private property as feasible.
- Erosion control devices shall not be placed or installed closer to the ocean to protect improvements or encroachments.
- C. The Public Works Director may impose additional standard conditions necessary or appropriate to insure compliance with, or facilitate City administration of this policy.

XI. Determination of Grade.

- A. The nature of the beach makes a precise determination of grade difficult. The level of the sand changes with wind, storm, and tidal conditions. The Public Works Director shall determine the level from which the height of encroachments and improvements is to be measured. In making this determination, the Public Works Director shall consider the following criteria:
1. The existing grade in the area;
 2. Finished floor elevation or grade of the adjacent residence;
 3. The elevation of existing encroachments on site and on adjacent properties;
 4. Any data on the historic elevation of the beach in that area.

XII. Annual Fee.

- A. The fees based on the depths of encroachment shown below shall be established by resolution of the City Council and paid annually as a condition of the issuance of encroachment permits:

Depth of Encroachment

0 - 5 feet
 5 - 7-1/2 feet
 7-1/2 - 10 feet
 10 - 15 feet

- B. For purposes of determining fees, the average depth of the encroachment shall be used. However, the maximum depth shall not exceed the limitations specified in

Section III. A dimensional tolerance not to exceed 12 inches may be allowed in determining the appropriate fee to be paid by persons with existing encroachments.

- C. The annual fee shall be due and payable upon submittal of the application for the initial encroachment permit. Renewal fees shall be due May 31 of each year. The fee shall be considered delinquent thirty (30) days thereafter. Delinquent fees shall be established by resolution of the City Council.
- D. The annual fee shall be used to defray City costs of administration, incidental costs of improvements on street ends along the oceanfront, and incidental costs to enhance public access and use of the ocean beaches. At least eighty-five (85%) percent of the fees shall be used by the City to implement the mitigation plan.

XIII. Violations/Remedy.

- A. The City shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event a permit-tee is in violation of the provisions of this policy or any condition to the permit, or any encroachment or improvement violates the provisions of this policy:
 - 1. Revoke the permit after giving the permittee notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation of this policy. The Public Works Director shall establish the specific procedures designed to insure that permit-tee receives due process of law.
 - 2. Summarily abate any encroachment or improvement violative of this policy after giving the permittee or property owner ten (10) day's written notice of its intention to do so in the event the permittee or property owner fails to remove the encroachment or improvement. The permittee or property owner shall pay all costs incurred by the City in summarily abating the encroachment or improvement. The determination of the Public Works Director with respect to abatement shall be final.

INTENTIONALLY LEFT BLANK