

PRIVATE ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY

It is the general policy of the City that the public rights-of-way are to be reserved for public use or open space; and that the rights of the public, present and future, are not to be diminished by the installation of private improvements within the public rights-of-way.

Categories of private encroachments and improvements are listed below, together with the permit requirement for each category.

A. Private encroachments prohibited.

1. Structural encroachments not otherwise listed; including, but not limited to, fences, walls, patios, raised planters, etc., which encroach in excess of 1 foot into the public right-of-way, or exceed 3 feet in height, measured from the top of curb elevation/or from sidewalk elevation where sidewalk exists.
2. Driveway approaches not conforming to Council Policy L-2.
3. Ocean front street end, or Bay front street end improvements not conforming to Council Policy L-8.
4. Ocean front alley end improvements not conforming to Council Policy L-8.
5. Modifications to original design concepts approved by the City.
6. Private signs except as provided for in the Building Code.
7. Lighting.
8. Parkway surfacing of loose rock, gravel, or any surfacing other than standard or colored/textured concrete or flat stone/brick/pavers installed at grade.
9. Private dwellings and appendages including raised patios and decks, except as provided for in this section and the Building Code.
10. Pay telephones and private mail carriers drop boxes.

- B. Private encroachments requiring an encroachment permit and if applicable an encroachment agreement from the Public Works Department and Municipal Operations Department approval.
1. Tree planting and removal.
  2. Shrub planting and removal.
  3. Median landscaping.

If, in the opinion of the Municipal Operations Department, the approved planting is not being maintained for view and safety clearance, Chapter 10.50, "Public Nuisance Abatement," of the Municipal Code shall be used to remove offending plant material.

The permit applicant shall reimburse the City of Newport Beach for the value of any City tree removed by this process. This value will be determined by the City Arborist using the International Society of Arboriculture's "Guide for Plant Appraisal."

- C. Private encroachments requiring an encroachment permit and if applicable an encroachment agreement from the Public Works Department.
1. Drive approaches conforming to Council Policy L-2.
  2. Standard sidewalks.
  3. Carriage walks.
  4. Parkway surfacing (standard or colored/textured concrete or flat stone/brick) installed at grade (subject to Municipal Operations Department review for tree well location).
  5. CATV and public utility facilities.
  6. Structural encroachments not otherwise listed; including, but not limited to, fences, walls, patios, raised planters, etc., which encroach 1 foot or less into the public right-of-way. If, however, in the opinion of the Public Works Department, the nature or location of this type of encroachment is such that Council review is warranted, the Department may forward the item to the Council for action.

7. Mailboxes, when required by the U.S. Postal Service. The front of mailbox shall be aligned in the same vertical plane as the back of the curb. Mailbox base construction length shall not exceed the length of the mailbox, or 24 inches, whichever is less.
  8. The placement of utility pedestals shall be at the back of sidewalks on arterials and major pedestrian thoroughfares without zero setbacks. There shall be at least 4 feet of clear sidewalk width and/or pedestals shall be placed in the parkway outside of walk area.
  9. When connecting to or relocating public utilities.
  10. Artificial Turf up to 100% of the required parkway landscape area. Artificial turf grass shall be installed in accordance to manufactures recommendations. Material must be securely anchored and maintained so as to eliminate disrepair, fading, tearing, wrinkling and or edge curling or any other type of material performance. Material shall be replaced prior to the aforementioned conditions occur. *Prohibited application:* Indoor and outdoor carpet, green in color or otherwise. The Director of Public Works shall from time to time update the standards for this application. See Artificial Turf - Material and Installation Standards.
- D. Private encroachments requiring an Encroachment Permit from the Public Works Department and subject to the execution of an agreement for non-standard improvements.
1. Structural encroachments not otherwise listed which do not exceed 3 feet in height measured from the top of curb elevation/or from sidewalk elevation where sidewalk exists, including, but not limited to fences, walls, and raised planters in public rights-of-way in areas that are more than 8 feet behind the face of curbs on the following streets:
    - a. Santa Ana Avenue from Cliff Drive to Fifteenth Street.
  2. Permitted Structural Encroachments on Balboa Island along South Bay Front, North Bay Front, Grand Canal, and East Bayfront are as follows:
    - a. Planters that do not exceed 1 foot in height located within 2'-6" of the back of existing sidewalk, planted with ground cover and

- shrubs not to exceed 2 feet in height measured from sidewalk elevation;
- b. Fences with a minimum setback of 2'-6" from back of sidewalk.
    - i. For patios constructed at grade elevation to 1' above sidewalk grade elevation, Fences may be 3' high above sidewalk grade.
    - ii. For patios constructed greater than 1' above sidewalk grade elevation, Fences must be set back a minimum of 3' from back of sidewalk, not exceed 2'-6" in height above the patio, have at least 40% visibility through them, and not to exceed 4' in height above existing public sidewalk grade.
  - c. Patios with a minimum setback of 2'-6" from the back of sidewalk.
    - i. Raised Patios are permitted provided they have a maximum height of 2'-6" above sidewalk grade, are set back a minimum of 2'-6" from back of sidewalk, and provided all bulkhead deadman and tiebacks supporting the Bay front bulkhead are replaced "If required by the Public Works Department" in conformance with the requirements of the Public Works Department; Stairs located a minimum of 2'-6" from back of sidewalk.
3. Structural encroachments not otherwise listed which do not exceed three (3) feet in height, including, but not limited to fences, walls, patios and raised planters in public rights-of-ways in areas that are five (5) feet behind the face of curb on the following streets:
    - a. Southerly side of West Bay Avenue between 8th Street and 15th Street.
  4. Non-standard encroachments, including, but not limited to fences, walls, and raised planters within City easements.

If, in the opinion of the Public Works Department, the nature or location of this type of encroachment is such that Council review is warranted, the Department may forward the application to the City Council for original action.

The City Manager is authorized to execute, on behalf of the City, agreements for non-standard improvements which are entered into pursuant to this section or other authorization.

- E. Private encroachments not requiring a permit:
1. Parkway lawn and ground cover.
  2. Parkway sprinkling systems.
  3. Use of public streets and projections over public property which are covered by the California Building Code or California Residential Code under a valid building permit issued by the City.
- F. Application for any permit as required by this policy shall be filed with the Public Works Department on a form to be provided by the City and shall show the proposed planting or work and the nature thereof. If the application is for a permit required under Section A, it shall be forwarded to the City Clerk for submission to the City Council. If the application is for a permit under Section B, it shall be processed by the Municipal Operations Department. Drawings for encroachment permits requiring City Council review shall be prepared to scale. Plan and elevation drawings shall accurately depict location, height, and extent of the proposed encroachments. No building permit shall be issued on a parcel whose access requires City Council review for an encroachment permit on public property, until said encroachment permit has been issued.
- G. Variances from the strict application of this policy shall not be granted unless individual circumstances indicate that approval will be consistent with the public interest.

**Adopted - August 25, 1969**  
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**Amended - August 11, 1975**  
**Amended - February 9, 1981**  
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**Amended - October 27, 1986**  
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**Amended - January 27, 2015**