ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY

It is the general policy of the City that the public rights-of-way shall be reserved for public use or open space; and that the rights of the public, present and future, shall not be diminished by the installation of private improvements within the public rights-of-way. For any project located within the Coastal Zone also look to Newport Beach Municipal Code Title 21, or any successor title.

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

Permit and/or encroachment agreement required.

A. Except as expressly set forth herein, permits and/or encroachment agreements are required for encroachments into the public rights-of-way.

B. 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. Drawings for encroachment permits requiring Planning Commission review shall be prepared to scale. Plan and elevation drawings shall accurately depict location, height, and extent of the proposed encroachments.

C. If the application is for a permit required under ***private encroachments that are prohibited without a waiver***, it shall be submitted to the Planning Commission for consideration.

1. The Planning Commission is designated to grant or deny a waiver and approve, conditionally approve, or deny applications for encroachment permits, subject to the findings in subsection (a), of this Section.

    a. The Planning Commission may grant a waiver and may approve or conditionally approve an application for an encroachment permit if the Planning Commission finds the encroachment will not be a detriment to the health, safety, and welfare of the public.

    b. If an application for a private encroachment that is prohibited without a waiver is part of a larger approval requiring City Council approval, then the Planning Commission shall make a recommendation to the City Council regarding whether this policy should be waived and the permit granted.

c. The Planning Commission shall have discretion to refer any request for a waiver or encroachment permit before the Planning Commission to the City Council for consideration.

d. Any decision made by the Planning Commission may be appealed or called for review in accordance with Chapter 20.64.

2. Notice of the Planning Commission's review of a request to waive a provision of this policy shall be:

a. Mailed to property owners within 300 feet of the project site at least ten (10) calendar days in advance of a meeting. The notice shall contain the address of the project site, the applicant's name, a brief description of the improvements, date, time, and place of the meeting, and a statement informing the public that they have the ability to provide comments to the Planning Commission; and

b. Posted on or close to the subject property in a prominent location at least ten (10) calendar days before the scheduled hearing by the Planning Commission in the following manner:

i. One or more sign(s) shall be posted as determined by the Public Works Director.

ii. The size and location of the sign(s) shall be as determined by the Public Works Director.

iii. The applicant for the encroachment permit/waiver shall be responsible for maintaining the sign(s) in a satisfactory condition.

iv. The applicant for the encroachment permit/waiver shall remove all sign(s) at the end of the appeal period.

Private encroachments that are prohibited without a waiver and approval.

A. All structural encroachments including, but not limited to, fences, walls, patios, raised planters, landscaping, etc., which encroach in excess of one (1)-foot into the public right-of-way, or exceed thee (3)-feet in height, measured from the top of curb elevation/or from sidewalk elevation where sidewalk exists.

B. Driveway approaches not conforming to Council Policy L-2.

C. Modifications to original design concepts approved by the City.

D Private signs except as provided for in the Building Code.

E. Lighting.

F. Parkway walkway surfacing of loose rock, gravel, or any surfacing other than standard or colored/textured concrete or flat stone/brick/pavers installed at grade.

G. Private dwellings and appendages including raised patios decks and bay windows, except as provided for in this section and the Building Code.

H. Pay telephones and private mail carriers drop boxes.

General private encroachments that require an encroachment permit and if applicable, an encroachment agreement from the Public Works Department.

A. Drive approaches conforming to Council Policy L-2.

B. Standard sidewalks.

C. Carriage walks (not to exceed twenty-five percent (25%) of the parkway area).

D. Parkway surfacing (standard or colored/textured concrete or flat stone/brick) installed at grade (not to exceed twenty-five percent (25%) of the parkway area).

E. CATV and public utility facilities.

F. Structural encroachments including, but not limited to, fences, walls, patios, raised planters, etc., which encroach one (1) foot or less and do not exceed three (3) feet in height within 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 Planning Commission review is warranted, the Department may forward the item to the Planning Commission for action in accordance with the procedures set forth for granting waivers for private encroachments that would otherwise be prohibited.

G. Mailboxes, when required by the U.S. Postal Service. Mailboxes shall be installed per U.S. Postal Service requirements. Mailbox base construction length and width shall not exceed the length of the mailbox, or twenty-four (24) inches, whichever is less.

H. 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 four (4) feet of clear sidewalk width and/or pedestals shall be placed in the parkway outside of walk area.

I. When connecting to or relocating public utilities.

J. Artificial Turf (permeable) up to 100% of the required parkway landscape area. Artificial turf grass shall be installed in accordance to manufacturers' 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.

K. Tree and shrub planting and removal.

L. Median landscaping.

If, in the opinion of the Public Works Departments, the approved planting is not being maintained for view, safety clearance and sight distance, Newport Beach Municipal Code Chapter 10.50, "Public Nuisance Abatement," or any successor statute, 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 shall be determined by the City Arborist using the International Society of Arboriculture's "Guide for Plant Appraisal" or a minimum forty-eight (48) inch box tree replacement value.

Area specific private encroachments requiring an encroachment permit from the Public Works Department and subject to the execution of an encroachment agreement for non-standard improvements.

A. Structural encroachments which do not exceed three (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 eight (8) feet behind the face of curbs on the following streets:

   1. Santa Ana Avenue from Cliff Drive to Fifteenth Street.

B. Permitted Structural Encroachments on Balboa Island along South Bay Front, North Bay Front, Grand Canal, and East Bayfront are as follows:

   1. Planters that do not exceed one (1) foot in height may be installed between the back of existing sidewalk and property line, planted with ground cover and shrubs not to exceed two (2) feet in height measured from sidewalk elevation;

   2. Fences and walls with a minimum setback of two (2) feet six (6) inches from back of sidewalk.

      a. For patios constructed at grade elevation to one (1) foot above sidewalk grade elevation, fences and walls may be three (3) feet high above sidewalk grade.

      b. For patios constructed greater than one (1) foot above sidewalk grade elevation, fences and walls must be set back a minimum of three (3) feet from back of sidewalk, not exceed two (2) feet six (6) inches in height above the patio, have at least forty percent (40%) visibility through them, and not to exceed four (4) feet in height above existing public sidewalk grade.

3. Patios with a minimum setback of two (2) feet six (6) inches from the back of sidewalk.

   a. Raised Patios are permitted provided they have a maximum height of two (2) feet six (6) inches above sidewalk grade, are set back a minimum of two (2) feet six (6) inches 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 two (2) feet six (6) inches from back of sidewalk.

C. Structural encroachments 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:

   1. Southerly side of West Bay Avenue between 8th Street and 15th Street.

D. Non-standard encroachments, including, but not limited to fences, walls, and raised planters within City easements as approved by the Public Works Director.

E. Buena Vista Boulevard - Bay Avenue to Edgewater Avenue. The street right-of-way in this reach is ten (10) feet wide, with private property on both sides of the public way. Improvements allowed at this location shall consist of the following:

   1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way line maintained by the City.

   2. Landscaping under twenty-four (24) inches in height and park-like improvements in the remaining portion of the right-of-way shall be allowed if installed and maintained by the adjoining property owners. Private improvements such as walls, fences, gates, signs and living areas such as cabanas and other roofed structures shall not be allowed.

   3. Access to existing private piers and floats shall be allowed where a harbor permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions.

F. Edgewater Avenue - Buena Vista Boulevard to Island Avenue. The street right-of-way in this reach is forty (40) feet wide with private property on the inland side. The bay side is improved with a privately constructed bulkhead on public property. Improvements allowed at this location shall consist of the following:

1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way line maintained by the City.

2. Landscaping under twenty (24) inches in height and park-like improvements in the remaining portion of the right-of-way (between the sidewalk and the bulkhead) shall be allowed if installed and maintained by the adjoining property owner. Private improvements such as fences, gates, signs, and living areas shall not be allowed.

3. Access to private piers and floats shall be allowed where a harbor permit has been granted, but such access structures shall not be expanded beyond the permit dimensions.

G. Edgewater Avenue - Island Avenue to Alvarado Street. The street right-of-way in this reach is forty (40) feet wide with private property on the inland side. The bay side is improved with a sloping beach leading to the waters of the bay. Improvements allowed at this location shall consist of the following:

1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way maintained by the City.

2. The remaining portion of the right-of-way shall be reserved as a public beach and no private improvements, impediments or boat storage shall be allowed except for access to existing piers and floats where a harbor or a mooring permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions. Any existing permits to encroach on the right-of-way shall be rescinded

H. Edgewater Avenue - Alvarado Street to Fernando Street. The street right-of-way in this reach is fifty (50) feet wide. The bay side is improved with a sloping beach leading to the waters of the bay. The private lots bayward of the public right-of-way are under water and within State Tidelands. Improvements allowed at this location shall consist of the following:

1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way maintained by the City.

2. The remaining portion of the right-of-way shall be reserved as a public beach and no private improvements, impediments or boat storage shall be allowed except for access to existing piers and floats where a harbor permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions.

I. Bay Front Street Ends

1. Bay front street ends at beach level may contain two (2) foot wide planting areas bounded by redwood or concrete strips and containing hedges no more than two (2) feet in height above the adjacent surface. The planting areas may be installed:

    a. At each side of the prolongation of the street and extending no more than fifteen (15) feet from the end of the paved street.

    b. At the end of the paved street, except that a twelve (12) foot wide opening must be left for City emergency and maintenance equipment, and pedestrians to enter the beach area.

2. Bay front street ends where tidal flow prevents standard installation may be landscaped, subject to the prior approval by the City of specific plans prepared by the applicant. Access to beach areas shall be provided for in any such specific plans.

3. Improvements shall be installed at the expense of the adjacent property owners.

4. Landscape maintenance and watering shall be provided by the adjacent property owners to the satisfaction of the City. A sprinkler system connected to the adjacent property shall be installed in each planter

J. Unimproved Ocean Front Street Ends

1. Improvements shall be installed at the expense of the adjacent property owners.

2. Landscape maintenance and watering shall be provided by the adjacent property owners to the satisfaction of the City. A sprinkler system connected to the adjacent property shall be installed in each planter.

3. All work shall be installed to grades established by the Public Works Department.

4. A four (4) foot wide sidewalk shall be provided on each side of the street right-of-way adjacent to the property line.

5. A minimum of twelve (12) feet of unobstructed access to the beach in the center of the right-of-way shall be surfaced with brick, asphalt, concrete or artificial turf, or an equivalent surfacing approved by the City.

a. Portland Cement Concrete. A minimum six (6) inches over native compacted material.

b. Asphalt Concrete. A minimum two (2) feet six (6) inches of asphalt concrete over a six (6) inch thick aggregate.

c. Brick. Brick installed over four inches of imported aggregate base. A dry mix of one-to-one cement and clean plaster sand to be swept into the one-quarter (1/4) to one-half (1/2) inch space between bricks. The dry mix shall be moistened with a fine spray of water after it is in place.

6. Planters five (5) feet wide shall be provided between the side and the center access along a portion of each side of the street with a heavy emphasis on drought resistant plant materials. Plant materials shall be installed to City specifications. A six (6) inch to eighteen (18) inch high lip of concrete, brick or rock may be installed as part of the planter.

7. Special provisions shall be made in the design when garage access is required from street ends.

8. Where unusually large quantities of sand exist in a street end area, the City shall assist the adjacent owners by moving the sand to an area determined by the City.

K. Unimproved Alleys that End at the Ocean Front

1. Improvements shall be installed at the expense of the adjacent property owner.

2. All work shall be installed to grades established by the Public Works Department.

3. Landscaping of potted plants shall be permitted in the portion of the alley right-of-way that terminates at the ocean front sidewalk. A six (6) foot wide inviting passageway shall be maintained for pedestrian access.

4. Where vehicles or pedestrians will travel, alleys may be surfaced with brick, asphalt, concrete or equivalent surfacing.

5. Improvements shall extend from the nearest street of alley improvement to the northerly line of the ocean front.

If, in the opinion of the Public Works Department, the nature or location of this type of encroachment is such that Planning Commission review is warranted, the Department may forward the application to the Planning Commission for original action in accordance with the procedures set forth for granting waivers for private encroachments that would otherwise be prohibited.

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.

Private encroachments not requiring a permit:

A. Parkway lawn, ground cover and drought tolerant planting. Parkway areas with the exception of carriage walks/parkway paving/artificial turf shall be entirely planted with lawn, ground cover and/or drought tolerant planting.

B. Parkway sprinkling systems.

C. Use of public streets and projections over public property, which are covered by the latest adopted edition of the California Code of Regulations Title 24 under a valid building permit issued by the City.

Encroachments on public sidewalks

Newport Beach sidewalks are a desirable place to walk, stroll and jog and it is, therefore, the policy of the City that public sidewalks are to provide unobstructed passage whenever possible.

Sidewalks shall be reserved for public use and the rights of the public shall not be diminished by the installation of benches, planters, bicycle racks, etc., by private entities nor by the installation of facilities by public utilities or other public agencies. It is the policy of the City that encroachments on public sidewalks shall be subject to the following:

A. General

1. Permitted encroachments shall not reduce the sidewalk width available for normal pedestrian movement.

2. Permitted encroachments may be located in areas between tree wells or other existing improvements as long as they do not interfere with pedestrian travel.

3. Permitted encroachments shall be located at least eighteen (18) inches from the curb face. In areas where vehicles do not park or otherwise extend over the sidewalk, this setback may be reduced.

4. Permitted encroachments shall not be located within thirty-six (36) inches of a parking meter or street light, nor shall they be located where they will interfere with the normal use of other facilities.

5. Encroachments shall not block access from parked cars.

6. They shall not be located within ten (10) feet of a crosswalk, fire hydrant or driveway.

7. Encroachments may not be chained or otherwise anchored to any tree, streetlight, parking meter or other property.

8. Applicant shall pay all costs for City and/or the California Department of Transportation ("CalTrans") permit processing where necessary.

9. Applicant shall pay all costs associated with the installation and maintenance of the encroachments by the City or private installer.

B. Public Benches

1. When applying the above requirements to benches, allowance shall be made for the space required for a person sitting on the bench.

2. Benches to be installed in an area where there is a theme or bench style shall conform to that theme or style.

C. Public Bicycle Racks

1. Bicycle racks shall be located to allow bicycles to extend five (5) feet from the center of the rack and comply with the above requirements.

History

(1969, 08/25) - L-6 - Adopted (Private Encroachments in Public Rights-of-Way)
(1969, 08/25) - I-12 - Adopted (Ocean Front Street-End Improvements)
(1970, 03/09) - L-6 - Reaffirmed

(1970, 03/09) – I-12 - Amended
(1971, 02/08) – L-6 - Reaffirmed
(1972, 02/14) – L-6 – Amended
(1972, 02/14) – I-12 - Reaffirmed
(1973, 12/10) – L-6 – Reaffirmed
(1973, 12/10) – I-12 - Amended
(1974, 11/11) – L-6 – Reaffirmed
(1974, 11/11) – I-12 - Amended
(1975, 08/11) – L-6 – Amended
(1977, 03/14) – L-7 – Adopted (Encroachments and Bay Access on Buena Vista Blvd. - Edgewater Ave. Between bay Ave. and Fernando St.)
(1977, 09/12) – L-7 - Reaffirmed
(1981, 02/09) – L-6 – Amended
(1981, 02/09) – I-12 – Amended
(1981, 08/24) – L-10 – Adopted - incorporating I-12 & L-10
(1981, 11/23) – L-6 – Amended
(1982, 11/08) – L-10 - Amended
(1986, 10/27) – L-6 - Amended
(1987, 01/26) – L-6 - Amended
(1987, 07/13) – L-6 - Amended
(1989, 02/13) – L-6 - Amended
(1989, 08/14) – L-6 - Amended
(1989, 11/27) – L-6 – Amended
(1989, 11/27) – L-10 - Amended
(1991, 12/09) – L-6 - Amended
(1992, 12/14) – L-6 – Amended
(1993, 01/11) – L-18 – Adopted (Encroachments on Public Sidewalks)
(1993, 07/12) – L-6 - Amended
(1994, 01/24) – L-6 – Amended
(1994, 01/24) – L-7 – Reaffirmed
(1994, 01/24) – L-8 _ Amended - changed to L-8
(1994, 01/24) – L-15 – Amended – changed to L-15
(1994, 05/09) – L-6 - Amended
(1995, 02/27) – L-6 - Amended
(1996, 02/26) – L-6 – Amended
(1996, 02/26) – L-15 - Amended
(2001, 05/08) – L-6 – Amended
(2001, 05/08) – L-7 – Amended
(2001, 05/08) – L-8 - Amended
(2015, 01/27) – L-6 - Amended
(2018, 08/14) – L-6 – Amended (incorporating L-6, L-7, L-8 & L-15)
(2018, 11/27) – L-6 - Amended