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## Chapter 20.59 – Public Access in the Coastal Zone [New]

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### 20.59.010 – Purpose

This Chapter provides procedures and standards for the preservation, dedication, and improvement of public access to, and along the shoreline and coastal bluffs, in conjunction with development in the Coastal Zone. The intent is to ensure that public rights of access to the shoreline are protected as guaranteed by the California Constitution; to ensure public access to coastal bluffs; and to implement applicable policies of the General Plan and the Coastal Land Use Plan.

### 20.59.020 – Applicability

- A. Development in the Coastal Zone.** This Chapter applies to new development in the Coastal Zone located between the first public roadway paralleling the shoreline, unless exempt in compliance with Paragraph B (Exemptions), below, or waived in compliance with Subsection 20.59.060.B (Waiver of public access requirements). For the purposes of this Chapter, development shall mean “Development” as defined in Part 7 (Definitions).
- B. Exemptions.** The public access requirements of this Chapter shall not apply to the following new development in compliance with the Coastal Act (Public Resources Code Section 30212):
  - 1. Structure destroyed by disaster.** The replacement of a structure, other than a public works facility, destroyed by disaster, provided that the replacement structure:
    - a. Conforms to applicable zoning district requirements in Part 2 (Zoning Districts, Allowable Land Uses, and Zoning District Standards);
    - b. Is for the same use as the destroyed structure;
    - c. Not exceed the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the destroyed structure by more than 10 percent;
    - d. Is sited in the same location on the affected property as the destroyed structure; and

- e. Does not extend the replacement structure seaward on a sandy beach or beachfronting bluff lot.
- 2. Demolition and reconstruction.** The demolition and reconstruction of a single-family residence, provided that the reconstructed residence:
- a. Does not exceed either the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the former structure by more than 10 percent;
  - b. Is sited in the same location on the affected property as the former structure;
  - c. Does not extend seaward of the demolished residence on a sandy beach or beachfronting bluff lot; and
  - d. Does not include or necessitate a new or enlarged shoreline protective device within the economic life of the structure.
- 3. Improvements.** Improvements to a structure that do not:
- a. Change the intensity of its use;
  - b. Increase either the floor area, height, or bulk of the structure by more than 10 percent;
  - c. Block or impede access;
  - d. Result in a seaward encroachment by the structure; and
  - e. Include or necessitate a new or enlarged shoreline protective device within the economic life of the structure.
- 4. Repair and maintenance of a shoreline protective device.** The reconstruction or repair of a bulkhead; provided that the reconstructed or repaired bulkhead is not seaward of the location of the former bulkhead.
- 5. Repair and maintenance.** A repair or maintenance activity consistent with Public Resources Code Section 30212.b.(5) and with Subsection 20.66.020.E.3.d. (Repair and/or maintenance) and Subsection 20.66.020.E.4. (Ongoing routine repair and/or maintenance).
- C. Conflict.** In the event of a conflict between this Chapter and another provision in this Zoning Code or the Municipal Code, the more restrictive regulation shall control.

### 20.59.030 – Protection or Provision of Public Access Required

- A. Protection of existing public access.** Development shall not interfere with public right of access to the shoreline or coastal bluffs where the rights have been acquired through use or legislative authorization. Public access rights may include, but are not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

- B. Provision of new public access.** Development located between the shoreline and the first public road paralleling the shoreline shall provide public access (i.e., lateral access and vertical access) to the shoreline or to coastal bluffs, unless exempt in compliance with Subsection 20.59.020.B (Exemptions) or waived by the review authority in compliance with Subsection 20.59.060.B (Waivers of Public Access Requirements). The type and extent of public access to be dedicated, granted, constructed, and/or maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of permit approval in compliance with Section 20.59.060 (Permit Requirements).

#### **20.59.040 – Determination of Public Access**

This Section provides procedures for identifying the location and type of existing public access to be protected or new public access to be provided.

- A. Initial public access survey.** An applicant shall submit an initial public access survey that indicates the presence of, or potential for, public access on a site or within 500 feet of a site, if required by the Director in compliance with Section 20.59.060 (Permit Requirements). The report shall be prepared by a qualified professional (e.g., landscape architect, engineer, etc.) and shall include the following:
- 1. Description.** A description of the site's physical characteristics (e.g., topography, streams, etc.) and of existing public access features (e.g., improved or unimproved path or trail, stairwells, width of accessway(s), signage, parking, degree of connectivity with other public access in the vicinity, etc.) on the site or within 500 feet of the site;
  - 2. Photographs.** Photographs of public access features on the site or within 500 feet of the site; and
  - 3. Map.** A map depicting the boundaries of the site and the location of existing public access features on the site or within 500 feet of the site.
- B. Public access impact report.** If the initial public access survey indicates the absence of public access on the site or within 500 feet of the site, an applicant shall submit a detailed public access impact report. The report shall be prepared by a qualified professional (e.g., landscape architect, engineer, etc.) and shall include the following information:
- 1. Historic public use.** Evidence of use of the site by members of the general public for access to the shoreline or coastal bluffs or for recreational use (active or passive), and the development's effects on public use of the site for access;
  - 2. Demand for access and recreation.** The development's effects upon the use and capacity of the identified access and recreation opportunities (e.g., the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs; the capacity of coastal access roads; public parking; and recreational support facilities and services; etc.);

3. **Obstructions.** Physical aspects of the development that may block or impede public access to and along the shoreline and to coastal parks, trails, or coastal bluffs, (e.g., placement of structures, private streets, shoreline protective structures, barriers, guardhouses, gates, fences, signs;
4. **Vessel launching, berthing, and storage.** The development's cumulative effects on vessel launching, berthing, and storage facilities and other facilities that provide public access;
5. **Shoreline processes.** The development's cumulative effects upon shoreline conditions (e.g., beach profile; the character, extent, accessibility and usability of the beach; erosion or accretion; character and sources of sand; wave and sand movement; etc.) that have the potential to adversely impact public access;
6. **Other impacts.** Other aspects of the development, which, individually or cumulatively, are likely to diminish the public's access to, and use of, the shoreline or coastal bluffs.
7. **Recommended accessways.** A recommendation of the location and size of new public accessway(s) on the site, or a plan to provide public access within 500 feet of the site;
8. **Map.** A map depicting the boundaries of the site and recommended new public accessway(s).
9. **Mitigation measures.** A description of mitigation measures, including identification of potential mitigation sites, that would minimize or mitigate residual impacts that cannot be avoided.

### 20.59.050 – Development Standards

This Section provides standards for the location and configuration of public access to ensure public safety and to protect public rights, rights of private property owners and leaseholders, and natural resource areas from overuse.

#### A. Site planning and design criteria.

1. **General.** Public access improvements shall be designed to:
  - a. Maximize public access to and along the shoreline and coastal blufftops;
  - b. Incorporate pedestrian, hiking, bicycle, and equestrian trails, where appropriate;
  - c. Provide connections to beaches, parks, recreational facilities, and trail systems, where feasible;
  - d. Ensure access to coastal view corridors, where feasible;
  - e. Minimize alterations to natural landforms;
  - f. Protect environmentally sensitive habitat areas; and

- g. Protect private property rights.
- 2. **Open and unobstructed.** Public access shall be open and unobstructed.
- 3. **Location in setback areas.** Public access may be provided within required setback areas.
- 4. **Privacy buffers.** A 10-foot wide buffer area between a public accessway and a residential structure shall be provided on the site when necessary to protect the landowner's privacy or security as well as the public's right to use the accessway. The review authority may reduce the width of the buffer area where separation is achieved through landscaping, fences, or changes in grade elevation.
- 5. **Barriers prohibited.** Development designed to restrict access to and along the shoreline or coastal blufftops (i.e., barriers, gates, guardhouses, private streets, etc.) shall be prohibited.
- 6. **Sensitive areas.** Public access improvements shall be sited, designed, and maintained to avoid or minimize impacts to environmentally sensitive habitat areas (ESHAs), wetlands, and other sensitive resource areas in compliance with Chapter 20.44 (Resource Protection in the Coastal Zone).
- 7. **Features of lateral accessways.**
  - a. **Location.**
    - (1) A lateral accessway shall extend along the entire width of a lot.
    - (2) A lateral accessway shall be located on land, when feasible. A lateral accessway that consists of decking and/or boardwalks extending over the water or floating walkways may be allowed only when existing development makes onshore lateral access infeasible or as part of a comprehensive program to provide waterfront access.
  - b. **Minimum width.** Lateral accessways shall be the following minimum widths:
    - (1) **Lots with dry sand or rocky coastal beaches.** For lots with dry sand or rocky coastal beaches, a lateral accessway shall be a strip of land that extends landward from the mean high water line the greater of the following distances:
      - (a) 10 feet; or
      - (b) If the width of the beach is greater than 10 feet, to a fixed point at the most seaward of the primary extent of development, the toe of the bluff, or the first line of terrestrial vegetation. For purposes of this paragraph, the primary extent of development shall mean the intersection of sand

with toe of revetment, the vertical face of a bulkhead, or other appropriate boundary (e.g., drip line of a deck, etc.).

- (2) **Lots with shoreline protective devices.** For lots with shoreline protective devices, a lateral accessway shall be a minimum of 10 feet in width as measured landward from the shoreline protective device.
- (3) **Lots on coastal bluffs.** For lots on a coastal bluffs, a lateral accessway shall be a minimum of 10 feet in width as measured upland from the bluff edge.

- c. **Construction design.** A lateral accessway may include open or enclosed unobstructed walkways; exterior decking and/or boardwalks; interior breezeways and/or walkways with a minimum vertical clearance of 8 feet above-grade, provided that the breezeways are located as close as possible to the water and are designed to provide the most direct, convenient connection between adjacent existing or potential lateral access. Exterior access is preferred over interior access.

#### 8. Features of vertical public accessways.

- a. **Location.** Where feasible, a minimum of one vertical accessway at every street stub, or where there are no street stubs at every 500 feet, shall link with lateral accessways along the bayward sides of structures.
- b. **Minimum width.** A vertical accessway shall be a minimum of 10 feet in width.

- B. **Usage limits.** Controls on the time, place, and manner of uses (e.g., limiting access to pass and repass; restricting hours of use; etc.) may be imposed in compliance with Section 20.59.060 (Permit Requirements).
- C. **Signage.** Public accessways shall be identified by signs that conform to the coastal access signing program of the California Coastal Conservancy/Coastal Commission.
- D. **Removal of unauthorized structures.** Unauthorized structures, including signs and fences, that inhibit public access shall be removed.
- E. **Parking.**
  - 1. Restrictions on public parking (e.g., the posting of “no parking” signs, painting curbs red, installation of physical barriers, etc.), shall be prohibited, except where the restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Development that results in restrictions on public parking shall provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.

2. Commercial or institutional development shall allow use of parking areas for public access outside of normal business hours (i.e., on weekends and holidays), where feasible. Parking areas may be used for motor vehicle parking, bicycle parking, or in conjunction with public transit or shuttles that serve coastal recreational areas.
3. Parking shall be provided by the developer in conjunction with new or improved vertical accessways, whenever feasible and consistent with site constraints, environmental constraints, and safety conditions.

**F. Timing of access implementation.**

1. **Guarantee precedes permit issuance.** The guarantee of public access in the form required in compliance with Section 20.59.060 (Permit Requirements) shall occur before issuance of construction permits or the start of construction activity not requiring a permit.
2. **Construction of public access improvements.** Construction of public access improvements shall occur at the same time as construction of the approved development, unless another time is established through conditions of development permit approval.

**G. Interference with public use prohibited.** After making an offer to dedicate public access in compliance with this Chapter, the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.

**H. Encroachments prohibited.** Encroachments or the installation of private improvements into public accessways shall be strictly prohibited.

**I. Prescriptive rights.**

1. **Location of development where prescriptive rights identified.** The design and siting of development shall not interfere with the potential public rights based on historic public use; unless the review authority determines that replacement public access of an equivalent type, intensity, and area will be provided on, or reasonably adjacent to, the development site.
2. **Condition not determinative of prescriptive rights.** An access condition shall not serve to extinguish, adjudicate or waive potential prescriptive rights. The following language shall be added to the access condition in a permit with possible prescriptive rights:

"Nothing in this condition shall be construed to constitute a waiver of, or a determination on, an issue of prescriptive rights that may exist on the lot itself or on the designated easement."

### 20.59.060 – Permit Requirements

- A. Application requirements.** Permit applications for development that may affect public access shall include the information identified in Section 20.59.040 (Determination of Public Access), if required by the Director.
- B. Waiver of public access requirements.** The review authority may waive public access requirements if the review authority makes any of the following findings:
1. **Physical infeasibility.** Based on the public access impact report required in Section 20.59.040 (Determination of Public Access) or an engineering analysis (e.g., slope stability analysis, erosion rate estimates, etc.), all or a portion of the required public access is physically infeasible and design alternatives are incapable of overcoming topographical or site constraints. If continuous lateral access across the bayward portion of the lot is found to be infeasible, the contribution of an in-lieu fee, equivalent to the cost of construction of an accessway along the bayward edge of the proposed structure, shall be paid to the City.
  2. **Security or public safety.** Marine sales and service equipment and operations present security or public safety concerns necessitating waterfront access detours in order to maintain facilities and services essential to the operation of the harbor, provided that public viewing areas and/or walkways are provided in suitable locations in the development to the maximum extent feasible.
  3. **Adequate nearby access.** Adequate public access exists within 500 feet of the site; or
  4. **Inconsistent with other policies or law.** Providing public access is inconsistent with:
    - a. Public safety needs;
    - b. Military security needs;
    - c. Protection of fragile coastal resources;
    - d. Policies of the General Plan or the Coastal Land Use Plan, other than those requiring access; or
    - e. State or Federal law.

- C. Guarantee of public access.** As a condition of approval, the review authority shall require a guarantee of public access from an applicant, including its successors and assigns, in a form approved by the City Attorney, and recorded by the applicant. The guarantee of the public access shall identify the precise location and area to be set aside for public access. The review authority shall select the method of access guarantee in compliance with the following criteria:
- 1. Deed restriction.** A deed restriction shall be used only where an owner, association, or corporation agrees to assume responsibility for maintenance of and liability for the public access area.
  - 2. Grant of fee interest or easement.** A grant of fee interest or easement shall be used when a public agency or private organization is willing to assume ownership, maintenance, and liability for the access.
  - 3. Offer to Dedicate.** An offer to dedicate shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for accessway maintenance and liability. An offer shall not be accepted until maintenance responsibility and liability is established.
- D. Management and maintenance.**
- 1. Time, place, and manner controls.** The review authority may require controls on the time, place, and manner of public access when justified by site characteristics or development features (e.g., topographic and geologic conditions; the intensity of use and the capacity of the site to sustain the use; the fragility of natural resource areas; the need to protect the privacy or security of residential development; public safety services access; the provision of support facilities, etc.).
  - 2. Management plan.** The review authority may require a management plan in conjunction with a guarantee of public access where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site.
  - 3. Commencement of use of public access.** A dedicated public accessway shall not be required to be opened to public use until a public agency or private association approved by the review authority agrees to accept responsibility for maintenance and liability of the access, except incases where immediate public access is implemented through a deed restriction.
- E. Subdivisions.** When the General Plan or the certified Coastal Land Use Plan indicates the location of a public accessway within the boundaries of a proposed subdivision, the accessway shall be shown on the Tentative Map and offered for dedication to the City. When a public or private accessway is already in existence at the time a Tentative Map is filed, the Tentative Map shall identify the status of the accessway.
- F. Findings.** An access dedication or grant of easement that is required as a condition of approval shall be supported by substantial evidence in the record and findings shall explain how the adverse effects that have been identified will be alleviated or mitigated by the dedication or grant of easement.

- G. Post-decision procedures.** The Director shall forward copies of the recorded access documents to the Coastal Commission.