

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

December 17, 2003

**TO:** Commissioners and Interested Persons**Th6c****FROM:** Deborah Lee, Deputy Director
Pam Emerson, Los Angeles County Area Supervisor
Charles Posner, Coastal Program Analyst**SUBJECT:** Major Amendment Request No. 1-03 (MNB-MAJ-1-3) to the City of Manhattan Beach Certified Local Coastal Program. For public hearing and action at the Commission's January 15, 2004 meeting in Laguna Beach.**SUMMARY OF LCP AMENDMENT REQUEST NO. 1-03**

The Coastal Commission certified the City of Manhattan Beach Local Coastal Program (LCP) on May 12, 1994. The current LCP amendment request, submitted for Commission certification by City Council Resolution No. 5816, is the City's sixth major LCP amendment request since certification and its only major LCP amendment request for 2003. The LCP amendment would repeal the existing provisions of Chapter 7.36 of the Municipal Code and replace them with the new provisions contained in City Council Ordinance No. 2039 (Exhibits #4&5). Only the Implementing Ordinances (LIP) portion of the certified LCP is affected.

Chapter 7.36 of the Municipal Code governs the use (i.e., encroachments) of the City's public right-of-way (e.g., streets, walk streets, sidewalks, alleys) by private parties. The intent of the LCP amendment is to improve and strengthen the section of the LCP (Chapter 7.36) that governs the private use and development of the City's public rights-of-way in order to ensure that all permitted encroachments 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. Chapter 7.36 (both the existing and proposed versions) requires a person to obtain an encroachment permit for the following development or activity on a City right-of-way: private improvements, long-term commercial uses, sidewalk dining, temporary access for installation of private street improvements, and all other temporary or permanent intrusions. Since Chapter 7.36 governs only the private use of the City's public rights-of-way, it could not be used to permit any encroachments on the County-owned sandy beach. The currently proposed provisions of Chapter 7.36 and would protect public access along streets and walk streets, forbid encroachments onto the paved portions of right-of-way (except for limited sidewalk dining areas), and regulate the scale of development within rights-of-way. In order to issue an encroachment permit, the City must make a finding that the proposed encroachment would not adversely impact public access to the shoreline. Additionally, any approved encroachment would be subject to the specific standards and limitations set forth in Chapter 7.36, and nothing in Chapter 7.36 precludes the requirement for a coastal development permit.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing, **APPROVE** the amendment request to the LIP as submitted. **The motion to accomplish this recommendation is found at the bottom of Page Two.**

STANDARD OF REVIEW

The standard of review for the proposed amendment to the LCP Implementing Ordinances (LIP), pursuant to Sections 30513 and 30514 of the Coastal Act, is that the proposed LIP amendment is in conformance with, and adequate to carry out, the provisions of the certified Land Use Plan (LUP).

CONTENTS OF LCP AMENDMENT REQUEST

Local Coastal Program Amendment Request No. 1-03 affects only the Implementing Ordinances (LIP) portion of the City's certified LCP. City Council Resolution No. 5816 submits the proposed LIP amendment for certification by the Commission (Exhibit #3). The LIP amendment is contained in City Council Ordinance No. 2039 (Exhibit #4). The City Parking and Public Improvement Commission (PPIC) held public hearings for the proposed ordinance and LCP amendment on May 23, 2002, July 25, 2002 and September 26, 2002. The City Council held public hearings on the matter on October 15, 2002, November 19, 2002 and February 4, 2003. The City Council adopted Ordinance No. 2039 on February 18, 2003.

On May 12, 2003, the Commission's South Coast District office received LCP Amendment Request No. 1-03 and deemed it submitted for Commission review consistent with the submittal requirements of the Coastal Act and the regulations which govern such proposals (Sections 30501, 30510, 30514 and 30605 of the Coastal Act, and Sections 13551, 13552 and 13553 of the California Code of Regulations). On July 9, 2003, the Commission extended for one year the time limit for its review of the LCP amendment request.

ADDITIONAL INFORMATION

Copies of the staff report are available at the Commission's South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact *Charles Posner* in the Long Beach office at (562) 590-5071.

I. STAFF RECOMMENDATION

Staff recommends adoption of the following motion and resolution:

Approve the amendment to the LCP Implementing Actions as submitted

MOTION: *"I move that the Commission reject Amendment Request No. 1-03 to the City of Manhattan Beach LCP Implementing Actions as submitted by the City."*

Staff recommends a **NO** vote. Failure of this motion will result in certification of the amendment to the LCP Implementing Ordinances as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Certify Amendment to the Implementing Ordinances as Submitted

The Commission hereby certifies the amendment to the LCP Implementing Ordinances for the City of Manhattan Beach as submitted and adopts the findings set forth below on grounds that the Implementing Ordinances conform with and are adequate to carry out the provisions of the certified Land Use Plan, and certification of the Implementing Ordinances will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

II. FINDINGS

The Commission hereby finds and declares as follows:

A. Description of LCP Amendment Request No. 1-03

The LCP amendment, contained in City Council Ordinance No. 2039, repeals and replaces Chapter 7.36 of the Municipal Code. Chapter 7.36 of the Municipal Code contains provisions to govern use by private parties (i.e., encroachments) of the City's public rights-of-way (e.g., streets, walk streets, sidewalks, alleys). Since Chapter 7.36 governs only the private use of the City's public rights-of-way, it could not be used to permit any encroachments on the County-owned sandy beach. The new proposed Chapter 7.36 is attached as Exhibit #4. The existing Chapter 7.36 that would be repealed is attached as Exhibit #5.

The intent of the LCP amendment is to improve and strengthen the section of the LCP (Chapter 7.36) that governs the private use and development of the City's public rights-of-way in order to ensure that all permitted encroachments 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. The proposed new ordinance would strengthen the City's ability to regulate encroachments by codifying some of the encroachment standards that were formerly only City guidelines.

Both the existing and new proposed Chapter 7.36 require a person to obtain an encroachment permit for the following development or activity on a City right-of-way: private improvements, long-term commercial uses, sidewalk dining, temporary access for installation of private street improvements, and all other temporary or permanent intrusions (Section 7.36.030). The City would have to make certain findings in order to issue an encroachment permit, including a finding that the proposed encroachment would not impact public access to the shoreline and would not adversely impact public pedestrian access along the paved portion of the sidewalk, walk street, alley or stairway (Exhibit #4, p.4). Pursuant to Section 7.36.060.B (Mandatory Conditions), each City-issued encroachment permit is revocable and each encroachment permit issued by the City must include a condition that states, "That the encroachment shall be

removed or relocated by the permittee at no cost to the City upon thirty days written notice to the permittee from the City..." (Exhibit #4, p.3)

Additionally, any approved encroachment would be subject to the specific standards and limitations set forth in the new proposed Chapter 7.36. Section 7.36.150 of the proposed new Chapter 7.36 lists the standards for various types of encroachments (Exhibit #4, ps.6-10). For example, landscaping and safety railings within the walk streets are limited to a height of 42 inches, while all other encroachments within the walk streets are limited in height to 36 inches. In the El Porto Strand area, residential encroachments could be permitted on the utility easement situated between the private lots and the Strand walkway (boardwalk), but such encroachments are limited in height to 72-inches above the walkway, reflecting the existing pattern of development situated inland of the Strand.

Section 7.36.160 of the new proposed ordinance applies to commercial encroachments for sidewalk dining (Exhibit #4, p.9). Only tables and chairs could be permitted on the public sidewalk portion of a vehicular right-of-way adjacent to an existing restaurant, and a minimum 48-inch wide unobstructed sidewalk area must be maintained so that public pedestrian access along the sidewalk will not be adversely affected (Section 7.36.160.B). Also, only existing tables already being used inside of the restaurant may be used for sidewalk dining, unless additional parking and zoning approval is provided for as required by the municipal code (Section 7.36.160.K-L). All tables and chairs must be removed from the sidewalk nightly by 10:30 p.m. (Section 7.36.160.I). Section 7.36.170.B states that commercial use (i.e., sidewalk dining or other commercial encroachments) on walk streets is prohibited (Exhibit #4, p.10).

Section 7.36.140 of the proposed new Chapter 7.36 states that nothing in the chapter precludes a requirement to obtain a coastal development permit (Exhibit #4, p.6). Therefore, the proposed LCP amendment would not change the certified LCP coastal development permit requirements that currently apply to development. Municipal Code Sections A.96.040 (Requirement for a Coastal Development Permit) and A.96.050 (Exemptions/Categorical Exclusions) are the sections of the certified LIP that state which types of development must obtain a coastal development permit and which may be exempt from coastal development permit requirements. Since private use or development within a public right-of-way would not qualify for a coastal development permit exemption under Municipal Code Section A.96.050, such a use or development in the coastal zone must be permitted by a coastal development permit.

B. Public Access and Recreation

Pursuant to Sections 30513 and 30514 of the Coastal Act, in order to be certified as part of the LIP, the proposed new Chapter 7.36 governing the use of public rights-of-way by private parties must conform with, and be adequate to carry out, the provisions of the certified Land Use Plan (LUP). The certified LUP sets forth the following policies that protect public access and recreational opportunities in the Manhattan Beach coastal zone:

POLICY I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

POLICY I.A.5: The City shall preserve its walk-street resources, shall prohibit non-complying walk-street encroachments, including decks, shall enforce measures to eliminate walk-street noncompliance with existing guidelines and shall provide expedited appeal procedures related thereto.

POLICY I.B.6: The Strand shall be maintained for non-vehicular beach access.

POLICY II.B.4: The beach shall be preserved for public beach recreation. No permanent structures, with the exception of bikeways, walkways, and restrooms shall be permitted on the beach.

POLICY II.1: Control development within the Manhattan Beach coastal zone.

The coastal resource that is directly affected by the proposed LCP amendment is the City's public rights-of-way. The City's public rights-of-way (e.g., streets, walk streets, sidewalks, alleys) are a valuable coastal resource because they provide public pedestrian and vehicular access to the shoreline and other recreational areas within the coastal zone. The certified City of Manhattan Beach LCP protects the Strand and the walk streets in the coastal zone as public accessways (Exhibit #2). The Strand is the main public sidewalk/boardwalk that runs parallel to the shoreline at the inland extent of the beach. The City's walk streets provide direct vertical access to the Strand and the beach from inland areas.

The City's walk streets have already been developed as vertical public pedestrian accessways with a sidewalk down the center portion of the right-of-way, while the residences on either side of the walk street have been allowed to use the edges of the right-of-way as yard areas (Exhibit #6). The rear alleys provide the only vehicular access to the homes along the walk streets (Exhibit #2). This pattern of private/public use of the walk street rights-of-way was established in the early 1900s as Manhattan Beach was originally developed.

The above-stated policies of the certified LUP require that the City maintain existing vertical and horizontal accessways (I.A.1), preserve its walk-street resources through regulation (I.A.5), preserve the beach for public recreation (II.B.4), maintain the Strand for non-vehicular beach access (I.B.6), and control development (II.1). The LCP amendment request conforms with, and will adequately carry out these provisions of the certified LUP.

The proposed LCP amendment protects and maintains public access along its vertical and horizontal accessways, including the Strand and walk streets, by regulating the private use of such accessways through the encroachment permit process set forth by Chapter 7.36 (Exhibit #4). Proposed Chapter 7.36 requires a person to obtain an encroachment permit for development or use of a walk street or other City right-of-way. In order to grant an encroachment permit, the City must make a finding that the proposed encroachment would not impact public access to the shoreline and would not adversely impact public pedestrian access along the paved portion of the sidewalk, walk street, alley or stairway (Exhibit #4, p.4). The only type of encroachment that the City may permit on the paved portion of a sidewalk, walk street, alley or stairway is sidewalk dining adjacent to an existing restaurant, and sidewalk dining is prohibited on walk streets (Section 7.36.170.B). Where sidewalk dining is permitted,

a minimum 48-inch wide unobstructed sidewalk area must be maintained so that public pedestrian access along the sidewalk will not be adversely affected (Section 7.36.160.B).

Also, for any encroachment permit granted in the coastal zone, as required by Section 7.36.065.F, the City must make the following specific findings in order to ensure that public access and recreation is protected and maintained:

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 [Coastal Act Section 30212(a)(2)].
2. The present and foreseeable demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area [Coastal Act Section 30221].

Public access along the Strand would not be adversely affected because it is a paved public access way where no encroachments could be permitted pursuant to the limitations and standards set forth by the proposed Chapter 7.36. Sidewalk dining cannot be permitted on the Strand because only residential uses (no restaurants) have been permitted adjacent to the Strand, and no other types of encroachments can be permitted the paved portion of a sidewalk (Section 7.36.065). Therefore, the proposed LCP amendment conforms with certified LUP Policy I.B.6.

The Strand separates the sandy beach from the private beachfront development. The beach will be preserved for public recreation and would not be adversely affected by the proposed LCP amendment because proposed Chapter 7.36 would not authorize any private use or development on the beach. The beach is not a City right-of-way. The beach is owned and operated by Los Angeles County. Since Chapter 7.36 governs only the private use of the City's public rights-of-way, it could not be used to permit any encroachments on the County-owned sandy beach. Also, the beach is a public recreation area, not a right-of-way. Therefore, the proposed LCP amendment conforms with certified LUP Policy II.B.4.

As stated above, the proposed LCP amendment controls development on the City's public rights-of-way. Chapter 7.36 includes provisions that prohibit non-complying walk-street encroachments and require their removal (Section 7.36.150.A.8), enforcement measures (Section 7.36.120), and expedited appeal procedures related thereto (Section 7.36.080), as required by certified LUP Policies I.A.5 and II.1 (Exhibit #4). Therefore, the proposed amendment to the LIP portion of the certified City of Manhattan Beach LCP conforms with and will be adequate to carry out the provisions of the certified LUP as required by Sections 30513 and 30514 of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f), 13542(a), 13555(b)] the Commission's certification of this LCP amendment must be based in part on a finding that it is consistent with CEQA

Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that for the reasons discussed in this report there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts of the LCP amendment. The Commission further finds that the proposed LCP amendment, as submitted, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.

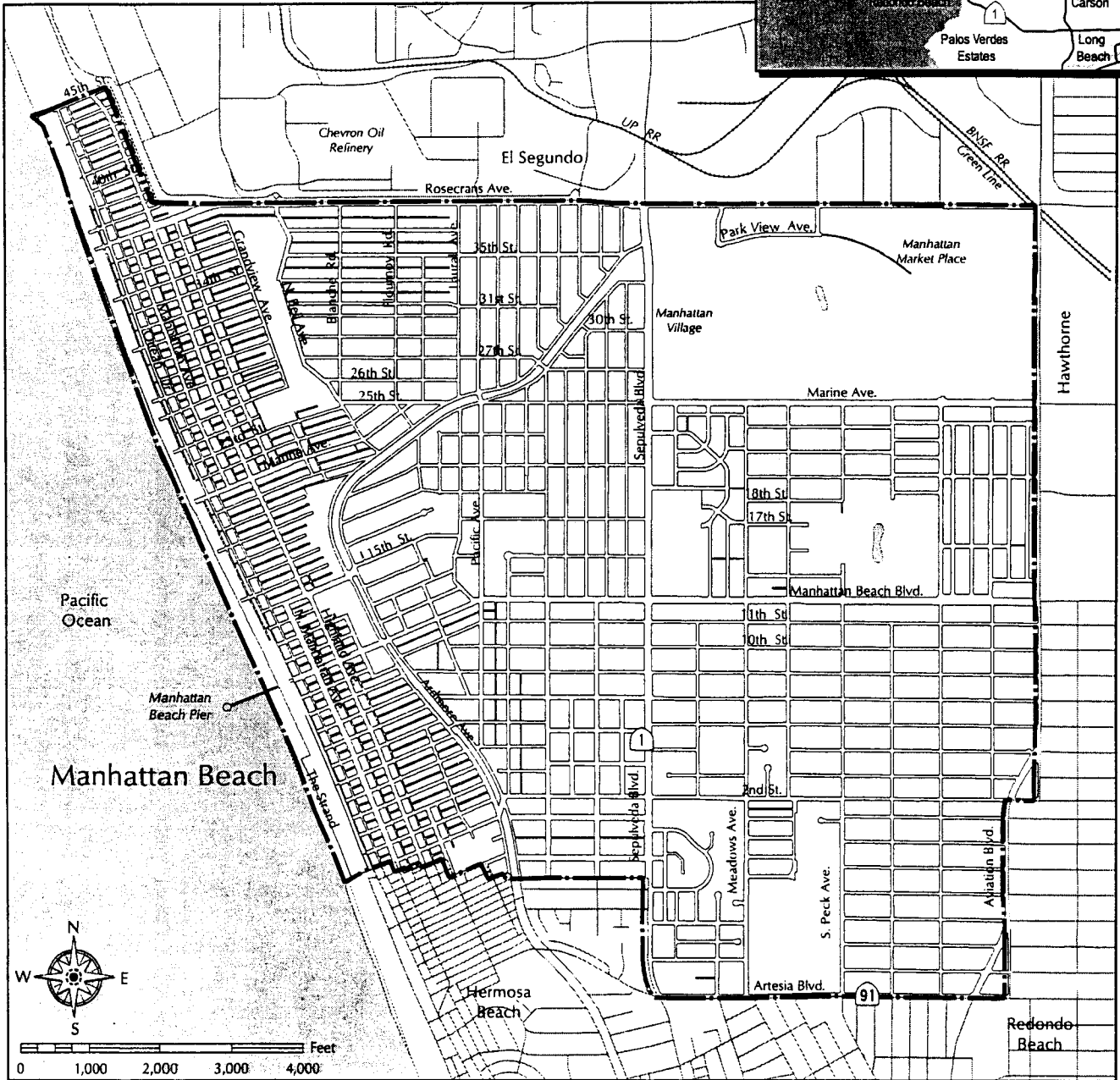
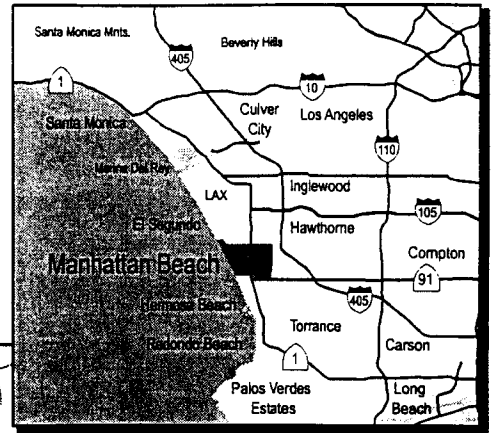
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City of Manhattan Beach

LCP Amendment No. 1-03

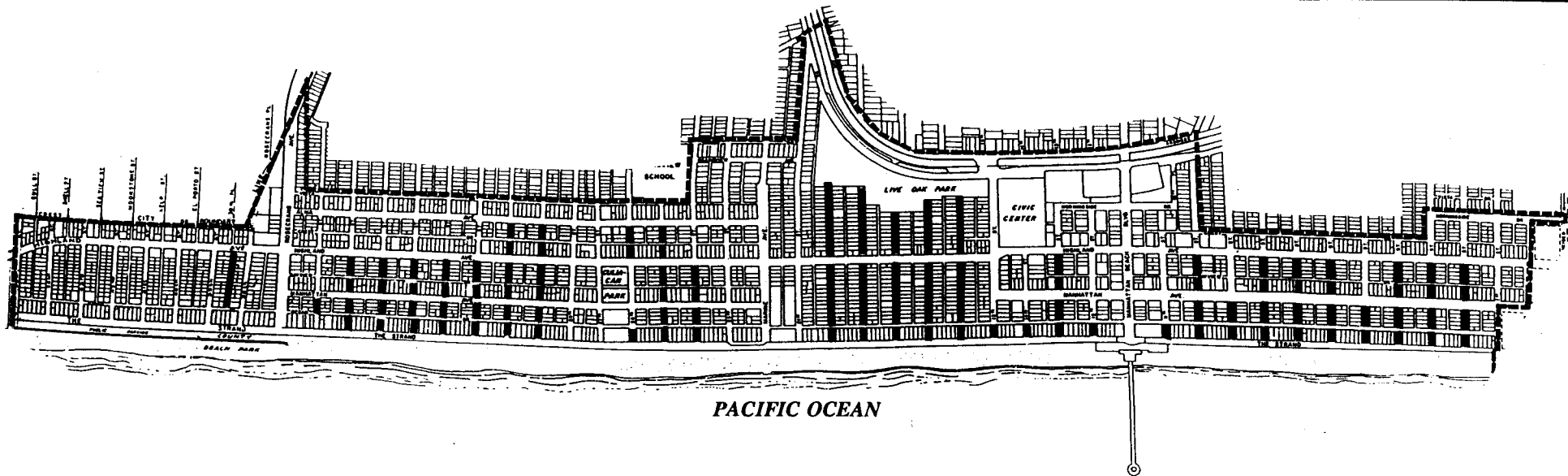


Regional Map



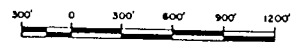
COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 1
PAGE 1 OF 1



Legend

- ▬ Coastal Zone Boundaries
- ▬ Walk Streets



Scale

Map III-2
Coastal Access
City of Manhattan Beach Local Coastal Plan
 Source: City of Manhattan Beach, 1994

COASTAL COMMISSION

EXHIBIT # 2
 PAGE 1 OF 1

MBLCP
1-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, SUBMITTING ORDINANCE NO. 2039 TO THE CALIFORNIA COASTAL COMMISSION FOR AN AMENDMENT TO CHAPTER 3 OF THE IMPLEMENTATION PROGRAM OF THE CITY OF MANHATTAN BEACH LOCAL COASTAL PLAN (LCP) PERTAINING TO ENCROACHMENT PERMITS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS

SECTION 1. The City Council hereby makes the following findings:

- A. The City Council of the City of Manhattan Beach conducted a public hearing, pursuant to applicable law, on November 19, 2002 and February 4, 2003, to consider a proposed amendment to Chapter 3 of the City of Manhattan Beach Local Coastal Plan (LCP) – Implementation Program (replacing existing "Encroachment Permit Guidelines"); and,
- B. The City Council adopted Ordinance 2039 at it's regular meeting on February 18, 2003; to become effective on March 20, 2003, and,
- C. The subject amendment is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment, pursuant to the CEQA Guidelines Section 15061 (b) (3), in that the proposed amendments are a minor modification to the code requirements; and,
- D. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code; and,
- E. The City Council certifies that the subject amendments are consistent with and will be implemented in a manner fully in conformity with all applicable procedures and policies of the California Coastal Act of 1976, as amended, and the City of Manhattan Beach Local Program-Implementation Program.

SECTION 2. This resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

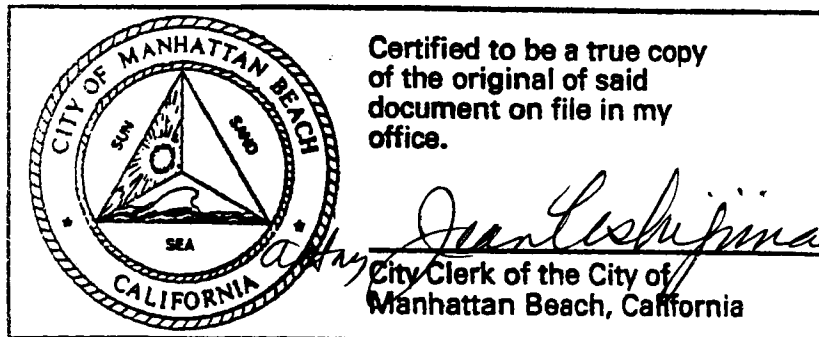
PASSED, APPROVED and ADOPTED this 18th day of February, 2003.

Ayes: Wilson, Dougher, Fahey, Aldinger and Mayor Napolitano.
 Noes: None.
 Absent: None.
 Abstain: None.

/s/Steven A. Napolitano
 Mayor, City of Manhattan Beach, California

ATTEST:

/s/ Jean Ushijima
 City Clerk (Acting)



COASTAL COMMISSIO
 MB LCP 1-03
 EXHIBIT # 3
 PAGE 1 OF 1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, REPLACING CHAPTER 7.36 OF THE MANHATTAN BEACH MUNICIPAL CODE AND IMPLEMENTATION PROGRAM OF THE LOCAL COASTAL PLAN REGARDING PRIVATE USE OF THE PUBLIC RIGHT OF WAY.

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby finds as follows:

- A. The City of Manhattan Beach is a community with a high quality of life, attractive neighborhoods and a non-urban "small town" ambience;
- B. Constant use of the public right of way for utilities and private development requires authority for the City to protect and regulate use of the right of way by private parties for private purposes to ensure public safety and reduce disruption to the public and degradation of public facilities;
- C. Permit requirements for private use of the public right of way ensures that any work performed in the public right of way meets acceptable standards for public improvements and protects public property;
- D. This ordinance is exempt from the requirements of the California Environmental Quality Act due to determination that it has no potential for causing a significant effect on the environment (per CEQA Guidelines Section 15061 (b) (3));
- E. The subject ordinance was reviewed by the Parking and Public Improvements Commission of the City of Manhattan Beach on May 23, July 25 and September 26, 2002 on which date the Commission recommended approval by the City Council;
- F. The proposed ordinance is consistent with the policies of Chapter 3 of the Coastal Act, and will not have an impact either individually or cumulatively on coastal resources, and do not involve any change in existing or proposed use of land or water.

SECTION 2. Chapter 7.36 of the Manhattan Beach Municipal Code and Local Coastal Plan Implementation Program is hereby replaced in its entirety as follows: (Existing Chapter 7.36 is hereby repealed)

CHAPTER 7.36 PRIVATE USE OF THE PUBLIC RIGHT OF WAY

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.

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.



Certified to be a true copy of said document on file in my office.

Pa
City Clerk of the City of Manhattan

COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 4
PAGE 1 OF 11

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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 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.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 11



Certified to be a true copy of said document on file in my office.

JLL
City Clerk of the City of

1 7.36.030 Permit Required

2 It shall be a violation of this Chapter for any person to construct, create, occupy or use an
3 encroachment in the public right of way without an encroachment permit. To the extent permitted by law
4 the issuance of such a permit shall be discretionary and may be denied or revoked without cause.
5 Application of this Chapter shall include, but not be limited to private improvements, long-term
6 commercial use and commercial sidewalk dining, temporary access for installation of private street
7 improvements and all other intrusions into the public right of way whether temporary or permanent. The
8 City Council may, from time to time, by resolution set fees for issuance of encroachment permits
9 authorized by this Chapter.

10 7.36.040 Initiation

11 The Director of Community Development shall have the authority to issue an encroachment permit
12 consistent with the standard set forth in this chapter provided that where fixtures or structures located
13 within public walkways or roadways, other than temporary moveable structures, are to be placed in the
14 public right of way, or street alterations are to be performed, detailed plans for any such work shall be
15 submitted to the Director of Public Works whose approval shall be required.

16 Applications shall be submitted to the Community Development Department with the required forms,
17 fees, plans, and related material. Applications shall be reviewed for compliance with the requirements of
18 this chapter, and the public's priority for use of City right-of-way as determined to be appropriate by the
19 Director of Public Works.

20 7.36.050 Director of Public Works Authority

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

28 7.36.060 Permit Conditions

29 A. Discretionary Conditions

30 The Director of Community Development shall have the authority to condition or restrict the permit in
31 any way which shall protect the public health and welfare. The Director of Community Development
32 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;



Certified to be a true copy of said document on file in my office.

All
City Clerk of the City of

COASTAL COMMISSION

EXHIBIT # 4
PAGE 3 OF 11

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.
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 Home-owners 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.

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 and 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)

COASTAL COMMISSION

EXHIBIT # 4
PAGE 4 OF 11



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the City of

1 7.36.070 Issuance

2 The Director of Community Development shall issue a written decision regarding each encroachment
3 permit application. This decision shall recite the findings upon which the decision is based as provided
4 in Section 7.36.065 of this chapter. If the decision grants the encroachment, it shall set forth the
5 conditions to be imposed. The conditions set forth in Section 7.36.060(b) of this chapter shall be
6 attached to every permit approval. The decision of the Director of Community Development shall be
7 final ten (10) calendar days after mailing a copy of the decision to the applicant.

8 7.36.080 Appeals

9 Applications which are inconsistent with the "Encroachment Standards" set forth in section 7.36.150,
10 including right-of-way frontage improvements required as a condition of approval by the Director of
11 Public Works, must be appealed to and approved by the City Council with a recommendation from the
12 Planning and Public Improvements Commission. A notice shall be sent to the property owners whose lots'
13 front property lines are within 300 feet of the subject encroachment area site at least 10 calendar days
14 prior to each body's consideration of the exception request. The notice will describe the proposed
15 encroachment, make the plans available for review, and set a deadline for registering objections. Upon
16 consideration of such an appeal application, the City Council may approve, modify, or disapprove the
17 application for encroachment. The action of the City Council shall be final.

18 7.36.090 Time Limit

19 Any encroachment granted pursuant to the provisions of this Chapter shall be developed and utilized
20 within a period not to exceed twelve (12) months from and after the date of the granting of such
21 encroachment, and, if not so developed and utilized, such encroachment automatically shall become
22 null and void at the expiration of such twelve (12) month period.

23 The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which
24 to develop and use such encroachment. The Director of Community Development, in his or her sole
25 discretion after due consideration, shall either grant or deny the extension of time for such development
26 and use.

27 7.36.100 Inspection

28 The Director of Community Development shall require that inspections be completed before
29 commencement, and after completion of encroachment work. Inspections while encroachment work is
30 in progress shall be completed as determined to be appropriate by the Director of Community
31 Development or Director of Public Works.

32 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.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 5 OF 11



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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.

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; attorney fees.

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.

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 30 inches 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.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 6 OF 11



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- 7. Steps and Stairs, other than risers between 4 and 7 inches in height and spaced a minimum of 3 feet apart, are not permitted in the public right of way.
Exception. One set of steps comprised of three 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 42" above the adjacent public walkway. To ensure pedestrian to vehicle visibility at corners, a 36" maximum height (measured from adjacent curb level) is required within a distance of 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 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 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 42-inches 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 42-inches 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 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:

COASTAL COMMISSION

EXHIBIT # 4
PAGE 7 OF 11



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City Clerk of

- a. Within the front half of the encroachment area (adjacent to the public walkway), limited to a maximum height of 12 inches 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: 36 inches as measured above or below the adjacent public walkway, or 12 inches 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 42 inches 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 72 inches measured from the adjacent public walkway, provided they are accompanied by terraced landscape planters with evenly spaced retaining walls with a maximum height of 30" each.
- 2. Fences and walls are permitted to be a maximum height of 42 inches above the adjacent public walkway except that planter walls required in subsection (1) above may have a maximum height of 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 6' above adjacent curb level except that a maximum height of 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 2 feet is required behind existing or required street improvements.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 8 OF 11



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City Clerk of

b. Height. Fences and walls may not exceed a maximum height of 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 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 36" maximum height is applicable to all fences, walls or landscape plantings within a distance of 15' from the street corner as per MBMC 3.40.010 (Traffic Sight Obstructions). A height less than 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.

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 48 inches) 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.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 9 OF 11



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City Clerk of

- I. Dining activities must conclude by 10:00pm. Tables and chairs must be removed from the sidewalk by 10:30pm.
- 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.).
- L. Only existing tables used inside the restaurant may be used for sidewalk dining unless additional parking and zoning approval is provided in accordance with the Municipal Code.
- M. The portion of sidewalks used for dining must be cleaned regularly and consistently kept free of litter by the applicant.
- N. The applicant must provide an insurance endorsement and complete a Hold Harmless agreement, to the satisfaction of the City Risk Manager.
- O. The applicant must submit an application for a permit and pay an established permit fee as set forth by resolution of the City Council.
- P. Permits are issued to business owners rather than property owners and are not considered an entitlement to the adjacent private property. New business owners must apply for a new permit.

7.36.170 Long-term Commercial Use Encroachment Permits

- A. Commercial use of the public right of way requires City Council approval.
 Exceptions. The Director of Community Development may approve the following:
 - a. Sidewalk dining permits applicable to vehicular streets in conformance with Section 7.36.110 of this chapter.
 - b. Building projections such as eaves, awnings, signs or elements that benefit the public and comply with applicable codes.
 - c. Roof access or other elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.
- B. Commercial use of a walk street is prohibited. Existing long-term uses conducted on a walk street under the authority of an Encroachment Permit approved prior to January 21, 2003 may continue to operate provided the use is not expanded or intensified. Expansion of intensification includes but is not necessarily limited to: increase of floor area or expansion of hours of operation, or addition of alcohol beverage service.

SECTION 4. All other provisions of the Manhattan Beach Municipal Code not inconsistent with this ordinance shall remain unchanged and continue in full force and effect.

SECTION 5. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 10 OF 11



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City Clerk of the City of Manhattan Beach

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SECTION 7. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 8. A review of the proposed amendments per Section 2 of this Ordinance is hereby directed to occur approximately twelve (12) months after the effective date, with a hearing before the Parking and Public Improvements Commission followed by a recommendation to the City Council.

SECTION 9. The City Clerk shall cause a summary of this Ordinance to be published as provided by law. The summary shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

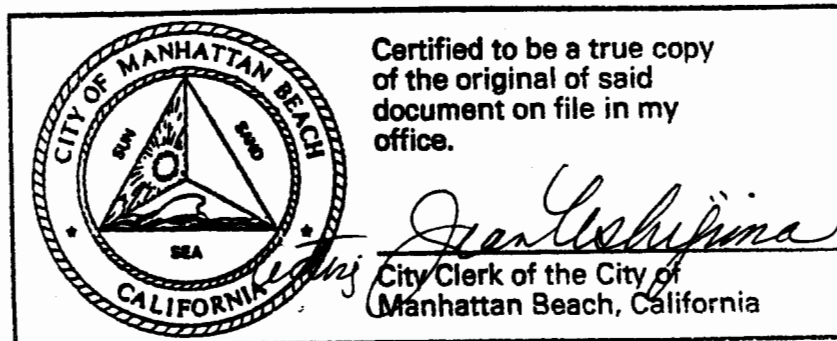
PASSED, APPROVED and ADOPTED this 18th day of February, 2003.

Ayes: Wilson, Dougher, Fahey, Aldinger and Mayor Napolitano.
Noes: None.
Absent: None.
Abstain: None.

/s/ Steven A. Napolitano
Mayor, City of Manhattan Beach

ATTEST:

/s/ Jean Ushijima
City Clerk (Acting)



COASTAL COMMISSION

Chapter 7.36

ENCROACHMENT PERMIT

Sections:

- 7.36.010 Authority to grant.
- 7.36.020 Findings necessary to granting an encroachment.
- 7.36.030 Mandatory conditions imposed upon encroachments.
- 7.36.040 Procedure.
- 7.36.050 Revocation.
- 7.36.060 Encroachment violation.
- 7.36.070 Violations: Misdemeanors.
- 7.36.080 Violations: Additional remedies.

7.36.010 Authority to grant.

Where practical difficulties, unnecessary hardships, or results inconsistent with the general purposes of this chapter occur from its strict literal interpretation and enforcement, a permit to encroach into a planned or existing public right of way may be granted upon such terms and conditions as are deemed necessary. The authority to grant or deny such permit application is vested in the Director of Public Works.

(§ 1, Ord. 1304, eff. October 5, 1972)

7.36.020 Findings necessary to granting an encroachment.

The Director of Public Works, in granting approval of an encroachment permit application, shall make a finding that in the evidence presented, all five (5) of the following conditions exist in reference to the property being considered.

- A. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications;
- B. That any encroachment granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated;
- C. That the granting of the encroachment 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 subject property is located; and
- D. That the granting of such encroachment will not adversely affect the general plan of the City.

(§ 1, Ord. 1304, eff. October 5, 1972)

E. That, in the coastal zone, such encroachment:

- 1. is located within a right of way that has been improved with a paved sidewalk or pedestrian or vehicular accessway or stairway;
- 2. does not encroach into the area of the right of way occupied by such improved paved sidewalk or pedestrian or vehicular accessway or stairway;
- 3. does not reduce public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway, does not reduce the vehicular access along the improved alley and is consistent with the Access Maps and policies of the certified Local Coastal Program; and,

COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 5

PAGE 1 OF 3

4. that the applicant for such encroachment has received a coastal development permit for the encroachment consistent with Chapter 2 of the Local Implementation Program, Section A.96.

(Ord. No. 1898, Amended, 04/14/94)

7.36.030 Mandatory conditions imposed upon encroachments.

In granting an encroachment under the provisions of this chapter, the following conditions, in addition to any other conditions deemed necessary or advisable, shall be imposed:

- A. That the encroachment shall be removed 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 subject property;
- B. That the encroachment be recorded by the City in the office of the County Recorder;
- C. That the encroachment shall be a covenant running with the land and shall be binding upon all heirs, successors, assigns, executors, or administrators in interest;
- D. That a certificate of insurance in amounts and form satisfactory to the City Attorney 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; and
- E. 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.

(§ 1, Ord. 1304, eff. October 5, 1972)

7.36.040 Procedure.

- A. **Applications.** An application for an encroachment into a planned or existing public right of way shall be filed by the owner of the property for which the encroachment is sought or by an authorized representative of the owner. Such application shall be made to the Director of Public Works and shall be on forms furnished by the Department of Public Works.
- B. **Filing fee.** A uniform fee, established by Council under separate resolution, shall be required upon the filing and investigation of the application for encroachment or transfer of an encroachment permit to defray administrative costs incurred by the City in processing the application. Such fee shall be nonrefundable and shall include the costs of recordation of the encroachment, if granted.

(§ 28, Ord. 1458, eff. June 17, 1976)

- C. **Investigation.** An investigation shall be conducted by all departments of the City having an interest in, or jurisdiction over, the matter. Upon the receipt of an application pursuant to the provisions of this chapter, the Director of Public Works shall transmit the application to all affected departments for written reports of findings and recommendations. All such written reports shall be submitted to the Director of Public Works for consideration when making a decision on the application.
- D. **Director of Public Works findings and decision.** The Director of Public Works shall make a written decision. Such decision shall recite the findings upon which he bases his decision. If the decision is favorable to the granting of the encroachment, it shall set forth the conditions to be imposed. The conditions set forth in Section 7.36.030 of this chapter shall be attached to every permit approval.
- E. **Appeal.** The decision of the Director of Public Works shall be final ten (10) days after mailing a copy of his decision to the applicant. Within said ten (10) day period, the applicant may appeal the decision of the Director of Public Works to the Council to review a denial of the application any conditions attached to an approval other than those set forth in Section 7.36.030 of this chapter. Upon consideration of such appeal, the Council may approve, modify, or disapprove the application for

COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 5
PAGE 2 OF 3

encroachment. The Council may add, delete, or modify the conditions attached to the encroachment permit. The action of the Council shall be final.

F. **Time limit for development.** Any encroachment granted pursuant to the provisions of this chapter shall be developed and utilized within a period not to exceed six (6) 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 six (6) month period.

G. **Extension of time.** 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 Public Works, after due consideration, shall either grant or deny the extension of time for such development and use.

(§ 1, Ord. 1304, eff. October 5, 1972)

7.36.050 Revocation.

The Director of Public Works or the Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment 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) 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 reviewed by the Council and its determination of the matter shall be final.

(§ 1, Ord. 1304, eff. October 5, 1972)

7.36.060 Encroachment violation.

It shall be unlawful for any person to construct or maintain, or cause to be constructed or maintained, any encroachment in violation of the provisions of this chapter.

(§ 1, Ord. 1552, eff. April 19, 1979)

7.36.070 Violations: Misdemeanors.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred and no/100ths (\$500.00) Dollars or be imprisoned in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(§ 2, Ord. 1552, eff. April 19, 1979)

7.36.080 Violations: Additional remedies.

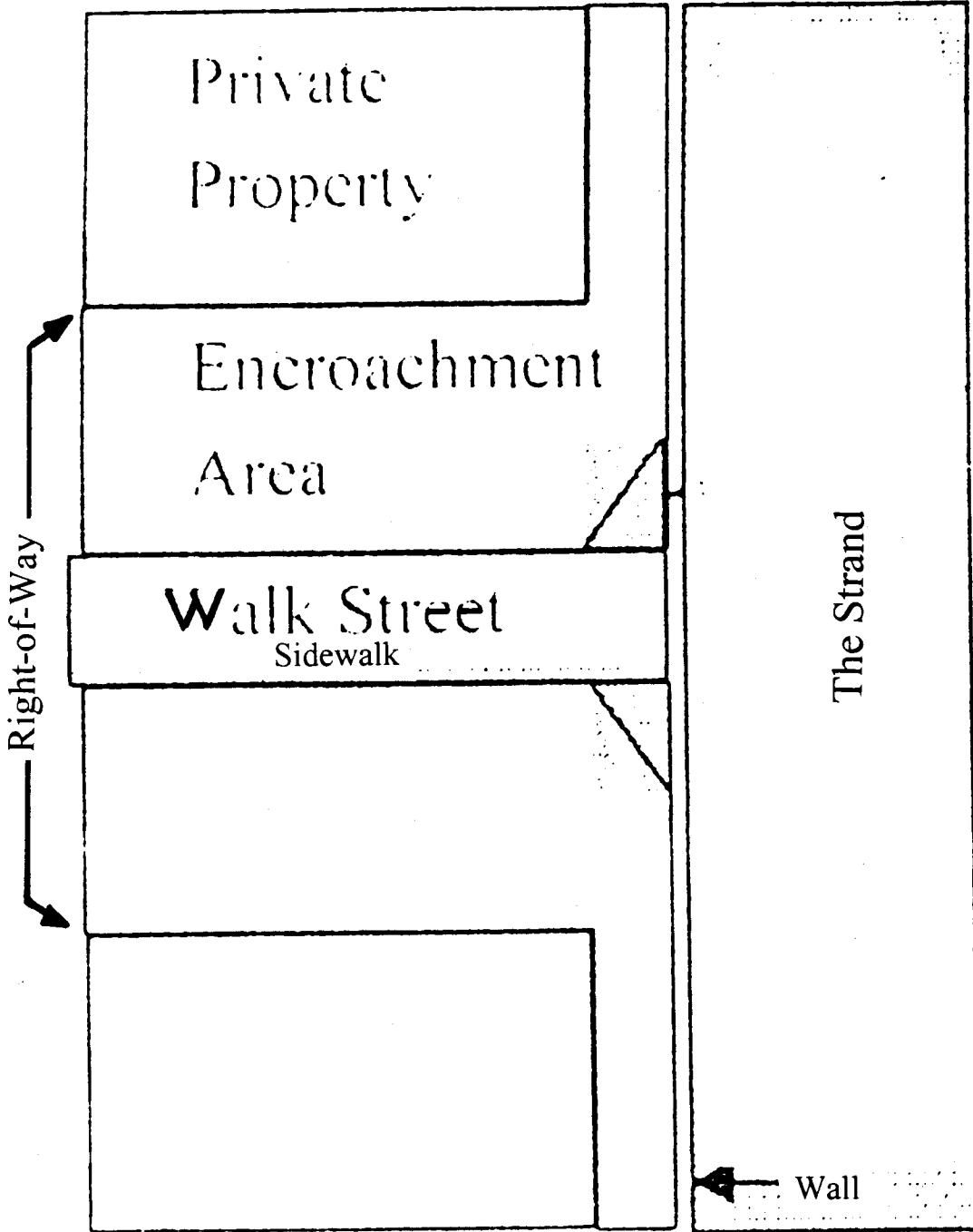
As an additional remedy, the construction or maintenance of any encroachment in violation of any provision of this chapter, shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by City forces or by a duly authorized contractor to the City. In addition to the summary abatement of an encroachment violation, such a public nuisance may be prosecuted civilly in a court of competent jurisdiction.

(§ 3, Ord. 1552, eff. April 19, 1979)

(Ord. No. 1880, Amended, 06/17/93)

COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 5
PAGE 3 OF 3



Public Beach

COASTAL COMMISSION
MB LCP 1-03

EXHIBIT # 6
PAGE 1 OF 1