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ENCROACHMENT PERMIT

An applicant's guide to the process

This handout provides information on the City's process for reviewing applications to work on or encroach onto city rights-of-way and easements. Please contact the Planning Department to obtain additional information, including a copy of the City's Code Chapter on Encroachment Permits (DMMC Chapter 23.28).

Requests to work on City property.

The City of Del Mar owns or holds an interest in various properties throughout the community. These property interests include roads, sidewalks, and easements granted for utility lines, public access and open space.

The City frequently receives requests from home owners, businesses and public utilities to install improvements on city rights-of-way and easements. Requests for encroachments range from what will likely be long-term improvements such as fences, driveways and utility lines, to short-term encroachments such as the storage of dumpsters, building materials, or altering traffic patterns. Short-term encroachments are often proposed as part of the construction-phase of new development or scheduled events that require traffic control in City rights-of-way.

Protection of Traffic

Adequate provision shall be made for the protection of the traveling public. A Traffic Control Plan must be submitted and approved by the City prior to the start of any work in the right-of-way. All plans shall be stamped by a registered civil or traffic engineer. Exceptions to this requirement may be made for low volume street (those less than 5,000 ADT) on a case-by-case basis depending on their location. All warning signs and safety devices used by the Permittee to perform the work shall conform to the requirements contained in the current California Manual of Uniform Traffic Control Devices for Streets and Highways (MUTCD) and section 7-10 of the most current edition adopted for use in the City of Del Mar of the "Standard Specifications for Public Works Construction". Devices must be present on the site prior to beginning any work which affects the traveling public.

Requests to work in a city right-of-way or easement are reviewed under the Encroachment Permit process. Although termed a "permit", this name is somewhat of a misnomer in that it is not the type of permit that grants an entitlement to build or develop. It is more a statement of permission to use another's property, in this case, property over which the City holds interest. In this sense, Encroachment Permits are similar to the type of permission a property owner might grant to a neighbor to install a fence across their common property lines.

The City will generally approve a request for an Encroachment Permit - unless the encroachment would present a public health or safety hazard or the proposal would be inconsistent with the City's planned use

for the area. The City may also deny the request if the proposal would be visually incompatible with the surrounding area.

It should be noted that when the City does grant an Encroachment Permit, it does not give up its interest in the property. In fact, every encroachment that is authorized is considered to be a temporary encroachment, including those that *appear* to be permanent. The City may demand that even an approved encroachment be removed at a future date.

Classifications of Encroachment Permits

There are different types of Encroachment Permits for different types of proposed encroachments. Projects that will have permanent appearance and that will extend above the ground are termed “Major Encroachments.” This category also includes proposals that would result in a significant change in the way a public right-of-way would be used.

These are distinguished from “Minor Encroachments” which include improvements that would have a long-term appearance but would not extend above the ground, such as a driveway apron. Encroachments that are intended for a more limited duration, such as temporary traffic control, the storage of a dumpster or construction materials are also termed Minor. Proposed encroachments are also grouped into categories of “long term” vs. “short-term” encroachments.

The review process for Minor and Major Encroachment Permits is similar. An application is filed at the City Hall Planning Department and is routed to other City Departments for review and comment. Various conditions are attached to virtually all approved applications. The conditions should be read carefully because they affect the work to be done and because they lay out future responsibilities of an applicant. For example, one of the conditions notifies the applicant that any granted encroachment permit may be revoked by the City if it is determined that the area in question should be used for another purpose. If the authorization is revoked, the applicant or successor in interest will be required to remove the encroachment at their own expense and to restore the area to its previous condition.

In terms of processing, requests for Major Encroachments are reviewed by the City Council at a noticed public hearing while requests for Minor Encroachments are reviewed by staff. The fee for the two types of permits varies, as does the type of public notice required.

There are some activities that do not require the receipt of an Encroachment Permit. These include the installation of low-growing vegetation (under 30 inches at maturity), the installation of certain types of mailboxes and repair and maintenance activities. Work performed by a public utility such as SDG&E is also exempt from the permit requirement but still requires an Access Permit which includes review by the City’s Public Works Department. Please consult with city staff to determine if the encroachment that you may be planning requires an Encroachment Permit and if so, what type.

ENCROACHMENT PERMIT APPLICATION REVIEW PROCESS

For projects that do trigger the requirement for receipt of an Encroachment Permit, the following steps apply.

Step 1– Filing of Application

Applications must be submitted via email to planning@delmar.ca.us or by submitting it online through the City's online portal [e-Trakit](#). At the time of submittal, the application will be given a preliminary review to determine if all submittal requirements have been met. There will also be a determination of

whether the project constitutes a Major or Minor Encroachment. The two “levels” of review are described below.

A. Major Encroachment Permit - reviewed by City Council at a public meeting

This process involves review of the application by the five-member City Council at a scheduled meeting. A staff report is prepared describing the project and the applicable standards of review. After an opportunity for public comment, the City Council renders a decision to approve, conditionally approve, or deny the application. In some instances, an application may be continued to a subsequent meeting to allow staff to gather additional information or to allow an applicant the opportunity to modify project plans. If there is no public comment and if the Council is prepared to approve the application per the staff recommendation, the item may be approved on the Council’s Consent Calendar.

B. Minor Encroachment Permit - reviewed by City staff without a public meeting

This process involves review of the application by the various city departments who make a recommendation to the City Manager. The Manager makes a decision to approve, conditionally approve, or deny the application. The Manager’s decision may be appealed to the City Council in the manner established in the Municipal Code.

Step 1 APPLICATION SUBMITTAL REQUIREMENTS

The following is a list of documents or information that must be submitted as part of an Encroachment Permit application. There may be items on the list that staff determines are not required for a given application. However, unless directed otherwise by staff, each of the listed items is required. Incomplete submittals will **not** be accepted.

1. **Application Form** (completed and signed by the applicant(s) and, where applicable, the owner(s) of the property adjacent to the proposed encroachment area.
2. **Urban Runoff Threat Assessment Form** (completed and signed by the applicant)
(Some projects may be exempt but will still require a completed and signed “Understanding of Exemption” form.)
3. **Application Fee** (please see Fee Schedule)
4. **Project Plan Sets** (two sets are required at the time of application submittal. Ten additional sets will be required for those applications that will be reviewed at a City Council meeting). Plan sets are to be of a minimum 8½” x 11” size. Based on the complexity of the proposal, staff may require that plans of a larger scale be submitted. If larger plans are required, they are to be collated, stapled, and then folded to 8 1/2” x 14” (legal size), with the lower right-hand corner on top. No additional loose pages will be accepted. Please use paper that can be recycled.

Project plans shall include all of the information listed below unless otherwise waived or determined not applicable by the Planning Department. For architectural drawings, use of 1/8th or 1/4th scale is highly recommended.

a. **Site Plan** properly dimensioned and drawn accurately to scale (preferably a 10 engineer scale or a 1/8th or 1/4th architectural scale) containing the following information:

- Scale and North Arrow pointing to top of page
- Vicinity map
- Name and address of applicant, architect, and/or engineer
- Date of plan preparation, including revisions
- Location and dimensions of *all* easements
- Indication of property encumbrances
- Location of proposed structures, as well as existing structures in the vicinity of the proposed right-of way encroachment
- Location of *all* existing Torrey Pine and Monterey Cypress trees within 10 feet of a proposed encroachment
- Location of off-street parking, loading facilities in the vicinity of the proposed encroachment
- Location of *all* nearby driveways, access roads and curb cuts (with dimensions and the type of construction material)
- Location of any waterways, flood-prone areas or other topographical features in the vicinity of the proposed encroachment

b. **Construction Elevations** For all proposals that would extend above the existing grade in the encroachment area, plans must show the proposed finished construction appearance. These elevations shall be properly dimensioned, drawn accurately and to scale.

c. **Landscape/Irrigation Plan.** (Required for installation of new landscape material or irrigation.) Plans shall be drawn accurately and to scale, containing the following information:

- Scale and north arrow pointing to top of the page and a legend
- Proposed plantings
- Alphabetical listing of all proposed plant species using botanical and common names
- Number and container size of each species to be planted
- Mature heights of *all* Species
- Indication of landscape maintenance responsibility (private or common)
- Location of irrigation lines and heads
- Areas to be paved for parking or driving, differentiated from areas intended for landscape planting or decorative hardscape material

d. **Traffic Control Plans** (as necessary) For all work proposed in the public right-of-way. Plans shall be prepared per the requirements in the attached guidelines.

5. **Photographs** of the project area.

6. **Public Noticing Package (for Major Encroachment Permits):**

- a. **Noticing Map** - A 300' radius map drawn on assessor's parcel maps and spliced together (when necessary) showing the 300' radius measured from the exterior boundaries of the property of the subject property.

- b. **Noticing List** - A typewritten list of property owners that corresponds to the radius map required above. The list shall contain the names, addresses, and assessor's parcel number for all parcels within the radius area (including the applicant and/or owner).
 - c. **Noticing Envelopes** - Stamped business size envelopes with typed address labels for all parties listed on the property owner's list required above. The envelopes must also include a City of Del Mar return address.
 - d. **Affidavit** - Certification that the Public Notice Mailing List is accurate and up to date.
7. **Public Noticing Package (for Minor, "long-term" Encroachment Permits):**
- Same as above, but with only a 100-foot property radius mail out.
- ***For a fee, City staff will prepare the Notice Map, Notice List and will supply the required envelopes. For additional information, see the *Public Notice Handout*.
- ***Notice of Minor "short-term" Encroachment Permits is posted at City Hall by the Planning Department staff
- 8. A **Development Permit Pending Notice Sign** shall be posted at the site of the proposed encroachment. The sign must be posted in a conspicuous location along the property's street frontage(s).
 - 9. A requirement for **Miscellaneous Information** may apply to certain applications, due to their location in areas of steep slopes or adjacent to sensitive resources, and may involve the submittal of additional information, such as a soils report or a slope analysis.

Step 2 – Staff Review of Application Submittals – Incomplete Applications

After the initial submittal of the application, the project will be assigned to a member of the Planning Department for a detailed analysis. The planner will review the application for completeness and for compliance with the applicable Municipal Codes. If it is determined that the application is missing information, or is somehow inconsistent with one or more provisions of the Code, it will be deemed *Incomplete*. A letter will be sent to the applicant regarding the necessary information and/or changes.

Step 3 – Routing of application through City Departments

Once an application has been deemed complete, it will be routed to other city departments for comment on the appropriateness of the proposed encroachment and for recommendations as to conditions that should be attached if the application is approved.

Step 4 – City Council or City Manager Review

Following its routing, the application will reviewed by the issuing authority for the application (either the City Council or the City Manager, depending on whether the proposal constitutes a Major or Minor encroachment).

The length of time for the issuing authority's review of the application may vary, depending on the complexity of the proposal. Generally, the review period is longer for City Council review due to the schedule of Council meeting dates.

Step 5 – Appeal Period

For Minor Encroachment Permits, the City Manager’s decision may be appealed to the City Council. The appeal process involves the submittal of a written appeal along with a fee within ten (working) days of the Manger’s decision. The appeal is then forwarded to the City Council, which determines whether to reject the appeal, thereby upholding the Manager’s decision, or to set the matter for a new (*de novo*) review.

Step 6 – Permit Expiration/Modifications to Plans

Any Encroachment Permit granted by the City will become null and void if not exercised and “vested” within the time specified in the permit, or if no date is specified, within one (1) year from the date of approval of the Permit. An applicant may request a single one-year extension for an Encroachment Permit that is about to expire by submitting a written request to the City Manager stating the reason for the request. Changes made to plans after approval of the Encroachment Permit application may require further review by either staff or the issuing authority for the Permit.

Step 7 – Inspections

Approved projects involving long-term physical changes to a right-of-way are subject to construction phase inspections by staff to confirm compliance with approved plans. Where applicable, an applicant may request a refund of a submitted security Deposit/Inspection Fee following a satisfactory inspection, a portion of the fee will be retained to cover the City’s costs of performing the inspection(s).

APPLICATIONS AVAILABLE FOR PUBLIC REVIEW/REPRODUCTION

A submitted application is a matter of public record. With certain exceptions, any portion of the submitted application material may be reproduced and distributed to City staff, to other discretionary bodies, or to the general public for use in reviewing the project proposal. The noted exception involves project plans. Architectural drawings are protected by copyright laws and are, therefore, subject to a separate set of limitations regarding their reproduction. In short, the copyright protection requires that, prior to releasing plans for reproduction, the party interested in receiving the duplication must provide staff with 1) written permission from the architect or draftsman who prepared the plans; 2) written permission from the applicant; and 3) an affidavit that the reproductions will be used solely for purpose of application review. A separate handout is available for the required affidavit.

ADDITIONAL INFORMATION

This handout pertains only to the City of Del Mar Encroachment Permit process. A development proposal may require other separate City permits or authorizations such as a Tree Removal Permit, a Variance or Design Review Permit. Please contact staff for further information.

TRAFFIC CONTROL PLAN GUIDELINES

A Traffic Control Plan (“TCP”) shall be required for all work performed within the public right-of-way. Each TCP shall be developed with both the Caltrans Manual of Traffic Control Devices for Construction and Maintenance Work Zones and the Standard Specifications for Public Works Construction, latest edition. Data to be included on a TCP will vary depending upon the complexity of the project, the volume of traffic affected and the roadway geometrics where the construction is being performed. The TCP must clearly depict the exact sequence of the construction operation (s), the construction to be performed and the traveled way that will be utilized by all movements of traffic during each phase of construction. Multiple phases of construction will require a separate TCP for each different construction phase or operation.

The checklist should be used as a guide to ensure that all of the basic elements are included on the TCP. This will help expedite the plan review process. Following the submittal of the TCP, all submittals deemed complete shall be reviewed within two (2) weeks. A TCP that does not include each of the appropriate elements listed below will be deemed incomplete and returned for revision and re-submittal. The TCP shall be submitted in a timely manner to allow for the specified review period. It is important to note that each TCP must be developed specific to the actual construction work zone location. Each TCP must include on the plan a description of the work to be performed using that particular TCP.

TRAFFIC CONTROL PLAN CHECKLIST

- TCP shall be drawn on 11” x 17” sheets and stamped by a Registered Civil Engineer or Registered Traffic Engineer unless otherwise approved by the Public Works Department.
- Indicate Contractor’s name, address and telephone number. Include name and telephone number of the 24-hour contact person representing the Contractor.
- Indicate north arrow and scale or “Not to Scale” (NTS).
- Show all nearby streets with street names to assure proper orientation.
- Show existing traffic signals and existing regulatory signs, as applicable.
- Show existing striping, pavement markings, painted crosswalks and bike lanes.
- Show existing curbs, gutters, sidewalks, manholes, driveways and intersections in the construction work zone, include areas affected by taper transition.
- Indicate total roadway widths. Dimension existing striping from edges of pavement.
- Indicate posted speed limits.
- Show location and dimensions of the construction work zone.
- Show staging area and materials storage area, as appropriate.
- Indicate locations of construction signs, as appropriate.
- Label all taper lengths and widths, delineator spacing and sign spacing.
- Road closures will require approval from the City.
- Use a legend to define all symbols and designate them with Caltrans nomenclature.
- Show all parking restriction zones and signs, as appropriate, including Bus Stop locations.
- Signs and barricades will be required to direct pedestrians through or around the construction work zone and shall be shown on the TCP.
- Indicate on the plan the duration of the construction work and subsequent traffic control.

TRAFFIC CONTROL GENERAL NOTES

1. The Public Works Director or his representative has the authority to revoke the permit should the Permittee fail to ensure public safety.
2. All traffic control devices shall be removed from view when not in use.
3. Work hours shall be restricted to between 8:30 a.m. to 3:30 p.m. unless approved otherwise.
4. Traffic control devices are to be placed by a person trained in traffic control and are to be checked, and maintained as necessary, periodically throughout the day. Failure to maintain traffic control devices may result in Encroachment Permit revocation.
5. Trenches must be backfilled or plated during non-working hours. Contractor to provide steel plates installed per Encroachment Permit and signage denoting "Trench Plate Ahead" for on-coming traffic; all requirements set forth in the ***Encroachment Permit Standard Condition PW-5***.
6. Pedestrian controls shall be provided as shown on the plans.
7. Temporary "NO PARKING" signs will be posted 72 hours prior to commencing work which indicate the day(s) of the week and hours of the day that the work is to be performed.
8. Access to driveways will be maintained at all times unless other arrangements are made and previously approved by a Public Works Director or his representative.
9. The Contractor shall replace, within 72 hours, all traffic signal loop detectors damaged during construction.
10. All striping removed or damaged will be replaced by the Contractor within 24 hours (or replaced with temporary tape).
11. All workers shall be equipped with reflective safety vest. All flaggers shall also be equipped with a hard hat, C28 "Stop/Slow" paddle and shall be trained in the proper fundamentals of flagging traffic.
12. Any work that disturbs normal traffic signal operations shall be coordinated with the City 48 hours prior to beginning of construction.
13. The Contractor shall maintain all traffic control devices 24 hours per day and 7 days per week.
14. A minimum of eleven (11) foot travel lanes must be maintained unless otherwise approved by the City.
15. All night work will require written approval from the City Manager. Lane closures, road detours, road closures, and traffic signal modifications associated with overnight construction activities will require warning signs to be placed at least one week in advance of starting construction.
16. A flashing arrow board shall be required on all arterial street lane closures.
17. Deviations in the actual placement of traffic control devices relative to the approved Traffic Control Plan are prohibited. Changes must be submitted, in writing, to the city in the required plan format by the Permittee and approved prior to implementation. All Traffic Control Plans must be signed by a professional Traffic Engineer licensed in California, unless otherwise approved by the city.