

Private Encroachments into City Right-of-Way

The city frequently receives requests from private property owners to use the city's public right-of-way (ROW) or easement for personal use. In limited circumstances, the city will authorize private use of public property. This info-bulletin provides an overview of the permitting requirements for such requests.



BACKGROUND

The city owns or holds an ownership interest in various properties throughout the community, including roads, sidewalks, and easements that are used for utility lines, public access, and open space. The city often receives requests from homeowners and businesses to install various improvements within public ROW.

Requests for encroachments range from long-term improvements such as landscaping, stormwater facilities, retaining walls, and driveways, to short-term encroachments such as dumpsters, building materials, traffic detours, and similar requests associated with building construction or scheduled events.

Carlsbad Municipal Code (CMC) [§11.16](#) sets forth the permit requirements for encroachments within these public ROWs. The following sections are intended to provide additional direction on how the city processes private requests to use the public ROW.

TYPES OF PERMITS

The location and type of encroachment determines the type of permit that will be required. The sections below provide an overview of those permits and when they are required.

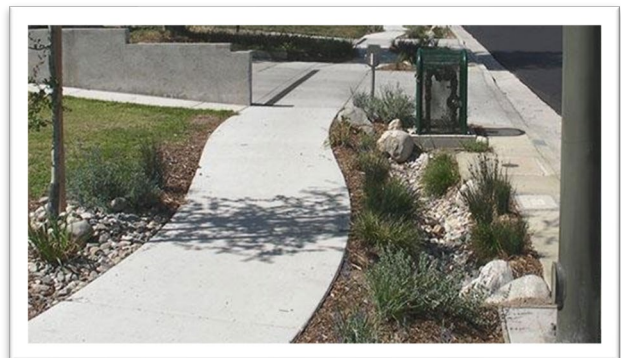
Documents Referenced

Carlsbad Municipal Code; [§11.16](#)
Right-of-Way Permit and Application Checklist, [E-11](#)
ROW Use Permit; [E-12](#)
Encroachment Agreement Submittal Checklist, [E-6](#)
Village & Barrio Master Plan; [VBMP](#)
Engineering Decision Appeal Form [E-38](#)
[City Engineer Standards](#)

Encroachment Permit

With limited exceptions, all encroachments in the public ROW require approval of a city issued encroachment permit. Although termed a “permit,” this name is somewhat of a misnomer in that it does not grant an entitlement to permanently build or use the ROW in perpetuity. Rather, it is more a statement of permission to use the public ROW. In fact, every encroachment authorized is temporary, including those improvements that appear permanent.

Ultimately, the purpose of an encroachment permit is to enable the city to monitor work or activities performed within city ROW, and if the city finds that the encroachment is unsafe or the ROW is needed for public use, the city may direct at any time that the improvements be removed.



ROW Use Permit

A ROW use permit is a type of encroachment permit that allows temporary improvements and uses within public streets and sidewalks located specifically within the Village & Barrio Master Plan ([VBMP](#)) area. Pursuant to the Plan, a ROW Use Permit may authorize the

following unique allowances within authorized downtown streets and sidewalks.

- *Curb Cafes.* Allows up to two public street parking stalls to be used for dining purposes.
- *Sidewalk Café.* Allows dining on the sidewalk along the frontage of an establishment.
- *Outdoor Display.* Allows merchandise to be displayed on the sidewalk along the frontage of an establishment.



Encroachment Agreement

Any encroachments that are long-term in nature require an encroachment agreement be signed by the property owner who is benefitting from the encroachment.

In short, the agreement is a document that sets forth encroachment terms such as maintenance, removal, liability, and indemnity. The agreement ultimately gets recorded as an encumbrance against the private real property. It should be noted that there are a few instances when an encroachment agreement will not be required for permanent improvements within the public ROW, such as:

- Personal mailboxes
- Low growing vegetation (<30" at maturity) and supporting irrigation, or groundcover including

rocks up to approximately 2 feet in diameter, and low voltage landscape lighting.

- Trees that will not interfere with service lines, utilities, or sight distance.
- Removal of turf or grass from a parkway in front of a residential structure for the purpose of installing water-efficient landscaping and/or irrigation systems.
- Low landscape modular or rock retaining walls less than 16 inches high that do not interfere with utilities.
- Resurfacing an existing driveway without changing drainage patterns.

The Encroachment Agreement is processed concurrently with an Encroachment Permit or ROW Use Permit.

Special Events Permit

On occasion, organizations and groups propose to hold short-term events and activities within the public right-of-way (e.g., farmers market, parades, community events, marathons, and bicycle races). These events fall under [CMC §8.17](#), which sets forth the standards and permit processes for special events permits on public property. An encroachment permit is not required for special events.

The Parks & Recreation Department is responsible for processing special event permits, including any required traffic control plans. To learn more, visit the department's [Citywide Event Permitting](#) website.



PERMIT REVIEW PROCESS

Intake & Processing

- Submittal requirements for an Encroachment Permit, including permit application, are contained in the ROW Permit Application and Checklist Form [E-11](#).

- Submittal requirements for a ROW Use Permits are contained in the Right-of-Way Use Application Form [E-12](#). Please refer to Section 2.6.5 of the VBMP for required standards, limitations, and requirements for these different uses.
- Submittal requirements to process the encroachment agreement are contained in the Encroachment Agreement Submittal Checklist Form [E-6](#). Staff will prepare the encroachment agreement once the encroachment is approved.

Once an application is submitted, the packet is routed to the following divisions for processing:

- Land Development Engineering (LDE) Division
- Transportation Department
- Current Planning Division

Initial permit application review takes roughly ten business days to complete while resubmittal reviews typically take four business days to complete. When approving a permit, the LDE Engineering Manager may condition the issuance on compliance with any special requirements which are determined necessary in order to ensure that such encroachment will not threaten or frustrate the safety of persons or property and in a manner that will not unreasonably interfere with the use by the city or general public.

Standards of Review

When reviewing applications, the following standards are applied:

- The encroachment does not pose a public safety or health hazard
- The encroachment complies with the latest version of the [City Engineering Standards](#)
- The encroachment does not conflict with the intended purpose of the public right-of-way
- The encroachment does not interfere with the city or utility company's ability to access/maintain existing public utilities or infrastructure
- The encroachment is consistent with the city's planned use for the area
- The encroachment is visually compatible with the surrounding area

Potentially Permitted Encroachments

Below are private encroachments the city may authorize, assuming the Standards of Review can be met.

- Decorative concrete and pavers
- Landscaping and irrigation lines
- Stormwater facilities
- Awnings affixed to buildings
- Private drainage connecting to public drainage
- Retaining walls needed for private driveway and/or walkway access

Generally Prohibited Encroachments

Below are encroachments generally not allowed.

- Fences, walls, gates, and pilasters
- Private monument signs
- Retaining walls used to extend usable private property into the right-of-way
- Permanent structures such as sheds, patio covers, decks, and poles

Appeal Process

The decision of the LDE Engineering Manager may be appealed to the City Council within 10 days following the manager's decision, pursuant to CMC [§1.20.310](#). Appeal Form [E-38](#) must be completed and filed with the city clerk (1200 Carlsbad Village Drive), accompanied by the appropriate appeal fee, and shall state the basis for the appeal.

YOUR OPTIONS FOR SERVICE

To schedule an appointment or to learn more about this process, please contact the Land Development Engineering Division at 442-602-2750 or via email at LandDev@CarlsbadCA.gov.