

ENCROACHMENTS SUGGESTED MODS:

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Add new Section 3.3.10 Beachfront Encroachments:

3.3 Regulations

Add new Section 3.3.10 below following proposed Section 3.3.8 Flood Plain District (page 60) and 3.3.9 Coastal Hazards Analysis (all language below would be new to the Specific Plan but is not bold, underlined for ease of reading):

3.3.11 Beachfront Encroachments

A. Definitions.

1. For the purpose of this Section, the following words and phrases shall be defined as specified below:
 - a. “Existing encroachment” shall mean any encroachment or improvement installed or constructed before the effective date of Huntington Beach Local Coastal Program Amendment LCP-5-HNB-16-0003-1 (Sunset Beach Specific Plan) for which a valid coastal development permit exists.
 - b. “New encroachment” shall mean any encroachment or improvement installed or constructed after the effective date of Huntington Beach Local Coastal Program Amendment LCP-5-HNB-16-0003-1 (Sunset Beach Specific Plan).
 - c. “Encroachment” shall mean any object, thing or landscaping oceanward of the seaward property line of any oceanfront residential parcel within Sunset Beach.
 - d. “Application” shall mean any coastal development permit application that includes a request for an encroachment located seaward of the oceanfront property line of any oceanfront residential parcel pursuant to the provisions of this policy and the policies and requirements of the certified Local Coastal Program.

B. Encroachment Area.

Subject to compliance with the provisions of Sunset Beach Specific Plan Section 3.3.10 (this section) and upon approval of a Coastal Development Permit for an encroachment: The owner of an ocean front residential parcel in Sunset Beach may install improvements (as described in Section D, below) on the oceanside of the parcel up to 15 feet oceanward of the private property line and within an oceanward prolongation of the property lines on the side of the parcel, subject to the restrictions below.

C. Prohibited Encroachments.

1. Any encroachment for which no coastal development permit has been approved is prohibited.
2. Any structural, electrical, plumbing or other improvements which require issuance of a building permit.
3. Pressurized irrigation lines and valves.
4. Anything, including but not limited to, structures and landscaping, exceeding four feet in height above the street level of South Pacific Avenue.
5. Encroachments that would adversely impact sensitive habitat.

- D. Subject to compliance with the provisions of this policy, permitted Encroachments shall be limited to the following types of development:
1. Temporary/removable patio/deck units, the top elevation/surface of which shall not exceed four feet above the street level of South Pacific Avenue;
 2. Landscaping not exceeding 30 inches in height above patio/deck surface at full growth and which is compatible with any existing native habitat within 100 feet of the proposed encroachment;
 3. Portable furniture.
 4. Existing encroachments which were constructed in conjunction with development for which a valid building permit and coastal development permit were issued may be approved by the Community Development Director, or Coastal Commission on appeal, upon a finding that the improvement is consistent with or is modified to be consistent with this chapter.
- E. Permit Process.
1. An application for an encroachment may be included in a coastal development permit for development on the private parcel adjacent to the requested encroachment; or an application for an encroachment may be submitted as a separate coastal development permit application. However, for development on any site with an existing encroachment, the coastal development permit application must include either: a) request for retention of the encroachment or, b) removal of the encroachment from the project the site; the choice must be reflected on the project plans.
 2. The coastal development permit application shall be filed with the City of Huntington Beach Planning Department on a form provided by the City. The application shall be signed by the owner of the private property adjacent to the area of the requested encroachment, or an agent of the owner if the application is accompanied by a document, signed by the owner, granting the agent the power to act for the owner with respect to the application and property.
 3. The coastal development permit application shall be accompanied by:
 - a) A site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed and/or existing improvements and objects within the encroachment zone; and shall request either:
 - i) retention of the encroachments (as modified if necessary to meet the standards of this Section 3.3.10), or
 - ii) removal of the encroachments.
 - b) When proposing to construct or retain an encroachment, a biological survey, prepared by an appropriately licensed professional, of all flora and fauna within 300 feet of all proposed or existing to be retained improvements and objects within the encroachment zone. The biological survey shall evaluate, among other things, the presence and extent of native dune vegetation and the presence of snowy plovers or evidence of snowy plover use of the area. If any sensitive and/or native species are present, the application shall include measures to be implemented to assure protection of the sensitive and/or native species, including but not limited to buffer zones between the sensitive/native species and any proposed encroachment, planting of additional native plant species to support the sensitive species in the area, and agreement to prohibit allowance of invasive landscaping species in the encroachment area. When the required biological survey reveals the

presence of sensitive species, the application shall also be accompanied by a mitigation plan as described in Section K, below.

4. Applications with incomplete or inadequate information and/or drawings will not be accepted.
5. Upon receipt of the application, the Community Development Director shall, within thirty (30) days after the date of filing, determine if the application is complete or if additional information is necessary or appropriate in order to adequately analyze the application. In the event the application is incomplete and/or additional information is necessary, written notice to that effect shall be sent to the property owner and/or his/her designee (consistent with subsection E.2 above) within thirty (30) days from the date the application is received by the Planning Department.
6. With respect to applications for existing encroachments, an inspection shall be conducted of all improvements within the encroachment zone before a permit may be approved. With respect to applications for new encroachments, an on site inspection shall be conducted after installation of the improvements to insure conformity with provisions of the coastal development permit and this policy. Inspections shall be conducted by appropriate City staff or Coastal Commission staff on appeal.
7. The Community Development Director, or the Coastal Commission upon appeal, shall approve the coastal development permit upon a determination that a) the encroachment(s) proposed to be constructed, or to remain, are consistent with this policy, b) the applicant has agreed to abide by all of the terms and conditions imposed on the coastal development permit, and, c) the applicant has paid all fees required by this policy.
8. The Community Development Director, or the Coastal Commission upon appeal, shall have the authority to condition his/her approval of the coastal development permit as necessary or appropriate to insure compliance with the provisions of this policy. The Community Development Director or the Coastal Commission upon appeal shall have the specific authority to condition approval of an encroachment permit on the removal of any existing encroachment that is inconsistent with this section within a specified period of time.
9. The coastal development permit application for the proposed encroachment shall be processed in accordance with the requirements of Chapter 245 Coastal Development Permits, of the Huntington Beach Zoning and Subdivision Ordinance.
10. Once a coastal development permit is approved for an encroachment, an annual encroachment fee shall be required. This requirement shall be included in the approval of any coastal development permit that includes a request for encroachment. The requirements for the annual encroachment fee is described below.

F. Annual Encroachment Fee.

1. The City Council shall establish, by resolution, the amount of the annual encroachment fee required for any encroachment subject to this section. The annual encroachment fee shall be directed specifically to offsetting the impacts caused by the encroachments, including impacts to public access and/or impacts to sensitive habitat. The City Council resolution shall establish a fund with the sole purpose of administering the collected annual encroachment fees and shall establish and describe the method by which the fund will be administered by the City. The City Council resolution shall provide a mechanism by which the annual fee may be increased (such as linking the fee to the Consumer Price

Index or similar mechanism). Allowable uses of the encroachment fee fund are described in greater detail in Subsection 4 below.

2. A condition of the approval of the coastal development permit shall require that the encroachment fee be paid annually for as long as the encroachment persists.
3. The first annual fee shall be due and payable prior to issuance of the approved coastal development permit and annually thereafter. The condition of approval shall establish the due date of the subsequent annual encroachment fee, which shall be no more than one year from the date of the first payment of the annual fee. The fee shall be considered delinquent thirty (30) days thereafter. Delinquent fees shall be established by resolution of the City Council.
4. The annual fee shall be used to defray City costs of administration, costs to enhance public access and use of the ocean beaches, and/or to establish/expand dune habitat on the adjacent berm/dune (located approximately 40 feet from the oceanward private property line) necessitated by impacts to public access and habitat caused by the private encroachments onto the public beach area of Sunset Beach. At least eighty-five (85%) percent of the fees shall be used by the City for specific projects that enhance public access in Sunset Beach or in Huntington Harbour and/or for habitat restoration of the adjacent berm/dune (see Section J, below). No more than fifteen percent (15%) of the fees shall be used by the City to defray costs of administration.

G. Continued Encroachment

The approved encroachments shall be allowed to continue only as long as the following occur:

- a. The applicant has complied with all standard and special conditions of approval;
- b. The applicant has constructed only those improvements and encroachments authorized by the permit;
- c. The applicant is current with payment of the annual fee requirement as described in subsection F above.
- d. The applicant is in compliance with all the provisions of this policy.

H. Standard Conditions.

1. The Community Development Director, or the Coastal Commission upon appeal, shall impose standard conditions of approval on all coastal development permits for approval of encroachments. These standard conditions shall include, without limitation, the following:
 - a. The obligation of permittee to comply with all of the provisions of this policy and all conditions imposed upon the permit.
 - b. The right of the Community Development Director, or the Coastal Commission upon appeal, to revoke any permit after notice and hearing if the permittee is in violation of this policy or conditions to the permit.
 - c. The right of the City to summarily abate encroachments which are prohibited by this policy or conditions of the permit upon ten (10) day's written notice.
 - d. The obligation of permittee to pay all costs incurred by the City in summarily abating any prohibited improvement.
 - e. The obligation of permittee to defend, indemnify and hold the City (and the Coastal Commission where appropriate) and its employees harmless from and against any loss or damage arising from the use or existence of the encroachment.

- f. Permittee's waiver of any right to contest the City's street and public access easement over property within or oceanward of the encroachment areas.
 - g. The right of the Community Development Director or his or her designee to inspect improvements within the encroachment area without notice to the permittee.
 - h. The right of the City to cancel or modify any, or all, encroachment permit(s) upon a determination by the City Council or other public agency to construct a public access facility or improvement or habitat restoration within or adjacent to the encroachment zone in which the permittee's encroachment negatively impacts the ability of the City or other public agency to construct, operate, or maintain the proposed public access facility or improvement or habitat restoration.
2. The construction of any seawall, revetment or other shoreline protective device necessary to control erosion and to protect existing primary development, if approved, shall occur on private property if feasible, or as close to private property line as feasible. No shoreline protective device shall be allowed for the sole purpose of protecting an encroachment(s).
 3. The Community Development Director, or the Coastal Commission on appeal, may impose additional standard conditions necessary or appropriate to insure compliance with, or to facilitate City administration of this policy.
- I. Violations/Remedy.
1. The City shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event a permittee is in violation of the provisions of this policy or any condition to the permit, or any encroachment violates the provisions of this policy:
 - a. Revoke the permit after giving the permittee notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation of this policy. The Community Development Director shall establish the specific procedures designed to insure that permittee receives due process of law.
 - b. Summarily abate any encroachment violative of this policy after giving the permittee or property owner ten (10) day's written notice of its intention to do so in the event the permittee or property owner fails to remove the encroachment. The permittee or property owner shall pay all costs incurred by the City in summarily abating the encroachment or improvement. The determination of the Community Development Director, or the Coastal Commission on appeal, with respect to abatement shall be final.
- J. Mitigation Plan.
- To mitigate any impact on beach access and/or native/sensitive habitat resulting from the encroachments, the City shall specify the mitigation project to which the annual encroachment fee (per Section F.4) is to be directed as part of the City Council Resolution described in Section F above.

- K. If in a legal action to quiet title a court determines the area seaward of an applicant's oceanfront property lines is not public land, then these encroachment requirements will not apply to that applicant's proposed development.

DRAFT not for public review