CHAPTER 10.56 ENCROACHMENT REVIEW AND AGREEMENTS

10.56.010 Purpose

The Encroachment Review and Agreement process provides an opportunity to review permanent and/or semi-permanent encroachments onto public lands, easements and rights-of-way of the City of Sausalito. In addition to the general purposes of this Title, the specific purposes of this chapter regulating encroachments are as follows:

- A. To review and regulate the long-term (three years or more) use of City of Sausalito properties and easements by individual property owners;
- B. To protect the City of Sausalito's interests in City-owned property and easements;
- C. To examine demonstrated physical need by neighboring property owners to use and improve adjacent or nearby publicly-owned properties or easements for long-term and short-term private use;
- D. To ensure that permanent and/or semi-permanent private use of City-owned properties or easements will not affect the need for, and use of, public passageways and utilities:
- E. To ensure compatibility of permanent and/or semi-permanent encroachments with the surrounding area;
- F. To ensure land use review of permanent and/or semi-permanent encroachments;
- G. To ensure consistency of encroachments with the General Plan, Marinship Specific Plan, other sections of the Sausalito Municipal Code and applicable plans and ordinances; and
- H. To provide for the necessary removal or termination of any encroachment.

10.56.020 Applicability

Encroachments which are subject to this chapter shall also be subject to Chapter 17.16 (Encroachments on Public Streets and Property) of the Sausalito Municipal Code. Encroachments subject to this chapter shall include but not be limited to any fence, wall, trellis work, garage, runway, ramp, building, structure of any kind, or any other use or improvements, including landscaping that will occupy public land, easements and/or rights-of-way for three (3) years or more. Areas which are subject to such encroachment review and agreements shall include but not be limited to any public street area, easement, square, park, place, ground, or any other public property, regardless of whether such public property is or is not surfaced or otherwise improved. Other encroachments (including, but not limited to sewer, electricity and dumpsters) shall be subject to Chapter 17.16 (Encroachments on Public Streets and Property) only.

10.56.030 Authority

- Α. Community Development Director. The following encroachments shall be subject to Community Development Director review and recommendation:
 - 1. Major landscaping:
 - 2. Stairs not on grade:
 - 3. Driveways, involving cut or fill of more than six (6) feet;
 - 4. Fences that do not exceed 42 inches in height;
 - 5. Retaining walls that do not exceed six (6) feet in height; and
 - Signs allowed without permits (See Section 10.42.040, Signs Allowed Without 6. Permits).
- B. Planning Commission. The Planning Commission shall have the authority to review and make recommendations on the following types of encroachments:
 - 1. Garages;
 - 2. Fences that exceed 42 inches in height;
 - Buildings and structures, including but not limited to decks and accessory 3. structures:
 - 4. Parking spaces:
 - 5. Signs:
 - 6. Awnings; and
 - 7. Retaining walls that exceed six (6) feet in height.
- Design Review. Encroachments requiring Planning Commission review and C. recommendation shall be subject to Design Review Procedures (Chapter 10.54). Encroachments requiring Community Development Director review and recommendation shall be subject to Administrative Design Review Permits (Section 10.54.040).
- D. Multiple Applications. When multiple applications are filed for a given development or site, the Community Development Director may schedule a consolidated public hearing before the highest authority required under one or more of the applications.
- E. City Council. The City Council shall have the final decision-making authority to approve Encroachment Agreements, thereby authorizing the use of City-owned rights-of-way, easements or property.

10.56.040 **Applications**

Applications for Encroachment Agreements shall include all information specified by resolution of the Planning Commission. Submittal shall include a site plan drawn to scale showing location of all existing and proposed buildings, yards, driveways, and parking areas; floor plans showing the location of uses in the structure; and the required fee. Application procedures and processing timeframes shall be consistent with Chapter 10.50 (Land Use Permits), this chapter, State law and additional procedural guidelines established by the Community Development Director. Acceptance of an application does not constitute any indication of approval.

Bulk Calculations; Encroachment Adjustment 10.56.050

Structures and buildings to be located in the public right-of-way shall be included in the coverage and FAR calculation for the property which they are proposed to serve. The area of the coverage and/or floor area of the structure will be added into the coverage and floor area calculation. The land area being encroached upon shall not be included in the net parcel area in any fashion. Example: An encroaching living space of 500 square feet is proposed to serve a 5000 square foot parcel containing 1500 square feet of coverage and 2000 square feet of floor area. The existing condition has 30% site coverage and a .40 FAR. The coverage and floor area calculations are adjusted by 500 square feet, resulting in 40% site coverage and .50 FAR.

10.56.060 Findings

The Community Development Director or Planning Commission may recommend approval of, and the City Council may issue, an Encroachment Agreement if the following findings can be made:

- The proposed encroachment is compatible with the surrounding area and will either Α. improve or not significantly diminish visual or physical public enjoyment of the streetscape upon which the encroachment is proposed.
- The encroachment will not adversely affect the usability or enjoyment of adjoining B. parcels nor create or extend an undesirable land use precedent.
- The encroachment is necessary to the reasonable use and enjoyment of the property C. and the extent of the encroachment is justifiable.
- The proposed encroachment will not adversely affect the public circulation nor create or D. constitute a hazard to public safety.
- The value of the proposed improvements will not prejudice a policy decision to terminate E. the encroachment nor preclude or make difficult the establishment or improvement of streets or pedestrian ways.

Conditions of Approval 10.56.070

The Community Development Director or Planning Commission may recommend, and the City Council may apply, conditions of approval to assure compliance with applicable regulations and standards and to specify that the Encroachment Agreement is revocable by the City, including those recommended by City Departments and those specified in Section 10.50.100 (Recommended Conditions of Approval). The engineering division shall identify standard performance conditions for the encroachment upon issuance of an Encroachment Agreement, Section 10.56,110.

10.56.080 Notice of Decision

The Community Development Director or Planning Commission decision shall be in the form of a written resolution, shall include all findings and conditions and shall indicate the Community Development Director's or Planning Commission's decision is a recommendation to the City Council. If the Community Development Director or Planning Commission recommends denial, the decision shall summarize the appeal process contained in Section 10.56.090 (City Council Decision). A written decision shall be mailed to the applicant.

10.56.090 City Council Decision

The City Council may approve, modify or deny the recommendation of the Community Development Director or Planning Commission. The City Council is not required to notice or hold a public hearing on a final consideration of an Encroachment Agreement.

The City Council shall not be required to take further action on an Encroachment Agreement if the Community Development Director or Planning Commission has recommended against approval. An interested party may request City Council consideration by filing a written request with the City Clerk within ten (10) days after the Community Development Director or Planning Commission files its recommendations to the City Council.

10.56.100 Effective Date of Agreement

An Encroachment Agreement shall become effective the date of City Council authorization. If the Encroachment Agreement is denied, the denial becomes effective ten (10) days after the Community Development Director or Planning Commission denial, or the date of City Council denial.

10.56.110 Encroachment Agreement

Prior to any construction and improvement within public lands or rights-of-way, an Encroachment Agreement must be issued by the Engineering Division on forms furnished by the City Engineer per 17.16 of the Municipal Code.

10.56.120 Approval to Run With Land

Any Encroachment Agreement approval shall run with the land and shall continue to be valid for the time period specified whether or not there is a change of ownership of the site or structure to which it applies. Encroachment Agreement approval cannot be transferred to another site, or another portion of the same site.

10.56.130 **Expiration**

Encroachment Agreements are valid for one year unless a different expiration date is stipulated at the time of approval, a building permit has been issued and construction diligently pursued, or the permit is renewed or extended. If more than one phase of a development is approved in a

single action and later authorized time frame.	phases	remain	outstanding,	approval	shall	lapse	at	the	end	of	the
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