

Chapter 12.08 ENCROACHMENTS*

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* For statutory provisions on the construction of sidewalks, curbs and gutters, see Streets and Highways Code § [5870](#) et seq.; for provisions on maintenance of sidewalks, see Streets and Highways Code § [5600](#) et seq. Prior legislation: Code 1975 §§ 1218.0 – 1218.11; Ords. 318 C.S., 82-24, and 85-37.

12.08.010 General.

While it is recognized that special and unusual conditions may justify the erection, installation, or placement of encroachments on, over, or under public property of this City, it is the policy of this City to discourage encroachments onto public lands and that such encroachments shall be kept to a minimum and shall be permitted only when consistent with the General Plan, are for the preservation of public health, safety or welfare, contribute to the furtherance of the general planning and zoning objectives of this City and are characteristic with the appearance of the neighborhood and City. (Ord. 89-9 § 1, 1989).

12.08.020 Definitions.

For the purposes of this code, the following definitions shall apply:

- A. “Encroachment” is any excavation, structure or object, temporary or permanent, upon, over, or under any City property or public right-of-way, except driveways which are addressed in Chapter [12.24](#) CMC.
- B. “Utility company” shall include, but not be limited to, any entity or person providing gas, electric, water, television cable, telephone, sanitary service or other utility services.
- C. “Permittee” means any person or organization who/which has been issued an encroachment permit.
- D. “Temporary encroachment” means any encroachment which remains on City-owned property or on the public right-of-way for 90 days or less.
- E. “Permanent encroachment” means any encroachment which remains on City-owned property or in the public right-of-way more than 90 days.
- F. “Person” means an individual, group of individuals, company, utility company, governmental agency, or any other organization.
- G. “Mitigation” means measures taken to compensate for negative public impacts of an encroachment.
- H. “Emergency” means any unforeseen maintenance requiring immediate action to prevent injury to persons or significant property damage or loss.
- I. “Structure” is as defined in the Uniform Building Code and CMC Title [17](#). (Ord. 89-9 § 1, 1989).

12.08.030 Permit – Required.

A permit is required to create, erect, construct, place, operate or maintain any obstruction, structure or encroachment including utility lines, sanitary system transmission lines or reclaimed water system lines in, over, under or on any sidewalk area, street, public right-of-way, park or parkway. (Ord. 89-9 § 1, 1989).

12.08.040 Permit – Application and Fees.

A. Application for any encroachment under this chapter shall be submitted to the Director of Community Planning and Building on approved City forms. The Department of Community Planning and Building shall cause the appropriate City department(s) to review the application prior to forwarding it to the City Administrator for processing. There shall be a fee(s) for the filing of this application as established by the City Council from time to time by resolution. Concurrent with the application submittal, the applicant shall notify in writing, by first-class mail, postage prepaid, owners and residents/business occupants within 100 feet of the location of the proposed encroachment of the following:

1. Description of encroachment;
2. Notice of availability of inspection of a plan showing the location of the encroachment and construction detail;
3. Notice of last day to inspect plans and/or file objection to the proposed project;
4. Scheduled date of City Council (if applicable) or City staff action to be taken on the application;
5. Estimated length of time to complete project;
6. Possible disruption of service or accessibility to adjoining properties;
7. Hours of construction; and
8. A description of mitigation measures, if required.

A declaration under penalty of perjury, on a form supplied by the City Clerk, attesting to the fact that these requirements have been met shall be attached to the application.

B. Two sets of plans showing the location of the proposed encroachment and a construction detail shall accompany the application. This requirement may be waived by the Director of Community Planning and Building if the encroachment is minor in nature and does not include a structure. (Ord. 89-9 § 1, 1989).

12.08.050 Permit – Process and Determination.

A. Applications for encroachments involving properties in the CC, SC, RC and R-4 districts which accompany applications for design review shall be forwarded to the Planning Commission for its consideration and recommendation.

B. The Director of Community Planning and Building shall forward the application for encroachment permit to the City Administrator after the appropriate City department(s) has reviewed the application and made recommendations.

C. The City Administrator, or his/her designate, may approve the application if it conforms to the standards set forth in CMC [12.08.060](#) below.

D. If the proposed encroachment does not conform to these standards, or it is the opinion of the City Administrator that the nature of the encroachment is contrary to the public interest or should be referred to the City Council for determination, then the application shall be scheduled for action by the City Council. In all other cases, the decision of the City Administrator shall be final, unless appealed as provided for in CMC [12.08.090](#). The applicant shall be notified by the City Administrator within 10 days of the City Administrator's decision to grant, deny, or refer any application. (Ord. 89-9 § 1, 1989).

12.08.060 Encroachment Application Review Standards.

A. Need. The applicant shall be determined to have a justifiable need for the encroachment, and the encroachment shall not be contrary to the public interest.

B. Safety. The granting of an encroachment permit shall not create a hazard to public health or safety.

C. Drainage. The proposed encroachment shall not adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public and meet the standards herein.

D. Circulation and Parking.

1. The proposed encroachment shall not adversely affect vehicular and/or pedestrian traffic nor the parking of vehicles.

2. The proposed encroachment shall not adversely impact existing rights-of-way nor preclude or make difficult the establishment or improvement of existing or potential streets or pedestrian ways.

E. Public Use and Enjoyment.

1. The proposed encroachment shall not diminish public use or enjoyment, either visual or physical, of the City property or public right-of-way to be encroached upon.
2. The encroachment and enjoyment shall be in the public interest.
3. The length of time an encroachment has existed shall not by itself prejudice a decision.

F. Compatibility.

1. The proposed encroachment and its mitigation shall be consistent with the General Plan and the adopted ordinances of the City. Particular attention shall be given to Section P1-48 of the General Plan, which prohibits the construction of sidewalks and concrete curbs in the R-1 district, unless necessary for drainage and/or pedestrian safety.
2. The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent.
3. Granting of a permit shall not adversely affect the usability or enjoyment of one or more adjoining parcels.
4. The proposed encroachment and its mitigation shall be compatible with the surrounding area and adjoining properties.

G. Public Property/Greenbelt.

1. The proposed encroachment shall not adversely affect any public property, including existing vegetation or its root structure, and shall not significantly reduce greenbelt area that may be used for tree planting.
2. Significant trees which would be affected by the proposed encroachment shall be identified by the Director of Forest, Parks and Beach and approval for removal shall follow City policy.

H. Mitigation. When deemed appropriate by the City, the applicant shall include those measures appropriate to compensate the City for the loss of the use of City property or the public right-of-way, or to repair damage thereto. (Ord. 89-9 § 1, 1989).

12.08.070 Permit – Emergency Work.

Any person or agency, public or private, may perform emergency maintenance without first securing an encroachment permit; provided, the Department of Public Works is notified prior to the starting of work. The person or agency shall apply for a permit following the procedures set forth in CMC

[12.08.050](#) on the first business day subsequent to the emergency action. The City shall not be obligated to permit the encroachment beyond the period of emergency. The City may require changes or improvements to the emergency encroachment which are consistent with this code. (Ord. 89-9 § 1, 1989).

12.08.080 Permit – Issuance.

If, in the opinion of the City Administrator or his/her designate, the issuance of the permit conforms to the standards set forth in CMC [12.08.060](#) and will not jeopardize the public health, safety or welfare, the Director of Community Planning and Building may be authorized to issue the permit. (Ord. 89-9 § 1, 1989).

12.08.090 Appeals.

Any decision of the City Administrator may be appealed by submitting to the City Clerk, in writing, a request for appeal and the reasons therefor within 14 calendar days of the date of the decision. The City Clerk shall place any such appeal on the agenda of the City Council. Any decision of the City Council shall be final. (Ord. 89-9 § 1, 1989).

12.08.100 Renewal Fees.

Renewal fees are intended to offset costs that the City incurs for processing and renewing encroachment permits. The fees will be established from time to time by resolution of the City Council. Failure to pay a renewal fee may result in revocation of an encroachment permit and abatement proceedings. (Ord. 89-9 § 1, 1989).

12.08.110 Hold Harmless Agreement, Insurance and Bond Requirement.

Before receiving an encroachment permit, and as a condition of that permit, the permittee shall execute an agreement holding the City harmless from any and all claims, actions and demands of third parties of any kind, character and description arising out of or due to any accident or mishap in, on or about said encroachment so constructed or maintained or any error or omission resulting in personal injury or property damage. The permittee shall provide a certificate of insurance and an endorsement naming the City as an additional insured for the term of the maintenance of the encroachment establishing that the permittee has \$2,000,000 in combined single limit insurance for personal injury and/or property damage per occurrence and \$4,000,000 in aggregate caused by or due to the presence of the encroachment in the CC, SC, RC and R-4 districts and \$500,000 of this coverage in the R-1 district unless some other insurance is approved by the City Administrator or the designee of the City Administrator. The limit of insurance and any other requirements relating to the insurance required may be adjusted by the City Council from time to time by resolution. The insurance carrier shall certify that the insurance is currently in force and that it will notify the City 10 days in advance of any material change in the policy, including cancellation or nonrenewal thereof. This

insurance shall be primary over any other collectible or valid insurance the City may have. In addition, the bonding requirement set forth in Chapter [12.16](#) CMC shall be met for an encroachment involving excavation work. The City shall have the executed hold harmless agreement recorded with the Monterey County Recorder's office. The recorded document becomes a permanent record, and an encroachment permit and its conditions run with the land. In the event of change of ownership of the property, the terms and conditions of the hold harmless agreement are conveyed with the title. (Res. 2020-38 § 1, 2020; Ord. 89-26 § 1, 1989; Ord. 89-9 § 1, 1989).

12.08.120 Water System Transmission, Sanitary System Transmission and Reclaimed Water System Lines.

For water system transmission lines, sanitary system transmission lines and reclaimed water system lines, the application shall be accompanied by a duly executed utility easement between the City Council and the party making application and by a conditional use permit issued pursuant to City ordinances. In considering whether to grant use permit applications, the City Council, in addition to other policies and factors required by ordinance or law, shall consider the actual and potential environmental impact upon the City and the surrounding community, and upon adjoining properties. The City Council shall also consider the project's consistency with the City's adopted General Plan and ordinances. (Ord. 89-9 § 1, 1989).

12.08.125 Nonconforming Existing Encroachments.

A. At the transfer of property ownership or the issuance of a building permit, the Building Official shall inspect the public right-of-way adjacent to the affected private property. He/she shall require the abatement of any nonconforming encroachments or the property owner may submit an application for an encroachment permit that will be processed in accordance with CMC [12.08.050](#).

B. City staff may cooperate with the property owner to help remove and dispose of asphalt that has not been authorized by the City.

C. The City may plant trees and native vegetation, if appropriate, in areas where asphalt has been removed. (Ord. 96-6 § 1 (Exh. A), 1996).

12.08.130 Revocation of Permit and Abatement.

A. Revocation. The City Council reserves the right to revoke any encroachment permit at any time if the permit is not in the public interest or if it fails to meet the other requirements of this chapter. Failure of the permit holder to maintain the required insurance or pay an assessed fee shall result in the immediate revocation of the permit. The City Council may order the removal of the encroachment by the permittee. Should a permittee fail to comply with the Council's order for removal, the City may

undertake the removal of the encroachment. In that event, the City's costs of removal shall be assessed against the permit holder and/or the property and become a lien against the property.

B. Determination of Nuisance. Whenever the City Administrator, or his/her designate, determines that an encroachment exists contrary to one or more of the provisions of this chapter, the encroachment shall be considered a nuisance and abatement proceedings may be initiated by the City.

C. Notice to Owner. Immediately upon determination by the City Administrator that an encroachment constitutes a public nuisance, the City Administrator shall cause a copy of this section to be sent by certified mail to the last address of record of the permittee, together with a notice setting forth the details of the nuisance and the requirements of its abatement. The notice shall advise the permittee that the nuisance shall be abated within 30 days. If the City Administrator determines that the encroachment constitutes an immediate threat to health or safety, s/he shall then cause the encroachment to be abated in the most expeditious manner available, giving the permittee a reasonable opportunity under the circumstances to be heard on the issues of abatement and nuisance.

D. Notice to City Council. In the event the nuisance is not abated by the permittee within the specified time, the City Administrator shall forward to the City Clerk a request for resolution by the City Council, indicating that adequate notice has been given the permittee concerned and that the nuisance still exists.

E. Nuisance Hearing. The City Clerk shall place on the agenda of the City Council a resolution declaring the encroachment to be a nuisance and setting a hearing thereon. The Clerk shall cause a copy of the resolution to be sent by certified mail to the permittee a reasonable time, or at least 10 days, prior to such hearing.

F. Notice of Public Nuisance – Posting.

1. After the passage of such resolution, the City Administrator shall cause to be conspicuously posted on, or adjacent to, the property upon which said public nuisance is alleged to exist not less than three notices headed, "Notice to Abate Public Nuisance," such heading to be in letters not less than one inch in height and such notice to be on a form supplied by the City Clerk.

2. The notices shall be posted at least five days prior to the time for hearing objections to the abatement of such public nuisance.

G. Council Decision. At the time stated in such notices, the City Council shall hear and consider all objections, if any, to the proposed abatement, and may continue the hearing from time to time. Upon

the conclusion of such hearing, the City Council shall, by resolution, allow or overrule any and all objections; whereupon the City Council shall have acquired jurisdiction to proceed and perform the abatement, and the decision of the City Council on the matter shall be final and conclusive.

H. Abatement of Nuisance. After final action has been taken by the City Council to abate a nuisance, or in case no protests or objections have been received, the City Council shall, by resolution, order the City Administrator to abate the nuisance. The affected permittee and/or property owner shall have the right to have any such encroachment removed at his/her own expense, providing the same is done prior to the arrival of the City staff or contractor to remove the same.

I. Cost of Abatement. The City Administrator shall keep an account of the cost of abating such nuisance and shall submit an itemized statement thereof to the City Council at its next regular meeting, and shall forthwith send by certified mail a true and correct copy of such statement to the permittee and/or the owners of such premises. In the event that any such permittee or owner is unknown, the statement shall be posted on the bulletin board of City Hall for one week, giving notice when such statement will be submitted to the City Council for approval.

J. Assessment Against Owner. At the time for receiving and considering such statement, the City Council shall proceed to consider the same and the objections thereto, if any, and may raise, lower, or modify the amount alleged to be due therein. The determination of the City Council, as aforesaid, shall be final and conclusive, and the amounts of the cost of abating such nuisance upon the parcel of land mentioned in the statement shall constitute special charges and assessments against the permittee and/or the property, respectively. Upon confirmation of such statement, a full and correct copy thereof shall be delivered to the Monterey County Assessor and the Assessor shall add the amounts set forth in such statement and charged against any lot, piece, or parcel of land, to the amount assessed against the same for municipal taxes and assessments, and thereafter said amounts shall be collected at the same time and in the same manner as ordinary City taxes are collected, and such special assessments shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency, as provided for ordinary municipal taxes. Any assessment or charge against any property owner or permittee may be enforced by the City Attorney through the courts. The City shall be entitled to recover its reasonable court costs in connection with any such action.

K. Nothing in this chapter shall prohibit the City, acting through the City Attorney, from seeking judicial relief to abate any condition which constitutes a nuisance, or an immediate threat or danger to health or safety, pursuant to State law or any other ordinance. (Ord. 89-9 § 1, 1989).

12.08.140 Waiver of Liability.

It is expressly provided that the provisions for hold harmless agreements and insurance and the acceptance of such agreements or certificates shall not be construed so as to prohibit or limit the City's right to remove or cause the removal of such encroachments as it may from time to time deem advisable, pursuant either to applicable general law or other provisions of this code. (Ord. 89-9 § 1, 1989).

The Carmel-by-the-Sea Municipal Code is current through Ordinance 2022-03, passed November 1, 2022.

Disclaimer: The city clerk's office has the official version of the Carmel-by-the-Sea Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://ci.carmel.ca.us/>

City Telephone: (831) 620-2000

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