

(O-85-110)

ORDINANCE NUMBER O- 16400⁺ (NEW SERIES)

ADOPTED ON APR 08 1985

AN ORDINANCE PROVIDING AN ALTERNATIVE TO ENCROACHMENT REMOVAL AGREEMENT BY ALLOWING AN ENCROACHMENT MAINTENANCE AND LIABILITY AGREEMENT RELATING TO OCEAN FRONT WALK IN MISSION BEACH

WHEREAS, numerous private improvements or structures encroach into an undeveloped public right-of-way, twelve feet in width, which lies immediately to the east of the publicly improved portion of Ocean Front Walk in Mission Beach; and

WHEREAS, the property owners of such encroachments have indicated their willingness to assume the defense of, indemnify and save the City free and harmless from any claims and damages arising out of the construction or continued existence of these private encroachments; and

WHEREAS, many property owners along Ocean Front Walk have expressed concerns about entering into the standard encroachment removal agreement described in San Diego Municipal Code, Section 62.0302; and

WHEREAS, prior to its causing public improvement, if any, in the undeveloped portion of Ocean Front Walk, the City Council desires to provide an alternative to the standard encroachment removal agreement in order to balance public and private interests without undue disruption; and

WHEREAS, the City Council has therefore concluded to provide, by ordinance, an alternative to such standard agreement for

potential use by encroaching property owners in Ocean Front Walk;
and

WHEREAS, by providing for this alternative agreement, the City may avoid costly and unnecessary litigation with property owners, preserve the respective interests of all parties, and protect the public in matters of safety and liability; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. It is the purpose of this ordinance to protect the interests of both the City and property owners in certain circumstances where existing private improvements or structures encroach into an otherwise undeveloped portion of the public right-of-way in Ocean Front Walk, and further, to provide an orderly process whereby property owners shall assume liability for the encroachments and shall maintain them in a safe condition until such time as the City Council may decide to approve a project for public improvement in the undeveloped portion of the right-of-way.

A. As an alternative to the standard encroachment removal agreement provided for in San Diego Municipal Code, Section 62.0302, the City Engineer is authorized in the following circumstances to enter into encroachment maintenance and liability agreements with property owners who have existing private improvements or structures in the Ocean Front Walk public right-of-way:

1. Where the private improvements encroach only into an otherwise undeveloped portion of the public right-of-way;

2. Where the private improvements were constructed before December 31, 1984;

3. Where the private improvements do not adversely affect the public health or safety;

4. Where the City has no existing plan for public improvement of the undeveloped portion of the right-of-way; and

5. Where no private individual or entity has initiated litigation against either the City or property owners to enforce any public right to utilize the unimproved right-of-way containing the encroachments.

B. The encroachment maintenance and liability agreement provided for in this ordinance shall be prepared by the City Engineer and shall contain the following provisions:

1. A description of the private structures or improvements which exist in the undeveloped right-of-way provided by the encroaching property owner.

2. A legal description of the private property immediately adjacent to the encroaching structures or improvements provided by the property owner.

3. A provision that the property owner shall agree to at all times indemnify and save the City free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses that the City may

sustain or incur in any manner resulting from the construction, maintenance, use, state of repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (a) loss of or damage to property, and (b) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.

4. A provision stating that the property owner shall agree that the private improvements or structures described herein shall be maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and any successor in interest.

5. A provision to the effect that any property owner entering into this agreement does not thereby waive any rights he or she may claim to have regarding the potential continuance of encroaching structures or improvements when such rights or claims are based on circumstances that occurred before the effective date of the agreement.

6. A provision to the effect that the property owner does not acquire any independent claim or additional right to use the public right-of-way for private improvements as a result of the use permitted during this agreement.

7. A provision specifying that the agreement shall terminate at such time as the City Council approves a budget which funds a project for public improvement of the undeveloped right-of-way in which the private improvements are located.

8. A provision specifying that the agreement shall not affect in any manner such rights as the City may have to require removal or relocation of encroaching structures upon termination of the agreement and proper notice to the property owner.

9. A provision specifying that the property owner's obligations of liability and safe maintenance, as described above in provisions 3. and 4., shall survive termination of the agreement, and the property owner shall agree to be bound by such continuing obligations of liability and safe maintenance for as long as the private improvements or structures remain in the public right-of-way.

10. A provision specifying that the City Engineer shall be authorized to terminate the agreement for cause if the Engineer determines that certain encroaching structures or improvements adversely affect the public health or safety and the property owner has failed to correct any deficiency within thirty (30) days after written notice to do so.


The City Engineer shall cause such encroachment maintenance and liability agreements to be recorded in the office of the County Recorder.

An owner of any encroaching structure or improvement who does not execute an agreement pursuant to this ordinance within sixty (60) days after written notice of opportunity by the City Engineer shall be required by the Engineer to enter into an encroachment removal agreement as provided for in Sections 62.0302 or 62.0303 of the San Diego Municipal Code. If such property owner refuses to enter into either the agreement provided for in this ordinance or else a standard encroachment removal agreement, the City Engineer shall refer the matter to the City Attorney for appropriate legal action.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
01/23/85
Or.Dept:T&LU
O-85-110
Form=o.none

APR 08 1985

Passed and adopted by the Council of The City of San Diego on _____, by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksmma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uvaldo Martinez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Roger Hedgecock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

ROGER HEDGECOCK
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Maureen G. Portucow*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 25 1985, and on APR 08 1985

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Maureen G. Portucow*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-16400 Adopted APR 08 1985

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