

Article 9: Construction Permits

Division 7: Public Right-of-Way Permits

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0701 Purpose of Public Right-of-Way Permit Procedures

The purpose of these procedures is to establish the process for review of Public Right-of-Way Permit applications for compliance with the regulations set forth in Chapter 5, Article 4 and Chapter 6, Article 2 and to protect the public health, safety, and welfare.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0702 When a Public Right-of-Way Permit Is Required

(a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:

- (1) The construction of *public improvements* by an entity other than the City;
- (2) The construction of privately owned *structures*, facilities, or improvements in the *public right-of-way* or in a *public service easement*;
- (3) Any construction activity within a *public right-of-way* as required by Municipal Code Sections 54.0116 and 54.0117;
- (4) The planting of any tree, shrub, or plant greater than 30 inches in height in the *public right-of-way*; where not otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).

(b) The City Engineer may:

- (1) Require a building permit for private structures encroaching in the *public right-of-way* in addition to, or in place of, a Public Right-of-Way Permit; or
- (2) Waive the requirement for a Public Right-of-Way Permit as provided in the Land Development Manual.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§129.0703 Exemptions from Requirement for a Public Right-of-Way Permit

Exemption from the Public Right-of-Way permit requirements does not authorize any work to be done in violation of the provisions of the *public right-of-way* regulations or other applicable local or state regulations. A Public Right-of-Way Permit is not required for the following work:

- (a) The installation of underground irrigation systems in the *parkway* that will be maintained by the fronting property owner; and
- (b) The installation of landscape in the *parkway* that is less than 30 inches high and will be maintained by the fronting property owner or where otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§129.0710 How to Apply for a Public Right-of-Way Permit

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) If the proposed *encroachment* involves construction of a privately-owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with Section 126.0402(j) except for the following, which are subject to approval by the City Engineer in accordance with Process One:
 - (1) Private *hardscape* improvements in the *public right-of-way* including ramps required to accommodate required access for *disabled persons*;
 - (2) Fences or walls that meet the following criteria:
 - (A) There is no present use for the subject *public right-of-way*;
 - (B) The proposed *encroachment* is consistent with the underlying zone, city standards, and policies;
 - (C) The proposed *encroachment* shall be 3 feet or less in height.

- (3) The *encroachment* is permitted under Chapter 6, Article 2, Division 11 (Utilities) or as a private underground utility service to the *applicant's* property.
 - (4) The *encroachment* is permitted under Section 141.0619(b) (Pushcarts).
 - (5) The *encroachment* is permitted under Chapter 6, Article 2, Division 10 (Newsracks).
 - (6) The *encroachment* is permitted under Section 141.0621 (Sidewalk Cafes).
 - (7) Temporary monitoring wells in the *public right-of-way*.
 - (8) *Encroachments* for temporary shoring and tie-backs.
 - (9) Outside the Coastal Overlay Zone, encroachment of below-*grade structures* into the *public right-of-way* up to 3 feet behind the existing curb line and at least 3 feet below the existing curb line, or encroachment of above-*grade structures* into the *public right-of-way* up to 4 feet and at least 8 feet above the finished *grade* of the curb line.
 - (10) Encroachment of equipment into the *public right-of-way* by *applicant's* for the fiber optic or *wireless communication facility* industries that can demonstrate installation of equipment cannot be undergrounded, as verified by the City Engineer or designee. The equipment shall not exceed 3 feet above the finished *grade* of the curb line and greater than 4 feet in diameter.
- (b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with Section 126.0502(d)(6), except for the following:
- (1) *Encroachments* listed in Section 129.0710(a)(4) through (8).
 - (2) Underground utility connections to a public main shall require a Neighborhood Development Permit in accordance with Section 126.0402(j).
 - (3) Temporary monitoring wells in the *public right-of-way*.

- (4) *Encroachments* where the *applicant* has written permission from the *record owner* of the underlying fee title in a form to the satisfaction of the City Manager shall be processed in accordance with Section 129.0710(a).
 - (5) Community entry *signs* in accordance with Section 141.1101.
 - (6) Encroachment of equipment into the *public right-of-way* by *applicants* for the fiber optic or *wireless communication facility* industries that can demonstrate installation of equipment cannot be undergrounded, as verified by the City Engineer or designee. The equipment shall not exceed 3 feet above the finished *grade* of the curb line and greater than 4 feet in diameter.
- (c) If the proposed *encroachment* includes underground or overhead *structures* which extend into the *public right-of-way* beyond the ultimate curb line, or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval, a Process Five Site Development Permit shall be obtained in accordance with section 126.0502(e) prior to the issuance of a Public Right-of-Way Permit.
- (d) Notwithstanding Sections 129.0710(a)-(c), a *development permit* is not required prior to issuance of a Public Right-of-Way Permit for *placemaking* or a recreational amenity in the *public right-of-way* subject to the following regulations. For purposes of Section 129.0710, a recreational amenity is defined as any improvement that provides recreational value to residents or visitors and that enhances the pedestrian or bicycle travel experience.
- (1) *Applicants* proposing a *placemaking or recreational amenity* project in the *public right-of-way* shall demonstrate to the satisfaction of the City Manager that the project constitutes a lawful use of the *public right-of-way*.
 - (2) Written permission from the *record owner* of the property underlying the *public right-of-way* is required.
 - (3) If the *placemaking* or recreational amenity project includes the temporary removal of one or more parking spaces to accommodate the project, the City Manager may approve the temporary removal as part of the Public Right-of-Way Permit only in accordance with the procedures described in Municipal Code section 86.0104, except that compliance with the Angle Parking Standards shall not be required unless otherwise applicable.

- (4) The term of the Public Right-of-Way Permit shall not exceed five years with the exception of *placemaking* and recreational amenities. The term shall not be limited in accordance with Municipal Code section 129.0750 and shall not be eligible for an extension of time pursuant to Municipal Code section 129.0751. *Placemaking* and recreational amenities shall be removed in accordance with the Encroachment Maintenance and Removal Agreement required in Section 129.0715.
- (5) The *permit holder* shall be responsible for maintaining the *placemaking* or recreational amenity project. Maintenance shall include, but not be limited to, posting of the name, phone number, and email address of the party responsible for the *placemaking* or recreational amenity project in a location visible from the *public right-of-way*, keeping the *placemaking* or recreational amenity project area free of litter, and preventing litter attributable to the *placemaking* or recreational amenity project from occurring on adjacent properties.
- (6) A *placemaking* or recreational amenity use that contains elements governed by other laws and regulations shall also be subject to those laws and regulations.
- (7) The *placemaking* or recreational amenity project shall not occur in an Industrial Base Zone or a Residential-Single Unit (RS) Zone.
- (8) The *placemaking* or recreational amenity project shall not include commercial services, retail, or assembly and entertainment uses as *accessory uses*. If a *placemaking* project or recreational amenity is located within 15 feet of a permitted eating and drinking establishment and is located on a City street with a posted speed limit no greater than 30 miles per hour, the establishment may conduct outdoor dining operations within the *placemaking* project or recreational amenity. The hours of operation of the outdoor operations shall be limited to the hours that the *kitchen* facilities of the associated eating and drinking establishment are open for meal ordering. Alcohol, food, or beverages shall not be served or permitted within the *placemaking* or recreational amenity area after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday through Saturday.

- (9) The *placemaking* or recreational amenity project shall allow for safe and efficient visibility and circulation for motor vehicle users and other users of the *public right-of way*, including bicyclists and pedestrians, and shall not impede the safe use of parking spaces or travel lanes in the *public right-of-way*, as determined by the City Engineer.
- (10) In the Coastal Overlay Zone, an *applicant* for a *placemaking* or recreational amenity project in the *public right-of-way* shall obtain a Coastal Development Permit pursuant to Section 126.0702.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)
(Amended 11-13-08 by O-19803 N.S.; effective 12-13-2008.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)
(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)
(Amended 3-20-2017 by O-20797 N.S.; effective 6-7-2017.)
(Amended 3-22-2018 by O-20916 N.S.; effective 4-21-2018.)
(Amended 5-22-2018 by O-20928 N.S.; effective 6-21-2018.)
(Amended 8-9-2019 by O-21114 N.S.; effective 9-8-2019.)
(Amended 10-24-2019 by O-21142 N.S.; effective 2-14-2020.)
(Amended 2-1-2021 by O-21288 N.S.; effective 3-3-2021.)

[Editors Note: Amendments as adopted by O-21288 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21288-SO.pdf]

(Amended 4-27-2021 by Emergency Ordinance O-21315 N.S.; effective 4-27-2021.)

[Editors Note: This Ordinance is effective citywide, including inside the Coastal Overlay Zone, which is subject to California Coastal Commission jurisdiction. The Coastal Commission determined the Ordinance did not require certification on April 23, 2021. The Ordinance is effective for 45 days from the effective date, unless extended pursuant to California Government Code section 65858.]

§129.0715 Encroachment Maintenance and Removal Agreement

- (a) An Encroachment Maintenance and Removal Agreement is required for any privately-owned and/or privately-maintained *encroachment* located in the *public right-of-way* or in a *public service easement* subject to the following:
 - (1) The *encroachment* shall not adversely affect the public’s health, safety, or general welfare and shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the *record owner* or *permit holder*, as applicable, to the satisfaction of the City Engineer.
 - (2) The *record owner* or *permit holder*, as applicable, shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.
 - (3) The *record owner* or *permit holder*, as applicable, shall agree to and shall remove or relocate the *encroachment* to the satisfaction of the City Engineer within 30 days after notice by the City Engineer, or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land, or the *record owner* or *permit holder*, as applicable, shall agree to an equivalent to the requirement for removal as determined by the City Engineer.
 - (4) For *encroachments* over or under the *public right-of-way*, the *record owner* or *permit holder*, as applicable, shall agree to and shall provide an alternate *public right-of-way* or relocation of any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be economically placed, replaced, or maintained due to the presence of the *encroachment*.
 - (5) Whatever rights and obligations were acquired by the City with respect to the *public right-of-way* or *public service easement* shall remain and continue in full force and effect and shall in no way be affected by the City’s grant of permission to construct and maintain the encroaching *structure*.
 - (6) Except as provided in Section 129.0715(a)(7), the *record owner* or *permit holder*, as applicable, shall maintain a policy of \$1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the *encroachment*.

- (7) For *encroachments* serving a *single dwelling unit*, the *record owner* or *permit holder*, as applicable, shall maintain a policy of \$500,000 liability insurance satisfactory to the City Engineer to protect the City from any potential claims which may arise from the *encroachments*.
 - (8) In the event the City is required to place, replace, or maintain a *public improvement* over which the *record owner* or *permit holder*, as applicable, has constructed an *encroachment*, the *record owner* or *permit holder* shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction or existence of the *encroachment*.
 - (9) The *record owner* or *permit holder*, as applicable, shall pay the City for the cost of placing, replacing, or maintaining a *public improvement* within a *public right-of-way* when the City's facility has failed as a result of the construction or existence of the *encroachment*.
 - (10) The costs of placing, replacing, or maintaining the *public improvement* shall include the cost of obtaining a necessary alternate easement.
 - (11) The *record owner* or *permit holder*, as applicable, shall pay the City or public utility, as applicable, for all costs of relocating, replacing, or protecting a facility within the *public right-of-way* or *public service easement* when such relocation, replacement, or protection results from the construction or existence of the *encroachment*.
- (b) The City may require a *record owner* or *permit holder*, as applicable, to record the Encroachment Maintenance and Removal Agreement in the Office of the County Recorder.

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§129.0720 Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way or Public Service Easement

The preparation of plans for and the construction of, work regulated by this division shall only be performed by persons with the following qualifications:

- (a) Public Improvement Plans required for work authorized under this division shall be prepared by a civil engineer licensed by the State of California;
- (b) *Geotechnical reports* required for work authorized under this division shall be prepared by professionals as licensed and allowed by the California Business and Professions Code and as specified in Land Development Manual;
- (c) Drainage reports required for work authorized under this division shall be prepared by a civil engineer licensed by the State of California;
- (d) *Grading* plans required by this division shall be prepared by professionals as licensed and allowed by the California Business and Professions Code;
- (e) Landscaping plans for revegetation or planting in *public rights-of-way* required for work authorized under this division shall be prepared by a landscape architect or other professional as licensed and authorized by the California Business and Professions Code; and
- (f) All construction work regulated by this division shall be performed by a contractor licensed by the State of California, with the following exceptions:
 - (1) Any person owning property that is or will be that person’s primary residence may perform *grading* on that property.
 - (2) Any construction work authorized by a Public Right-of-Way Permit as a result of application by a *public utility* may be performed by the *public utility*.

(“*Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way*” added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Retitled to “*Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way or Public Service Easement*” 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§129.0730 Decision Process for Public Right-of-Way Permits

A decision on an application for a Public Right-of-Way Permit shall be made in accordance with Process One. A Public Right-of-Way Permit shall be approved if the proposed work is consistent with the Municipal Code, applicable *development* standards, and any *development permits* approved for that project.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0731 Timeliness of Decision

For a Public Right of Way Permit required by Chapter 14, Article 2, Division 12, a decision to approve or deny the permit shall be made no more than forty-five *business days* after the date on which the application is *deemed complete*. When a decision is not made within the required time, and the *applicant* does not waive time, the application shall be deemed denied. The timeliness requirement may be waived by the *applicant*.

(“Timeliness of Decision” added 1-13-2004 by O-19253 N.S.)
(Amended 2-14-2005 by O-19356 N.S.)

129.0732 Judicial Review

For a Public Right of Way Permit required by Chapter 14, Article 2, Division 12, an *applicant* may seek judicial review of a final decision on the permit application, pursuant to California Code of Civil Procedure section 1094.8. This provision does not limit an *applicant’s* ability to seek judicial review by other means.

(“Judicial Review” added 1-13-2004 by O-19253 N.S.)

§129.0741 Issuance of a Public Right-of-Way Permit

- (a) A Public Right-of-Way Permit may be issued after the construction plans have been approved by the City Engineer, the prescribed fees have been paid, the required insurance has been guaranteed, and the required bond has been posted.
- (b) A Public Right-of-Way Permit shall not be issued for a *development* that requires a *development permit* until the *development permit* has been issued.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0742 Commencement of Work within a Public Right-of-Way or Public Service Easement

- (a) The *applicant* shall not begin any work, construction, or use within a *public right-of-way* or *public service easement* that will be authorized by a Public Right-of-Way Permit until the required permit has been issued.
- (b) Work within the *public right-of-way* shall be performed only during the dates and hours specified in the permit or on the approved traffic control plans.

(“Commencement of Work Within a Public Right-of-Way” added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Retitled to “Commencement of Work within a Public Right-of-Way or Public Service Easement” and amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

§129.0750 Expiration of a Public Right-of-Way Permit

- (a) A Public Right-of-Way Permit shall expire by limitation and become void 24 months after the date of permit issuance, unless an exception is granted in one of the following ways:
 - (1) At the time of permit issuance, the City Manager may approve an expiration date exceeding 24 months if the permittee can demonstrate that the complexity or size of the project makes completion of the project within 24 months unreasonable. The expiration date for the Public Right-of-Way Permit shall be specified on the permit; or
 - (2) A Public Right-of-Way Permit issued as part of a *subdivision* improvement agreement shall expire in accordance with the terms of that agreement.
 - (3) A Public Right-of-Way Permit associated with a valid Building Permit shall expire concurrently with the Building Permit.
- (b) If the work authorized by a Public Right-of-Way Permit has not received final inspection approval by the permit expiration date, all work shall stop until a new permit is issued.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

§129.0751 Extension of Time for a Public Right-of-Way Permit

The expiration date for a Public Right-of-Way Permit may be extended as follows:

- (a) An application for an extension of time shall be filed with the City Manager before, but no earlier than 60 calendar days before, the permit expiration date. The City Manager may extend the Public Right-of-Way Permit for a period not exceeding 180 calendar days if the City Manager determines that circumstances beyond the control of the permittee prevented completion of the work. A Public Right-of-Way Permit shall not be extended more than once except as provided in Section 129.0751(d).
- (b) If an application for an extension of time has been submitted by the expiration date, and in accordance with this section, the existing Public Right-of-Way Permit shall automatically be extended until the City Manager has made a decision on the application for an extension.
- (c) If a Public Right-of-Way Permit expires before an application is submitted for an extension of time, an extension shall not be granted. To proceed with the same *development*, a new application is required and the application shall be treated as a new application.
- (d) If an extension of time has been previously approved in accordance with Section 129.0751(a), the City Manager may extend the expiration of a Public Right-of-Way Permit one additional time if the City Manager finds the following:
 - (1) There has not been a significant change in the regulations applicable to the site since the date of permit issuance;
 - (2) The additional extension is in the public interest; and
 - (3) Circumstances beyond the control of the *applicant* prevented the authorized work from proceeding.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0752 Construction Change to a Public Right-of-Way Permit

- (a) A proposed construction change to a Public Right-of-Way Permit must be approved before the commencement of the construction change. A decision on a construction change shall be made in accordance with Section 129.0730.
- (b) A proposed construction change to a Public Right-of-Way Permit that was approved in conjunction with another permit or map may be approved only if the proposed change is in *substantial conformance* with the other approved permit or map. If the proposed change is not in *substantial conformance* with the other approved permit or map, the other permit or map must be amended before consideration of the construction change.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0760 Inspection of Work in the Public Right-of-Way

All work in the *public right-of-way* that is authorized by a Public Right-of-Way Permit shall be inspected by the City Engineer in accordance with Section 129.0111 and the inspection requirements of the Land Development Manual. Professional inspection in accordance with Section 129.0761 shall be provided by the Engineer of Record as designated by the permittee.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0761 Designation of Engineer of Record

- (a) The permittee shall retain and designate an Engineer of Record for each area of technical expertise needed to provide professional inspection services as required by the City Engineer and described in the Land Development Manual.
- (b) If an Engineer of Record is changed, the work shall be stopped until the replacement Engineer has agreed in writing to accept responsibility as Engineer of Record. The permittee is responsible for notifying the City Engineer in writing of any change before work resumes.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§129.0770 Completion of Work

The permittee shall notify the City Engineer when the work is ready for final inspection. Final approval shall not be given until all work has been completed in accordance with the final approved plans and the as-built plans and *As-Graded Reports* have been submitted to and approved by the City Engineer in accordance with standards established in the Land Development Manual. If the work in the *public right-of-way* is a requirement for a Building Permit, the Certificate of Occupancy shall not be issued until the work is completed by the permittee and approved by the City.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)