

Public Works Department Policy

Above-Ground Residential Encroachments Located within the Public Right-of-Way

Existing Encroachments in the Public Right-of-Way – Existing encroachments in the public right-of-way generally consist of fences (wood, wrought iron), walls (brick, block or masonry), decorative structures (planters, masonry mailbox structures, pillars, columns, lighting fixtures, steps, paving), and any other permanent or semi-permanent above-grade improvements constructed in the public right-of-way, other than landscaping. There are numerous existing encroachments throughout the City, many of which predate the incorporation of the City and the City’s adoption of its Ordinances. It has generally been the City’s practice to allow the existing encroachments to remain, un-permitted, existing, without benefit of a permit, as non-conforming encroachments, until such time as they are (i) determined to interfere with public health, safety or create a safety or visibility problem; (ii) are modified by the property-owner; (iii) become damaged; or (iv) are removed or relocated as required by a City project; and/or (v) are the subject of complaint(s).

In the event that an encroachment comes under review, staff will determine whether the encroachment is existing, a replacement, or new. Based upon this determination, the encroachment will be evaluated as set forth below. Nothing in this policy precludes the Director of Public Works from ordering the removal or modification of any existing encroachment, whether previously permitted or not, that is deemed to interfere with a public works project(s), is deemed to be a safety issue, or is otherwise inconsistent with this policy. Furthermore, the issuance of any Temporary Encroachment Permit Agreement (TEPA) shall be deemed a “temporary” approval allowing the improvement to remain in the public right-of-way until such future time as the encroachment may be subject to reconsideration for the benefit of the general public or in conjunction with a public works improvement project.

Under the policy, Public Works staff will attempt to encourage the installation and maintenance of “at grade” and “walkable” path areas fronting properties to encourage the future proliferation of “pedestrian friendly” areas where those improvements can be installed without damage to, or harm to other existing improvements, including City-owned parkway trees.

I. Encroachments

A. Existing, Non-Modified

- Pre-existing encroachments that have not been recently modified (i.e. within the last 1-year period) may be allowed to remain in place as non-conforming encroachments, without requiring a TEPA unless as they are: (i) deemed to interfere with public health, safety or welfare; (ii) modified by the property-owner; (iii) damaged; (iv) removed or relocated as required by a City project; and/or (v) the subject of complaint(s). The encroachment, which shall have no “grandfathered” rights to remain in place, will be reviewed by the Director of Public Works, subject to the findings numbered 1 through 4, as detailed in Section III herein.
- Upon review and approval by the Director, and provided the above-referenced findings can be made, the property-owner may be required to execute a Temporary Encroachment Permit Agreement (TEPA) with the City, or may be required to remove the encroaching improvements or structures.

- The Director of Public Works shall determine whether the encroachment is deemed to be an “Existing Non-Modified, Encroachment”.

B. Existing, Modified Encroachments

- Existing encroachments, which have been recently modified (i.e. within the last 1-year period), will require a TEPA as set forth below.
- The Director of Public Works shall determine whether the encroachment is deemed to be an “Existing, Modified Encroachment.”

C. New Encroachments

- New encroachments will require a TEPA as set forth below.
- The Director of Public Works shall determine whether the encroachment is deemed to be a “New Encroachment.”

II. Review Process for Encroachment Permit

A. Mailboxes in the Public Right-of-Way - “Breakaway” Materials. (No Permit Required).

- Mailboxes located within the public right-of-way, constructed of “break-away” materials (including, but not limited to, breakaway metal and wooden posts), shall be approved for installation in the public right-of-way, without a requirement for a permit, as determined by the Director of Public Works. The Director of Public Works shall determine whether an encroachment is constructed of “Breakaway” or “Non Breakaway” materials, and shall determine whether the mailbox otherwise interferes with the public health, safety and welfare.

B. Mailboxes in the Public Right-of-Way “Non- Breakaway” Materials. Public Works Director Review. (May Require Permit).

- Mailboxes that are constructed of “Non-Breakaway” materials shall receive initial review by the Director of Public Works. Upon review and consideration of the findings numbered 1 through 4 in Section III, the Director may propose or require removal of, require redesign of, or disallow installation/continued maintenance of any proposed or existing encroachment, or may require the issuance of a TEPA prior to installation or as a condition of maintaining an existing encroachment. Decisions of such an administrative nature made by the Director may be appealed by the property-owner or other interested party to the Public Works & Traffic Commission for further consideration and decision. Mailboxes located within the public right-of-way constructed of “non-breakaway” materials, such as, posts, structures, and enclosures consisting of masonry, stucco, brick, block, and mortar, may generally be approved without issuance of a TEPA provided they are not excessively large so as to create visibility obstructions, do not interfere with public health, safety and welfare and/or do not conflict with a future public works project as determined by the Director of Public Works.

C. Fences in the Public Right-of-Way

- In the event an existing, encroaching wooden fence or a fence constructed of alternate materials is repaired with like materials, and no other modifications are made to the

fence, no TEPA shall be required unless deemed to interfere with public health, safety and welfare or creates a visibility problem, or unless the placement of the fence is determined to conflict with a future public works project as determined by the Director of Public Works.

- For all other existing encroaching and new wooden or alternate materials fences, the application for a TEPA shall be referred to the Public Works & Traffic Commission. A public hearing will be scheduled. The applicant shall pay all public hearing and notification fees and will be responsible for all required submittals prior to consideration and decision by the Commission.
- If an encroaching fence exceeds 42-inches in height, or violates a set back requirement or other Zoning Code requirements, an approved TEPA shall be conditioned upon Planning Department Administrative and/or Planning Commission review and approval as required by the Municipal Code.

D. Walls in the Public Right-of-Way

- In the event an existing encroaching wall is repaired with like materials and no other modifications are made to the wall, issuance of a TEPA shall not be required unless deemed to interfere with public health, safety and welfare, or creates a visibility problem, or unless the placement of the wall is determined to conflict with a future public works project as determined by the Director of Public Works.
- For all other encroaching walls, the application for a TEPA shall be referred to the Public Works & Traffic Commission. A public hearing will be scheduled. The applicant shall pay all public hearing and notification fees and shall be responsible for all required submittals prior to consideration and decision by the Commission.
- If an encroaching wall exceeds 42-inches in height, or violates a set back or other Zoning Code requirement, an approved TEPA shall be conditioned upon Planning Department Administrative and/or Planning Commission review and approval as required by the Municipal Code.

E. Decorative Structures in the Public Right-of-Way

- Any decorative structure, not included above, located within the public right-of-way, whether it is a replacement, new, or modified, shall receive initial review by the Director of Public Works. Upon review, the Director shall determine, based on Section III herein, whether the maintenance and installation of the structure requires the issuance of a TEPA and shall act to approve or deny the issuance of a TEPA or refer the matter to the Public Works & Traffic Commission for consideration and decision. If an application for a TEPA is referred to the Public Works & Traffic Commission, a public hearing will be scheduled. The applicant shall pay all public hearing and notification fees and shall be responsible for all required submittals prior to consideration and decision by the Commission.

III. Temporary Encroachment Permit Agreement- Basis for Findings of Decisions

Issuance of a TEPA shall be denied unless the reviewing body can make all of the following findings:

- (1) The proposed above-ground encroaching structure does not block access nor obstruct view of vehicles, pedestrians, or bicycles;

- (2) The proposed above-ground encroaching structure is compatible with existing above-ground structures along the public right-of-way and does not result in an over-concentration of above-ground structures along the public right-of-way;
- (3) The proposed above-ground encroaching structure preserves the existing character of the surrounding neighborhood;
- (4) The proposed above-ground encroaching structure does not result in a negative aesthetic impact on the public right-of-way or the surrounding neighborhood; and
- (5) The applicant has agreed to execute an agreement, satisfactory to the City Attorney, setting forth appropriate indemnification, general liability and insurance requirements as well as future removal, relocation, maintenance and/or repair obligations.

Additional conditions may be imposed as deemed necessary to obtain compliance with the above findings and to help ensure that the encroachment does not result in a negative impact on the public right-of-way or the surrounding neighborhood.

A decision made by the Director of Public Works may be appealed to the Public Works & Traffic Commission. A decision made by the Public Works & Traffic Commission may be appealed to the City Council. Appeals shall be filed with the City Clerk within fifteen (15) calendar days from the date of the decision to approve or deny the issuance of a TEPA.

To appeal a decision, the appellant or applicant will be required to submit a letter of appeal and/or (if applicable) a drawing indicating the location and proposed construction of the encroachment. All public notice fees and submittals shall be required of the appellant or applicant at the time of appeal to cover administrative costs.

The City Council shall be notified of all appellate decisions by the Public Works and Traffic Commission regarding temporary encroachment permit agreement applications at the next regular City Council meeting following the Public Works and Traffic Commission meeting where the decision is rendered. Any City Councilmember may “call-up” any decision of the Public Works & Traffic Commission at the City Council meeting where the decision is reported. Such “call-up” shall stay the decision of the Public Works and Traffic Commission.

RECORDING REQUESTED BY

City of La Cañada Flintridge

WHEN RECORDED MAIL TO

City Clerk
City of La Cañada Flintridge
1327 Foothill Boulevard
La Cañada Flintridge, CA 91011

SPACE ABOVE THIS LINE FOR RECORDER'S USE
THIS IS TO CERTIFY THAT THIS DOCUMENT IS PRESENTED FOR
RECORDING BY THE CITY OF LA CAÑADA FLINTRIDGE UNDER
GOVERNMENT CODE 6103 AND IS ALSO EXEMPT FROM PAYMENT OF
DOCUMENTARY TRANSFER TAX

**AGREEMENT NO.
FOR TEMPORARY ENCROACHMENT PERMIT**

This Agreement, made and entered into this ___ day of ____, 20__ by and between the City of La Cañada Flintridge, hereinafter referred to as "CITY" and _____, hereinafter referred to as "PERMITTEE", and PERMITTEE'S heirs, executors, administrators, agents, successors or assigns.

WITNESSETH:

WHEREAS, the CITY is owner of the public right-of-way fronting that property generally known as _____, and more specifically described as: _____ ("PERMITTEE'S Property")_____

AND WHEREAS, PERMITTEE desires a permit for the purpose of temporarily encroaching upon said right-of-way by the installation and maintenance of a _____

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

**ARTICLE I
PERMIT**

The CITY does hereby grant to the PERMITTEE a permit for the purposes as described herein.

The permit to temporarily encroach upon the City's right-of-way by the installation of said _____ shall be effective from _____, and continue until such

time that the CITY may require that the encroachment be removed by the PERMITTEE at his sole expense.

ARTICLE II CONDITIONS IMPOSED BY THE CITY

- A. The outer face of any portion of the encroachment shall not extend more than ____ feet into said public right of way.
- B. The PERMITTEE shall be responsible for the costs associated with the maintenance in good condition and continued safe operation of any landscaped areas adjacent to the public sidewalks and the improvements for which this Encroachment Permit has been granted.
- C. The PERMITTEE shall obtain a building permit for the proposed encroachment if required by the Building Code.
- D. All Planning Department conditions of approval shall be complied with for this permit to remain in effect.
- E. PERMITTEE shall for the duration of this Agreement, maintain, control dust, weeds and remove excess soil resulting from the encroachment from the public right-of-way.
- F. This Agreement shall be recorded with the City of La Cañada Flintridge, and the Office of the County Recorder.

ARTICLE III AMENDMENT

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by all signatory parties.

ARTICLE IV LIAISON BY CITY MANAGER

The City Manager or his designee, shall be the liaison between CITY and PERMITTEE and shall be the City's agent with respect to the temporary use of the public right -of-way by PERMITTEE.

ARTICLE V LIABILITY

PERMITTEE herein indemnifies, defends and holds harmless the CITY, its officers, agents and employees from and against any and all liability, damages, costs, losses, claims and expenses, including attorney's fees and costs, caused or suffered by any person resulting directly or indirectly from or connected with the privilege of temporarily encroaching upon the public right-of-way. Said indemnification and defense shall include all areas under the control of the PERMITTEE under this Agreement.

PERMITTEE agrees to maintain a policy in connection with the homeowner's insurance carrier, with proof to the Public Works Department that the City of La Cañada Flintridge has been named as additional insured for liability associated with the encroachment. The coverage shall provide for 30-days notice of cancellation of coverage notice to the City of La Cañada Flintridge.

ARTICLE VI TERMINATION

CITY may terminate this Agreement at any time, without cause, upon giving thirty (30) days written notice to PERMITTEE.

Upon receipt of said notice, the PERMITTEE agrees to remove, at his sole expense, any and all structures and equipment within said public right-of-way and clear all unimproved portions of the property affected by his previous construction as directed by the CITY. The public right-of-way shall be left in a clean condition, free of weeds, debris and materials.

If the encroachment is not removed within thirty days following the date of Notice, the CITY shall remove the encroachment and all costs in connection with said removal shall be charged to the PERMITTEE, as provided in the City of La Cañada Flintridge Municipal Code Section 801.250.

Notice pursuant to this Agreement shall be given by United States Mail, postage prepaid, addressed to the parties hereto as follows:

CITY:

City of La Cañada Flintridge
1327 Foothill Boulevard
La Cañada Flintridge, CA 91011
(818) 790-8882
Attn: Director of Public Works

PERMITTEE:

**ARTICLE VII
ASSIGNMENT AND SUCCESSOR IN INTEREST**

The obligations, covenants and/or understandings herein shall run with PERMITTEE's Property and shall automatically inure to or be assigned to any subsequent property owner or successor in interest to PERMITTEE's Property.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

PERMITTEE

CITY OF LA CAÑADA FLINTRIDGE

By: _____

By: _____
City Manager

By: _____

By: _____
City Clerk