

**CITY OF MANHATTAN BEACH
PARKING AND PUBLIC IMPROVEMENTS COMMISSION
MINUTES OF A REGULAR MEETING
FEBRUARY 28, 2013**

A. CALL TO ORDER

The regular meeting of the Manhattan Beach Parking and Public Improvements Commission was held on the 28th day of February, 2013, at the hour of 6:30 p.m., in the City Council Chambers at City Hall, 1400 Highland Avenue, in said City.

B. ROLL CALL

Present: Stabile, Nicholson, Fournier, Silverman, and Chair Adami.
Absent: None.
Staff Present: Madrid, Zandvliet, Danna and Vargas.
Clerk: Kennedy.

C. APPROVAL OF MINUTES

02/28/12-1 December 6, 2012

MOTION: Commissioner Nicholson moved to approve the Parking and Public Improvements Commission minutes of December 6, 2012. The motion was seconded by Commissioner Fournier and passed by unanimous voice vote.

D. AUDIENCE PARTICIPATION

None.

E. GENERAL BUSINESS

02/28/13-2 Consideration of Code Amendments Regarding the Private Use of the Public Right of Way (Encroachments)

Commissioner Stabile announced the Commission received a request to continue the public hearing to a later date via email from Frank Wattles.

Management Analyst Madrid explained Associate Planner Danna was at the meeting to present the item and would address the continuance during his presentation.

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A conversation between the Commissioners ensued regarding the continuance/tabling of the issue.

Traffic Engineer Zandvliet clarified the public hearing was noticed, therefore, the Commission should accept the presentation, open the public hearing, and entertain a motion to continue the public hearing.

Commissioner Stabile expressed his opinion that if the issue is going to be continued there would be no need to accept the presentation.

Associate Planner Danna shared that staff discussed the issue with the Director of Community Development and made the determination to proceed with the presentation because it was publicly noticed. The Commissioners may discuss the issue, open the public hearing and ultimately decide to continue the item to a future meeting. If the Commission decides to continue the item there will be a chance to ask for more information/clarification.

Commissioner Silverman referred to an email the Commission received from resident Frank Wattles who was not able to attend and said he was not given sufficient notice of the public hearing. Commissioner Silverman asked staff to explain how the public hearing was noticed.

Associate Planner Danna explained a ¼ page notice for the public hearing was published in the *Beach Reporter*, an email notification was sent to anyone subscribed to the PPIC email notifications on the City's website. Additionally, the Community Development Department currently has a list for interested individuals. The list of about 70 individuals was used to email the notice when the agenda packet was published (the Friday immediately preceding the meeting).

Chair Adami clarified that a copy of ad in the *Beach Reporter* required specific noticing ahead of time.

Commissioner Silverman further explained Frank Wattles received the email the day before the meeting.

Commissioner Stabile stated that staff followed the letter of the law and the Commission may decide to continue the matter or proceed with the presentation.

Commissioner Nicholson asked if any of the audience members came to the meeting for the public hearing.

Chair Adami counted at least four individuals who came to discuss the public hearing.

Commissioner Stabile shared his preference; let anyone present comment on the item and postpone the presentation.

Traffic Engineer Zandvliet clarified the Commission has the option to entertain a motion to continue the meeting but there is no legal necessity to continue the item; it was properly noticed and the Chair may ask staff to present or not but the public hearing must be opened and anyone in attendance may give testimony.

Chair Adami asked Associate Planner Danna to give the staff presentation.

Associate Planner Danna then gave the staff presentation regarding the consideration of code amendments regarding the private use of the public right of ways (encroachments). The purpose of the amendments to the Manhattan Beach Municipal Code Title 7 is to clarify the City's rights over encroachment improvements, landscaping, and trees. It also simplifies and clarifies the "scenic views" language and how planter grades are measured. Staff recommends that the Parking and Public Improvements Commission conduct a public meeting to discuss and make a recommendation on the draft Code language and concepts provided by the City Attorney and staff. The Code language is draft at this point, other Sections may also require revisions for consistency and future amendments may be presented. The recommendation will then be forwarded to the City Council for final action. His presentation included a PowerPoint presentation with pictures of different encroachment areas in the City.

Commissioner Nicholson asked if the presentation strictly dealt with views. Associate Planner Danna affirmed at this particular time the amendments are focused on views.

Commissioner Silverman asked if the picket fences pictured in the PowerPoint presentation enclosed public property.

Associate Planner Danna explained the open style 42 inch fence is in fact, enclosing public property.

Commissioner Nicholson asked how far from the sidewalk is the encroachment area.

Associate Planner Danna explained the encroachment area is roughly 12-17 feet.

Chair Adami wanted to know if someone could sleep in the encroachment area.

Commissioner Silverman asked if he wanted to enjoy the scenery in an encroachment area could the homeowner ask him to leave.

Associate Planner Danna explained that theoretically, an individual could utilize the encroachment area, although, he would not recommend it.

Traffic Engineer Zandvliet clarified the distinction between walking on public property and using private property on public property. One brings one's own lawn chair to the beach, one would not sit in another person's lawn chair. Mr. Zandvliet also explained he does not know if the encroachment permit says it is for exclusive use or not.

Associate Planner Danna stated the planting of the encroachment areas beautify the City, creating a public benefit.

Commissioner Stabile asked for clarification; he stated when an owner files a building permit with the City it involves permits in the encroachment area and gives the owner possession and control, but not ownership. Therefore, if some random person walked by they would not be able to throw a party within the encroachment area.

Associate Planner Danna explained in the tree section of the City the encroachment areas often have parking pads and the public still has the right to utilize them; he was unsure of the limitations placed upon a random person walking by wanting to throw a party within the encroachment areas in the sand section.

Commissioner Fournier asked if it is for exclusive use or not, adding it is difficult for the Commission to move forward without that clarification.

Commissioner Stabile stated many people use their encroachment areas to keep their large dogs which could be a dangerous situation if strangers were entering the property.

Commissioner Fournier added those types of situations add to the City's exposure.

Associate Planner Danna stated staff would speak with the City Attorney's office and bring more information back/clarification to the next scheduled PPIC meeting.

Commissioner Fournier commented on a slide in Associate Planner Danna's PowerPoint presentation; he pointed out a tree that has grown above the 42 inch fence. He then asked if this would be a case where the Community Development Director utilizes his discretion.

Associate Planner Danna affirmed if there is a complaint the Community Development Director has the discretion to make the decision to cut down the tree; the owner has the right to appeal the process to the PPIC and ultimately the City Council before any trees are cut down.

Chair Adami asked if real estate agents require disclosure of the encroachment area rules and regulations when a property is bought and/or sold.

Associate Planner Danna explained it is really the responsibility of the homeowner; he stated the City has encountered some real estate agents that are really on top of it and others who do not have the information.

Commissioner Nicholson asked for clarification regarding the appeal process.

Associate Planner Danna explained appeals go to the PPIC and may be further appealed to the City Council.

Commissioner Stabile stated the issue arose when the City Council directed the PPIC to look at the article and make a recommendation to determine if the statue should have grandfathering or not. He did not see the issue addressed in the staff report, presentation, or any proposed changes that specifically address the intention to have, or not have, a retro-active effect. He asked if staff intended the article not to have a retroactive effect or if it was an omission.

Associate Planner Danna explained there is more than a yes or no answer; the standards have been around for a number of years and there was an interest from the public to have trees grandfathered into the amendments. Mr. Danna further clarified the direction given to staff by City Council did not specifically address grandfathering and the effective date of ordinances are generally the date they are adopted, they are not retroactive.

Chair Adami asked if retroactive language can be added to the amendment.

Associate Planner Danna stated the Commissioners may suggest the language be part of the recommendation given to City Council.

Chair Adami asked if more suggestions may be added.

Associate Planner Danna specified that within the Commissioner's discussion they can agree to include suggestions.

Commissioner Stabile asked if staff intended the ordinance to have a retroactive effect.

Associate Planner Danna clarified that it was not the intent of staff for the ordinance to have a retroactive effect; he has not seen an ordinance have a retroactive effect.

Commissioner Stabile stated Mr. Frank Wattles is currently suing the City because he claims the City's ordinance does not have a retroactive effect and if there is an encroachment that is preexisting then regardless of what the ordinance says, the City Council does not have the right to make the determination upon whether it stays or goes.

Associate Planner Danna explained an exception was made for the eucalyptus tree and it is a non-conforming issue within the encroachment area.

Traffic Engineer Zandvliet clarified the current ordinance still does not allow for the tree if it is over 42 inches in height.

Commissioner Stabile explained the trees were planted before the ordinance took effect.

Commissioner Nicholson stated the trees became non-conforming once they passed a 42 inch height.

Chair Adami opened the public hearing and stated that speakers have a four-minute speaking time limit.

Audience Participation

Mary Boyd, 300 Block of 7th Street, explained when she moved into her neighborhood in the 1960s there were no trees and the temperature was very high. Each house had/had barbeques, chairs, and tables in the encroachment area. The current owners of the property are not the complainants and the new building is three stories tall; she shared that after spending 53 years on 7th street the City came in and cut everything that was over 42 inches without notifying the owners and explained the owner was present at the meeting.

Sabine Birkenfeld, 600 Block of Highland Avenue, expressed her strong objection to the public noticing. The email notice she received ended up in her junk mailbox. She asked the Commissioners to table or continue the item because she was not able to reach many of the people who support the issue, like Frank Wattles. Ms. Birkenfeld stated she feels as though she is living in a police state with too many restrictions, rules, and regulations.

Gary Osterhout, Resident, asked when the four minute restriction for speakers came about; he stated when he was a member of the PPIC they did not have that restriction. Mr. Osterhout explained he has had experience being the complainant over the last year and a half and did not like the way the City handled the process. He suggested the more definitive the rules and ordinances the better and asked the complaint only policies be compiled into a formal document. He pointed out many other cities have a pro-active education campaign regarding code enforcement; he read and then handed in his statements to the PPIC regarding the issue. His comments included: a lack of accountability when staff has the ability to determine what a valid complaint is; interpretive differences between the parties involved; right to appeal by non-adjacent residents; inclusion of concepts and rules in the City's Construction and Landscaping on Public Property in the Municipal Code; and specific suggestions regarding rights to encroachment improvements, landscaping and trees, views, and vehicular street standards. Lastly, Mr. Osterhout suggested legal ads be published on the City's website in addition to their publication in the local newspaper.

Paul Gross, Resident, stated the Commission received emails from him regarding the issues and reiterated the first three statements added at the beginning make it much clearer

than it was: the adjacent property owner has no rights; the grandfathering issue needs to be settled; and there are several places that give staff the right to do what's right and the director the right to determine whether or not these ordinances apply. He shared his belief that this is important on the flat sections of the walk-streets. He also suggested adding "staff or director shall" so there would be an intent statement at each place. For example: for determining if it is valid, the intent would be to determine whether or not the ordinance has been violated. And the intent is the direction or would decide if the intent is in a view situation or not. For clarity the word should be very clear one way or the other. He suggested obstructing views should be prohibited or some other strong word. If there is blocking of the view in the public property then that is prohibited.

Earl Waggoner, 200 Block of 25th Street, stated his has been the victim of the capricious application of the code and he came to encourage the PPIC to take the ambiguity out of the ordinance. He shared it is his opinion that the walk-streets are meant to be view corridors and therefore if a tree is blocking a view it should be removed.

Will Arvizo, Resident, expressed his wish that he had known about the meeting earlier. He shared his belief that the subjectivity in the ordinance should be removed and should apply to everyone in the same manner; if it is going to be 42 inches it should be 42 inches. He also addressed issue that anyone can complain; he thinks it should apply to residents only, preventing a third party from coming in and complaining about a view.

Commission Discussion

Commissioner Fournier shared his support for continuing the item to the next PPIC meeting and stated the discussion could be disjointed. He suggested receiving public testimony and continuing the Commissioner discussion to the next meeting.

Commissioner Stabile stated the PPIC has had a least three cases before them where the issue of encroachments, being grandfathered or not, was up for discussion.

Commissioner Fournier addressed there was no grandfathering for the tree issue.

Commissioner Stabile explained Community Development Director Thompson is not a lawyer and Mr. Wattles is able to make a credible claim because the ordinance does not specifically state that it has retroactive prospective. Commissioner Stabile added the statute states that unless it specifically says retroactive then it is considered proactive. He also stated he believes staff does not want to specifically add retroactive language but wants to be able to state the ordinance is retroactive.

Commissioner Fournier suggested staff's recommendation to leave the 42 inches was contradicted by City Council allowing the tree to stay. City Council has tasked the PPIC to

provide clarity for the ordinance; his understanding is that staff would like a procedure to work with the complaint-based process. He shared his concern regarding the residents along Morningside being notified of any changes to the MBMC and expressed his support of sticking with the 42 inch height limit.

Associate Planner Danna clarified the amendments address all areas of encroachments but may be less restrictive in flatter areas.

Commissioner Fournier expressed his belief that Morningside residents will be more involved and affected.

Associate Planner Danna explained staff has met the legal requirement for noticing and the additional email notifications are above and beyond the legal requirement. He suggested sending a City-wide notice is not cost effective.

Traffic Engineer Zandvliet suggested a notice in the Community Newsletter or utility billing could also be done, although, utility billing would need to be planned out four months ahead of time.

Commissioner Fournier suggested the issue is important enough to delay for months in order to properly notify people who are asking for clarity.

Commissioner Silverman stated he had nothing further to discuss on this issue.

Commissioner Nicholson asked for clarity regarding pre-existing rights and expressed he did not have a problem with the narrow scope of ordinance amendments before the PPIC. His belief is the City is clearly defining the encroachment and it is not the property of the homeowner.

Associate Planner Danna stated the nonconforming rights are not written in the Manhattan Beach Municipal Code but still apply; staff is suggesting it be added to the MBMC so it clarifies and pin-points the information.

Commissioner Nicholson explained he learned a lot when he moved into the tree section and shared his belief that the additional phrasing is important. He expressed his support of the proposal as is.

Commissioner Silverman expressed his opinion that some room for compromise be left for exceptions, specifically for trees that are over 42 inches. Many of the trees have been a part of the landscape for many years and he did not support cutting down anything over the 42 inch height.

Commissioner Stabile brought up the issue of complaints; the proposal is to strike out the neighbors scenic views and specifically say “prohibiting” scenic views. He asked if that means a visitor from geographical propinquity or any resident can complain about any encroachment in the City. If that is the case he expressed his concern that it would create more problems than it solves. On the other hand, he did not feel the complainant should be limited to just the next-door neighbor.

Chair Adami shared the situation reminds him of the parking in front of the driveway issue where the Police Department does not ticket. He suggested following a complaint approach otherwise chaos could ensue.

Traffic Engineer Zandvliet explained many times there is a list of findings that must be met; if all of the findings are met than it shall be so which takes much of the subjectivity out of it.

Chair Adami highlighted the number of complaints within the last two years has risen; therefore, the amendment should provide clarity. He stated that property owners in the tree section feel as though parking pads are private property even though they are not. Chair Adami asked staff when the email notice was sent.

Associate Planner Danna explained the City website sends an email when the agenda is posted (the Friday preceding the meeting) and about 700 people are subscribed to that PPIC Agenda mailing list. The notice was also forwarded to those who had put their information on the list available in the Community Development Department and a ¼ page ad was published in the *Beach Reporter* two weeks prior to the meeting.

Commissioner Silverman shared his opinion that the encroachment areas in the sand section are utilized by the property owners as private property; he suggested signage or education to allow those passing by to utilize the property as well. If the owner of the property says “what are you doing here?” he does not think it should be the responsibility of the “trespasser” to prove he has a right to utilize the encroachment area.

Commissioner Stabile stated it is public property and that the property owner has the right to improve but property owner has possession and control.

Associate Planner Danna explained the issue can be addressed during the next meeting.

MOTION: Commissioner Silverman moved to continue the public hearing to next meeting and gave staff direction to bring specific information back regarding encroachment property, define exclusive use v. non-exclusive use in the context of encroachment, what is prohibited, pros and cons of grandfathering, who has the right to make a complaint (is it possible to clarify it should be a resident or tenant of the City), and if the City would suffer any liability unless that is

changed. The motion was seconded by Commissioner Fournier. The motion passed by the following unanimous roll call vote:

Ayes: Stabile, Nicholson, Fournier, Silverman, and Chair Adami.
Noes: None.
Abstain: None.
Absent: None.

Commissioner Stabile added he would like to see if staff can get a feel of what council wants. Have this ordinance apply to any encroachment in existence – I would like some feedback on that so we can draft specific language.

RECESS AND RECONVENE

At 8:05 p.m., there was a recess until 8:17 p.m., when the meeting reconvened in regular agenda order with all Commissioners present.

02/28/13-3 Non-Motorized Transportation Evaluation Criteria

Chair Adami introduced the item and Traffic Engineer Zandvliet gave the staff presentation and walked through the Non-Motorized Project Evaluation Form scoring criteria.

Traffic Engineer Zandvliet asked the Commissioners to review, discuss, and provide staff with further direction regarding the Non-Motorized Prioritization Evaluation Criteria.

Chair Adami questioned why the fiscal category 1.5 is only weighted at 15 percent. He suggested that projects that have 100% funding should automatically get approved and possibly not be evaluated through this criteria.

Commissioner Nicholson suggested giving a project 25 points if the entire project is funded by outside sources, meaning it would go straight to the top.

Traffic Engineer Zandvliet explained the form is to establish criteria to prioritize projects with a limited funding. If it does not need funding it does not need to be evaluated.

Traffic Engineer Zandvliet agreed that projects that are 100% funded should be done.

Commissioner Silverman asked if there was a criterion to determine if a project was a solution to a problem that did not exist. He shared the Parkview parking meter example.

Traffic Engineer Zandvliet wondered if it is an answer looking for a problem, if there is no political will and no citizen interest then maybe it is not a project that should be prioritized.

Commissioner Silverman explained that installing parking meters along Parkview Avenue was the political will of City Council.

Commissioner Stabile suggested a related concept to political will and citizen involvement would be to use the demand metric to determine the usefulness of a project.

Commissioner Nicholson suggested calling it public benefit criteria, how large a benefit it is for a wide group.

Traffic Engineer Zandvliet asked where the Commissioners suggest the public benefit criteria be added.

Commissioner Nicholson asked Traffic Engineer Zandvliet how the evaluation form will be utilized.

Traffic Engineer Zandvliet explained the evaluation form will be used to prioritize projects. With limited funding, staff is looking to utilize the tool to present the best options to City Council.

Commissioner Stabile shared his belief that the metric, to a certain extent, is subject to objectivity.

Traffic Engineer Zandvliet explained under the destinations category staff can objectively decide the number of destinations that are served.

Chair Adami pointed out that is the case with crosswalks on Manhattan Beach Boulevard at Meadows, it fills gaps.

Traffic Engineer Zandvliet concurred and pointed out the same issue with Manhattan Beach Boulevard at Peck Avenue. He asked how buildable is the project which gets answered in the fiscal area and where it asks for the usefulness of the project.

Commissioner Nicholson suggested a utilization scoring criteria, perhaps under the destinations portion of the accessibility category.

Traffic Engineer Zandvliet suggested it might be worthy of a separate category; staff can draw points off another category and build it into a "usefulness" category.

Commissioner Stabile asked for clarification regarding a sidewalk connecting Manhattan Village to the Manhattan Mall; would that be two destinations or two dozen destinations.

Traffic Engineer Zandvliet explained connecting the two would also benefit the The Marketplace, Senior Center, Marriott Hotel, Manhattan Village Shopping Center, etc.

Commissioner Stabile shared that he believes something that connects two global destinations should get more weight.

Traffic Engineer Zandvliet explained that is more of an interpretation but it can be written into the guidelines. He further explained the guidelines are a living document and it will be reviewed and modified on an as-needed basis.

Chair Adami suggested an additional criterion would be asking if it would create a problem in the future with residents.

Traffic Engineer Zandvliet clarified the evaluation form is a priority system to be used by staff; staff would evaluate the projects, make recommendations to City Council during the budget process and during that time the public would have the opportunity to review and comment on the projects.

Commissioner Nicholson clarified the evaluation process is non-binding, just a means to begin the conversation regarding project prioritization.

Traffic Engineer Zandvliet concurred.

Chair Adami asked if any other cities utilize similar criteria.

Traffic Engineer Zandvliet explained that other cities utilize similar criteria, especially for non-motorized funds. Non-motorized funding sometime comes from special Funds. For example, some cities have speed hump criteria because they do not have enough money to install all of the speed humps requested.

Management Analyst Madrid clarified the next step is to incorporate the comments of the Commission into the draft and forward the draft to City Council.

MOTION: Commissioner Silverman moved to make the proposed changes and forward the draft Non-Motorized Project Evaluation Criteria to City Council. The motion was seconded by Commissioner Nicholson. The motion passed by the following unanimous roll call vote:

Ayes:	Stabile, Nicholson, Fournier, Silverman, and Chair Adami.
Noes:	None.
Abstain:	None.
Absent:	None.

F. COMMISSION ITEMS

02/28/13-4 Commissioner Items

Parking and Public Improvements Commission
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F1. Commissioner Fournier asked if the PPIC handles the green belt.

Management Analyst Madrid explained the Parks and Recreation Commission handles issues with the green belt.

F2. Commissioner Silverman asked for an update regarding the signal timing at the 15th and Valley Drive intersection.

Management Analyst Madrid apologized and explained she discussed the issue with former Traffic Engineer Rydell and will be having a conversation with current Traffic Engineer Zandvliet and report back to the Commission.

G. STAFF ITEMS

02/28/13-5 Monthly Revenue and Expenditure Reports: Receive and File

Received and Filed.

02/28/13-6 Staff Follow-Up Items

Management Analyst Madrid introduced the new Traffic Engineer, Erik Zandvliet, who previously worked for the City.

Chair Adami welcomed Traffic Engineer Zandvliet and expressed his gratitude to have him working with the City once again.

Traffic Engineer Zandvliet shared his pleasure working for the City again and stated it feels like coming home.

Management Analyst Madrid announced Sergeant Chris Vargas and Lt. Andy Harrod are the two Police Officers assigned to the Parking and Public Improvements Commission. She introduced Sgt. Vargas, thanked him for attending, and explained he is in charge of parking, traffic, and animal control.

Management Analyst Madrid explained the PPIC's recommendation regarding the appeal at 217 4th Place went to City Council and Councilmember Lesser pulled it and scheduled a public hearing for Wednesday, March 6, 2013. She stated she would report back to PPIC during the next meeting.

H. ADJOURNMENT

The meeting was adjourned at 8:54 p.m. to the regular Parking and Public Improvements Commission Meeting on Thursday, March 28, 2013, in the City Council Chambers of City Hall, 1400 Highland Avenue, in said City.

DRAFT