

RESOLUTION NO. 45-2014

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON AMENDING THE TOWN'S POLICY REGARDING THE ISSUANCE OF ENCROACHMENT PERMITS PURSUANT TO TITLE V, CHAPTER 19 OF THE TIBURON MUNICIPAL CODE

WHEREAS, the Town's Municipal Code contains regulations regarding encroachment permits for work proposed in Town streets, street right-of-ways and other Town interests in real property (including easements) Title V, Chapter 19; and

WHEREAS, said Chapter 19 establishes definitions and procedures for the review, issuance, conditioning and revocation of encroachment permits but does not set forth policy direction for the benefit of Town decision-makers as to the appropriateness of various requests for encroachment into said areas; and

WHEREAS, in 2010, the Town Council adopted Resolution No. 16-2010, to restrict the granting of encroachment permits and to prohibit permanent encroachments that would effectively convert Town property to private use and private benefit, rather than for the use and benefit of the Town and the general public; and

WHEREAS, the Town Council has found that in a very few cases, a permanent encroachment may abate or ameliorate an existing public health and safety risk and therefore wishes to establish an exception for such cases; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Tiburon does hereby amend the policy adopted in Resolution No. 16-2010 by adopting the following amended policy with respect to encroachment permits issued pursuant to Title V, Chapter 19 of the Tiburon Municipal Code, to read as follows.

Encroachment Permit Policy

A. Definitions

For the purposes of this Resolution, the meaning of words and phrases, including without limitation, Town streets, street right-of-ways, Town-owned land and other Town interests in real property (including easements), shall be as set forth or used in Title V, Chapter 19, of the Tiburon Municipal Code.

B. General Provisions

The Town shall have discretion to revoke any encroachment permit at any time. No encroachment permit shall grant any private property owner a permanent right to perform work in or use the area subject to the encroachment permit. The Town may, in its discretion, grant an

encroachment permit allowing access from private property to the public right-of-way, provided that the Town shall condition any such encroachment permit as it deems appropriate to manage or enhance the public right-of-way. The Town is not responsible for the cost of altering, modifying, or removing any such encroachment if it deems such alteration, modification, or removal is warranted.

C. Allowable Purposes

For the following purposes, and only if the Town finds that the encroachment will serve public safety or welfare, the Town may issue encroachment permits for work within, upon, or beneath Town streets, street right-of-ways, and other Town interests in real property (including easements). Said permits shall contain conditions that shall include, without limitation, revocation at the Town's discretion.

1. To allow access to private property for entry/egress purposes.
2. To allow applicants to install, build or replace sidewalks, curbs and gutters and curb cuts.
3. To allow applicants to install, maintain, or replace landscaping, within the parameters of this policy.
4. To allow applicants to maintain, repair or replace previously lawfully-installed encroachments.
5. To accommodate parking that would be required by the Municipal Code for a newly-constructed use of the type associated with the encroachment permit, where the Town finds that (a) the applicant cannot feasibly locate such parking on private property; (b) the public safety or welfare is better served by allowing such parking to encroach; (c) a substantial and material public safety benefit will result in that a substandard safety-related public street condition (such as inadequate width or sight distance) in the project's public street frontage will be made standard or significantly improved; and d) the physical extent of the encroachment is minimized to the extent feasible.
6. To allow applicants the opportunity to secure approval for existing encroachments that the applicant cannot prove were lawfully installed and that are consistent with this policy and Title V, Chapter 19 of the Tiburon Municipal Code.
7. To allow applicants to drain their properties of storm water in a controlled fashion acceptable to the Town Engineer.
8. To allow utility companies to perform necessary work.
9. To allow Town contractors and/or service providers to perform authorized work.
10. To allow community groups to perform authorized work, either using volunteers or contractors.
11. To allow applicants to position a debris box or portable moving box for temporary construction, storage or moving purposes, where such placement will not unreasonably impede traffic circulation and pedestrian safety or otherwise be detrimental to public safety or welfare.
12. To allow a limited and controlled amount of equipment and material associated with permitted building construction activity.
13. To allow permitted special events with civic purpose and benefit.

14. To allow applicants temporary relief from unusually severe topographic or other physical circumstances that result in practical hardships to the creation of proper access to or improvement of private property in the absence of the encroachment.
15. To allow control of invasive or fire-prone plants, for fire prevention or other purposes of public benefit.

D. Impermissible Purposes

Encroachment permits for work within, upon, or beneath Town streets, street right-of-ways, and other Town interests in real property (including easements) should not be issued in the following instances:

1. Encroachments for the purpose of, or having the practical effect of, privatizing the affected area for the exclusive use or benefit of one or a limited number of individual owners in lieu of the general public, except as may be authorized under Section C.5 above.
2. Encroachments that would block, impede, or discourage public use or access over an area determined by the Town Engineer to be appropriate and suitable for public use or access either at present or in the foreseeable future.
3. Encroachments that in the judgment of the Town Engineer are not necessary or appropriate to serve one of the allowable purposes listed in Section C above.

E. Duration.

Encroachment permits shall contain conditions of approval to restrict the duration of the encroachment to a reasonable time necessary to accomplish the purpose thereof.

1. Except where the Town grants the permit pursuant to Sections C.1, C.2, C.3, C.4, C.5, C.6 or C.7, above, or as provided in E.2, the Town will allow only temporary encroachments.
2. Notwithstanding Section E.1, the Town shall have discretion to issue a permit for a long-term encroachment if it finds that the encroachment is necessary for public safety reasons or that the encroaching improvement will have a long-term public benefit commensurate with the private benefit to the permit holder.
3. The conditions of approval for any permit for a long-term encroachment shall include, without limitation, the following conditions of approval:
 - a. By acceptance of the permit and construction of the improvements or performance of the work, the permittee agrees to indemnify, defend and hold the Town harmless from any claims, losses, litigation or other liabilities that may arise from the permittee's performance of the work, construction and maintenance of said improvements and removal of the improvements.
 - b. The permittee shall execute a Memorandum of Encroachment Permit Conditions, using the form attached hereto as Exhibit 1 and incorporated herein by reference, which the Town shall record in the County of Marin's Recorder's Office. If the subject project requires a building permit, the Town must record the Memorandum of

Encroachment Permit Conditions before the Town issues said building permit. For all other projects, the Town must record the Memorandum of Encroachment Permit Conditions before the permittee enters onto the Town's property to perform work pursuant to the encroachment permit.

F. Encroachment Permit Application Requirements

1. All applications for an encroachment permit shall include the following:
 - a. Detailed drawings and narrative describing the work that will be performed on Town property.
 - b. Any reports or analyses that the Town Engineer determines are necessary to evaluate the proposed encroachment.
 - c. If the application is for a permanent encroachment, the Town Engineer shall also have discretion to require reports or analyses establishing that the encroachments can be removed without damage to adjoining properties or structures.
2. The Town Engineer shall have discretion to determine that the application drawings and/or materials require independent review by an outside consultant or consultants, either before accepting the application or during the processing thereof. The Town Engineer may charge and collect the estimated cost of any special reports or consultant fees that he determines are required to process the application. Any actual cost that is more than the estimated cost collected shall be paid by the applicant prior to the issuance of the permit, and any collected estimated costs that exceed the actual costs shall be returned to the applicant at the time of issuance of the permit, or within sixty days of permit issuance.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon on November 5, 2014, by the following vote:

AYES:	COUNCILMEMBERS:	Doyle, Fraser, Fredericks, O'Donnell, Tollini
NAYS:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None

ALICE FREDERICKS, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK

Attachment: Exhibit 1 (Memorandum of Encroachment Permit Conditions)

EXHIBIT 1

**TOWN OF TIBURON
MEMORANDUM OF
ENCROACHMENT PERMIT CONDITIONS**

This MEMORANDUM OF ENCROACHMENT PERMIT CONDITIONS is made and executed at _____, California, this _____ day of _____ 20____, by _____ (“Owner”).

RECITALS

1. Owner is the owner (or owners) of that real property located at

Tiburon, California.

2. On _____, Owner filed with the Town of Tiburon, a municipal corporation (“Town”), an application for encroachment permit for the construction or installation of the improvements described in **Exhibit A**, which is attached hereto and incorporated herein by reference.

3. Owner proposed to construct or install said improvements on the public right-of-way or other Town-owned land at [*describe area where encroachment is approved with street name, address, assessor parcel number, or appropriate adjacency*]

4. On _____, Town granted a revocable encroachment permit (No. _____) (“Permit”) to Owner allowing the construction or installation of said improvements subject to conditions of approval. The Permit and its conditions of approval (“Permit Conditions”) are attached hereto as **Exhibit B** and incorporated herein by reference. The Permit Conditions require, among other things, that Owner maintain the improvements as safe, clean and serviceable and that Owner remove said improvements at Owner’s sole expense if the Town requests such removal.

NOW, THEREFORE, IN CONSIDERATION OF THE TOWN’S GRANT OF THE PERMIT, OWNERS ACKNOWLEDGE AND AGREE TO THE FOLLOWING:

1. The Permit does not grant the Owner any permanent rights to the encroachment.
2. The Town may revoke the Permit without cause, and all improvements are installed at the Owner’s risk. Upon receipt by Owner of a written notice from the Town requesting Owner to remove said improvements, Owner will, exclusively at Owner’s cost and expense and within one hundred twenty (120) days from receipt of said notice, remove or cause to be removed said improvements. Owner shall indemnify, defend and hold harmless the Town and its officials, employees, agents and contractors, from any claims,

losses, damages or other liabilities that may arise from the removal from said improvements. The obligation to defend is separate and distinct from the obligation to indemnify and hold harmless and shall apply even if neither the Town nor Owner is found liable for the aforesaid claims, losses, damages or other liabilities.

3. Any improvements installed on Town property must be designed and constructed so as to be removable without damage or undermining of land or structures on the Owner's property and on adjacent or nearby property.
4. Owner shall be responsible for the stability of the project site along the length of, and adjacent to, the encroachment.
5. Owner shall be responsible for any drainage conditions affected by the encroachment.
6. Upon the failure of Owner to comply with any of the Permit Conditions, the Town may declare said improvements to be a public nuisance and may take such action as may be authorized by law to abate said nuisance. In addition, the Town may use any and all other remedies authorized by the Town's Municipal Code or state law.
7. The Permit Conditions are covenants and servitudes running with the land and shall be binding upon Owner and successors, assignees, executors, administrators and personal representatives thereto.

OWNER(S):

Signature*:

Print Name: _____

Signature*:

Print Name: _____

*Notarization of signature required

[This document to be recorded at the County of Marin Recorder's Office]

EXHIBIT A
Drawing of Approved Improvements

[ATTACH APPROVED DRAWING IF SUITABLE FOR RECORDATION]

or insert the following text:

Exhibit A, the drawing dated _____, 20____, depicting the work approved in Town of Tiburon Encroachment Permit No. _____, is of a size or nature that is not amenable to recordation. Exhibit A is available for public review in the Public Works Department of the Town of Tiburon, located at 1505 Tiburon Boulevard, Tiburon, California, during business hours.

EXHIBIT B
Permit and Permit Conditions

[documents must be of suitable quality and clarity for recordation]