

**Division 12. Encroachments****Section VII-1201.****A. Encroachments into required setbacks**

Every part of every required setback shall be open and unobstructed from the ground to the sky except as otherwise permitted by these regulations. Except for setbacks adjacent to the Gulf of Mexico, the following encroachments are permitted in all setbacks.

1. Sills and belt courses may project no more than twelve (12) inches into a required setback.
2. Movable awnings may project no more than three (3) feet into a required setback, provided that, where the setback is less than five (5) feet in width, the projection shall not exceed half the width of the setback. In non-residential districts, with requirements for pedestrian standards, awnings, canopies, marquees and similar features may fully extend into a required front setback.
3. Chimneys, bay windows or pilasters may project no more than two (2) feet into a required setback. In non-residential districts, with requirements for pedestrian standards, bay windows, open colonnades and entry features may extend into the required front setback up to four (4) feet.
4. Fire escapes, stairways and balconies which are unroofed and unenclosed may project no more than five (5) feet into a required rear setback or no more than three (3) feet into a required side setback of a multi-family dwelling, hotel or motel. In non-residential districts, with requirements for pedestrian standards, uncovered stairways and wheel chair ramps that lead to the front door of a building may fully extend into the required front setback.
5. Hoods, canopies, roof overhangs or marquees may project no more than three (3) feet into a required setback, but shall not come closer than one (1) foot to the zoning lot line.
6. Cornices, eaves or gutters may project no more than three (3) feet into a required setback, provided that, where the required setback is less than six (6) feet in width, such projection shall not exceed half the width of the setback.
7. Window, wall-hung air-conditioning unit and air-conditioning units installed at grade may project no more than three (3) feet into any required setback in residential districts. The screening wall for outdoor mechanical equipment, including but not limited to air conditioning equipment and pool pumps required by Sec. VI-102, U, 3 for single-family dwellings may project no more than thirty-six inches (36") into any required side yard setback.

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8. Fences, walls, poles, posts and other customary yard accessories and ornaments are permitted in all yards except waterfront yards adjacent to the open waters of the Gulf of Mexico, subject to height limitations and requirements limiting the obstruction of visibility.
9. Structures up to thirty (30) inches above the general ground level of the graded lot are permitted in all yards with the exception of waterfront yards adjacent to the Gulf of Mexico where no structures are permitted except as provided in section VII-1301 of the Zoning Code.

**B. Encroachments into the Public Right of Way**

1. **Encroachments Prohibited:** Every part of the public right of way in the City shall be open and unobstructed from below the ground to the sky, unless:
  - a. The Director of Building, Zoning and Code Enforcement has made a determination that the intrusion into the right of way is an encroachment allowed by the Florida Building Code; or,
  - b. The intrusion into the right of way is a “minor encroachment” as defined in subsection B. 4. hereof and an Encroachment Agreement between the City and the affected private property owner(s) setting out the terms and conditions upon which the particular minor encroachment will be allowed to remain in the public right of way has been approved by the City Administration and executed by the City Manager in accordance with the terms of this section.
  - c. The intrusion into the right of way is a “major encroachment” as defined in subsection B. 4. hereof; and an Encroachment Agreement between the City and the affected private property owner(s) setting out the terms and conditions upon which the particular major encroachment will be allowed to remain in the public right of way has been approved by the City Commission and executed by the Mayor.
  - d. The intrusion into the right of way has been permitted by a duly executed easement which has been recorded in the Public Records of Sarasota County.
  - e. The intrusion into the right of way is allowed by statute or by a utility franchise agreement.
  - f. The intrusion into the right of way is a sidewalk cafe which has received a permit pursuant to Sec. VII-602, V of the Zoning Code.
  - g. The intrusion into the right of way is a traffic control or directional sign.



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termination period, then the City shall have the right to remove the encroachment and to invoice the owner for the cost of same.

- d. In the event the encroachment or any portion thereof is voluntarily removed, then the encroachment may not be replaced unless a new Encroachment Agreement is approved and executed in accordance with this section.
- e. If applicable, in the event that the building of which the encroachment is a part is voluntarily demolished then the encroachment may not be replaced unless a new Encroachment Agreement is approved and executed in accordance with this section.
- f. In the event the encroachment or any portion thereof is involuntarily removed or destroyed by fire, storm or other calamity, then the encroachment may not be replaced unless a new Encroachment Agreement is approved and executed in accordance with this section.
- g. In the case of non structural supporting encroachments, a provision reserving the right to remove same in the event of an emergency without notice to the owner.
- h. A provision which limits the duration or term of the agreement other than as provided above.

In addition to the matters enumerated in subsections 2 and 3 above, an Encroachment Agreement may contain such other terms and conditions as may be recommended by the City Engineer or Director of Public Works through the City Manager or by the City Attorney and in the case of a major encroachment, which are approved by the City Commission.

#### **4. Major and Minor Encroachments**

- a. Major encroachments shall include all structures as defined in this Zoning Code (including portions of structures such as footers or arcades), except fences, flagpoles and signs which shall be considered minor encroachments. An Encroachment Agreement to allow a major encroachment shall be approved by the City Commission and executed by the Mayor.
- b. Minor encroachments shall include all encroachments which do not fall within the definition of major encroachments. Minor encroachments shall include but are not necessarily limited to all vegetation, landscaping materials, signs, flagpoles, fences, irrigation lines, private non franchised utilities, paved areas and mailboxes which are embellished in any manner. An Encroachment Agreement to allow a minor encroachment shall be

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executed by the City Manager upon the recommendation of the City Engineer and the Director of Public Works.

- c. When the term encroachment is used in this section without further modification, the term encroachment shall be construed to include both major and minor encroachments.
- d. Standard mailboxes, as described in section 1(h) above, shall not be considered encroachments for purposes of this section.
- e. Public art or public works of art as defined in the Zoning Code shall not be considered a major or minor encroachment for purposes of this section. Encroachment Agreements entered into by the City Manager to permit public art or public works of art in the public right of way are likewise not subject to the provisions of this section.

**5. Procedures**

- a. Procedures when encroachment is proposed or discovered in connection with application for development approval:
  - 1. The Engineering Department shall identify any existing or proposed encroachments on the development plans submitted. In the event an encroachment which has not been identified on the plans is discovered, the Engineering Department shall provide written notice to the applicant. The notice shall advise that the application for development approval will not proceed to the next stage of review until either (a) the applicant submits revised plans which remove the encroachment; or (b) an Encroachment Agreement in accordance with this section is approved and executed by the City Commission or the City Manager as the case may be. Copies of such notification shall be provided to the Department of Building, Zoning and Code Enforcement and to other affected Departments.
  - 2. The Department of Building, Zoning and Code Enforcement shall identify any existing or proposed encroachments which are allowed by the Florida Building Code on the development plans submitted. The Department shall also identify any other existing or proposed encroachments on the plans if the plans do not require review by the Engineering Department. If an encroachment is discovered, the plans shall be sent to the Engineering Department and the Engineering Department shall make the final determination as to whether an encroachment exists or is reflected on the plans as drawn and if so, shall proceed as provided in subparagraph 1. above.

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3. In the event that the Engineering Department sends a written notice to the applicant as provided in subparagraph 1 or 2 above, then the subject application for development approval shall not be approved and no building permit shall be issued for development which includes an encroachment unless an Encroachment Agreement has been approved in accordance with this Zoning Code.
  4. In the event that the application for development approval is an application for rezoning, site plan approval, conditional use or any other request which requires approval of the City Commission or the Planning Board; then the entire application, including the proposed Encroachment Agreement, shall be considered by the City Commission or the Planning Board on the same agenda.
- b. Procedures when existing encroachment is discovered unrelated to application for development approval.
1. When the possible existence of an encroachment into the public right of way is brought to the attention of the City by means which are unrelated to an application for development approval, the Engineering Department shall investigate the matter and determine whether or not an encroachment exists. If the existence of an encroachment is confirmed under these circumstances, the City Engineer shall notify the owner of the encroachment in writing that same must be removed within thirty (30) days unless an Encroachment Agreement is approved and executed in accordance with the Zoning Code.
  2. In the event the property owner desires to enter into an Encroachment Agreement with the City and so notifies the City Engineer in writing, then the thirty (30) day compliance period referred to in subparagraph b.1 above shall be tolled until the Agreement has been considered by the City Commission or the City administration as the case may be; and the Engineering Department shall provide the information to the City Attorney's Office for preparation of a proposed agreement. In the event the agreement is not approved by the City as provided herein and the owner fails to remove the encroachment as directed by the Engineering Department or in the alternative event that no request for an agreement is made by the property owner and the owner fails to remove the encroachment as directed, the Engineering Department shall refer the matter to the Department of Building, Zoning and Code Enforcement to commence appropriate enforcement proceedings to require the removal of the encroachment.

**Section VII-1202. Encroachments into Required Recess**

Every part of every required recess shall be open and unobstructed from the horizontal extension of the building where the required recess begins to the sky except as otherwise permitted by these regulations below.

- A. Sills, belt courses and pilasters may project no more than twelve (12) inches into a required recess.
- B. Roof overhangs, cornices, eaves, gutters and unroofed and unenclosed balconies may project no more than three (3) feet into a required recess.

**Section VII-1203. Sight Triangles**

- A. Standards outside the Downtown and Environs Area.  
See Engineering Design Criteria Manual (2002 Ed.) Part 4, Section D. 8. c. Visibility at intersections.
- B. Standards within the Downtown and Environs Area.  
See Engineering Design Criteria Manual (2002 Ed.) Part 5, Section D. 8. b. Visibility at intersections.