
Chapter 21.30A – Public Access and Recreation

Sections:

21.30A.010	Purpose
21.30A.020	Applicability
21.30A.030	Protection and Provision of Public Access Required
21.30A.040	Determination of Public Access/Recreation Impacts
21.30A.050	Development Standards
21.30A.060	Access Title and Guarantee
21.30A.070	Reserved
21.30A.080	Timing of Access Requirements
21.30A.090	Management and Maintenance
21.30A.100	Encroachments into Public Rights-of-way and Accessways

21.30A.010 – Purpose

This Chapter provides procedures and standards for the preservation, dedication, and improvement of public access to, and along the shoreline and coastal bluffs, in conjunction with development in the Coastal Zone. The intent is to ensure that public rights of access to the shoreline are protected as guaranteed by the California Constitution, and achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the Coastal Act (Sections 30000 through 30900); to implement the public access and recreation policies of Chapter 3 of the Coastal Act (Sections 30210-30255) and the applicable policies of the Coastal Land Use Plan; and where feasible, expanded and enhanced; to ensure public access to coastal bluff tops. The public access procedures and standards of this Chapter shall be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution.

21.30A.020 – Applicability

- A. **Applicability.** This Chapter applies to all coastal development permit applications within the City's coastal zone.
- B. **Development Between the Nearest Public Road and the Sea.** Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act (see Section 21.52.015 (F)).

21.30A.030 – Protection and Provision of Public Access Required

- A. **General.** Maximum access, shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs, and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

B. Existing Public Access.

1. **Protection of Existing Public Access.** Development shall not interfere with public right of access to the shoreline or coastal bluffs where the rights have been acquired through use or legislative authorization, including, but not limited to the public accessways identified in the Coastal Land Use Plan. Public access rights may include, but are not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.
2. **Maximization of Existing Public Access.** Proposed new development shall be encouraged to provide new and to improve, expand or enhance existing public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails. Improvements or enhancements include, but are not limited to:
 - a. Expanding of hours of public use;
 - b. Widening existing public accessways to and along the shoreline to conform with current standards or as needed to accommodate present and foreseeable future demand;
 - c. Closing curb cutouts to create new on-street parking spaces;
 - d. Wayfinding signage, consistent with the standards contained in Appendix B, that encourages public use of the shoreline and recreational facilities; and
 - e. Prohibiting gates, guardhouses, barriers, or other structures where they would inhibit public access to and along the shoreline, beaches, coastal parks, trails, or coastal bluffs.

C. Provision of New Public Access.

1. **Applicability.** New development projects shall provide public access from the nearest public roadway to the shoreline and along the coast, except where:
 - a. It is inconsistent with public safety, military security needs or the protection of fragile coastal resources; or
 - b. Adequate access exists nearby, or
 - c. Agriculture would be adversely affected.
2. **New Development Defined.** For purposes of this subsection, “new development” does not include:
 - a. **Single-Unit and Two-Unit Development.** The demolition and reconstruction of a single-unit or two-unit residence provided that the reconstructed residence:

- (1) Does not exceed the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the destroyed structure by more than 10 percent; and
 - (2) Is sited in the same location on the affected property as the former structure.
 - b. **Improvements to Structures.** Improvements to a structure that do not:
 - (1) Change the intensity of its use;
 - (2) Increase either the floor area, height, or bulk of the structure by more than 10 percent;
 - (3) Block or impede existing access; and
 - (4) Result in a seaward encroachment by the structure.
 - c. **Repair and Maintenance of a Shoreline Protective Device.** The reconstruction or repair of a bulkhead; provided that the reconstructed or repaired bulkhead is not seaward of the location of the former bulkhead.
 - d. **Repair and Maintenance.** A repair or maintenance activity for which the Director has determined, pursuant to Section 21.52.035, that a coastal development permit will be required unless the reviewing authority determines that the activity will have an adverse impact on lateral public access along the beach.
3. **Offer to Dedicate.** An offer to dedicate an easement (or other legal mechanism pursuant to Section 21.30A.060) for the permanent right of lateral, vertical, and/or coastal bluff access shall be required as a condition of approval, and prior to issuance, of a coastal development permit or other authorization for any new development causing or contributing to adverse impacts to public access, unless excepted by subsection (B)(2) of this section or the review authority determines that new public access is not required pursuant to Section 21.30A.050 (J).
 4. **Required Lateral Access.** New public accessways for any new development in the segments identified in Section 21.30A.050(A)(7)(b) shall be required unless excepted by subsection (C)(2) of this Section or the review authority determines that new public access is not required in pursuant to section 21.30A.050 (J)..
- D. **Recreation.** Park and recreational facilities provided for by dedications and/or in lieu fees shall be required consistent with Section 66477 of the Subdivision Map Act (known as the Quimby Act) as a condition of approval and prior to issuance of a coastal development permit or other authorization for any development causing or contributing to adverse impacts to public recreation. Where feasible, recreational opportunities in the coastal zone shall be expanded and enhanced.
 - E. **Public Trust Lands.** Public access on public trust lands shall be provided pursuant to Section 21.48.085 (Public Trust Lands) and the Common Law Public Trust.
 - F. **Regulation of Beach Use.** See Section 21.48.055.

21.30A.040 – Determination of Public Access/Recreation Impacts

- A. **Relationship and Proportionality.** The provision of public access shall bear a reasonable relationship between the requirement and the project's impact and shall be proportional to the impact.
- B. **Methodology.** In determining a development's impact on public access, the City shall evaluate, at a minimum, the factors listed below. Any access dedication required as a condition of approval shall be supported by substantial evidence in the record and findings shall explain how the adverse effects that have been identified will be alleviated or mitigated by the dedication.
1. **Land Use.** The project's impact on use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation and other priority uses specified in California Public Resources Code Section 30222 and Section 30223.
 2. **Demand for Access and Recreation.** The project's impact upon the use and capacity of the identified access and recreation opportunities, including the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs; the capacity of coastal access roads; public parking; and recreational support facilities and services.
 3. **Obstructions.** Any aspects of the project that would block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs, including placement of structures, private streets, shoreline protective structures, barriers, guardhouses, gates, fences, or signs.
 4. **Visual Access.** The project's impact on public access to public views to the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal bluffs, and other scenic coastal areas.
 5. **Vessel Launching, Berthing, and Storage.** The project's impact on vessel launching, berthing, and storage facilities and other facilities providing public access to the ocean, harbor, bay, channels, estuaries, salt marshes, and sloughs.
 6. **Shoreline Processes.** The project's impact upon shoreline conditions, including beach profile; the character, extent, accessibility and usability of the beach; erosion or accretion; character and sources of sand; wave and sand movement; and any other anticipated changes to shoreline processes that have the potential to adversely impact public access to and along the shoreline and to the harbor, bay, channels, estuaries, salt marshes, sloughs, and coastal bluffs.
 7. **Other Impacts.** Any other aspects of the project, which are likely to diminish the public's use of the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs.

21.30A.050 – Development Standards

This section provides standards for the location and configuration of public access to ensure public safety and to protect public rights, rights of private property owners and leaseholders, and natural resource areas from overuse.

- A. **Site Planning and Design Criteria.**

1. **General.** It is the intent of these site planning and design criteria to be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Public access improvements when required pursuant to Section 21.30A.030 (Protection and Provision of Public Access Required) shall be designed to:
 - a. Maximize public access to and along the shoreline and coastal bluffs;
 - b. Provide new vertical accessways in areas of limited public accessibility;
 - c. Incorporate pedestrian, hiking, bicycle, and equestrian trails;
 - d. Provide connections to beaches, parks, recreational facilities, **bikeways**, and trail systems, **including the California Coastal Trail**;
 - e. Integrate into project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels;
 - f. Provide access to coastal view corridors, where possible;
 - g. Alternative modes of transportation;
 - h. Minimize alterations to natural landforms;
 - i. Account for long-term projections in sea level rise and coastal bluff erosion rates (see Appendix A: Sea Level Rise);
 - j. Protect environmentally sensitive habitat areas consistent with Coastal Act Section 30240; and
 - k. Protect open coastal waters, wetlands, estuaries, and lakes consistent with Coastal Act Section 30233; and
 - l. Protect public and private property rights.
2. **Open and Unobstructed.** Public access shall be open and unobstructed.
3. **Barriers Prohibited.** Development designed to restrict access to and along the shoreline or coastal bluffs (i.e., barriers, gates, guardhouses, private streets, etc.) shall be prohibited.
4. **Location in Setback Areas.** Public access easements may be provided within required setback areas.
5. **Privacy Buffers.** A 10-foot wide buffer area between a public accessway and a residential structure shall be provided on the site when necessary to protect the landowner's privacy or security as well as the public's right to use the accessway. The review authority may reduce the width of the buffer area where separation is achieved through landscaping, fences, or changes in grade elevation.

6. **Sensitive Areas.** Public access improvements shall be sited, designed, and maintained to avoid or minimize impacts to environmentally sensitive habitat areas (ESHAs), wetlands, coastal dunes, and other sensitive resource areas in compliance with Chapter 21.30B (Environmentally Sensitive Areas).
7. **Lateral Access Design Features.**
 - a. **Location.**
 - (1) A lateral accessway shall extend along the entire width of a lot.
 - (2) A lateral accessway shall be located on land, when feasible. A lateral accessway that consists of decking and/or boardwalks extending over the water or floating walkways may be allowed only when existing development makes onshore lateral access infeasible or as part of a comprehensive program to provide waterfront access.
 - b. **Required Segments.** Lateral accessways segments shall be provided in the following areas:
 - (1) **Lido Marina Village.** On all bayfront nonresidential and mixed-use lots in Lido Marina Village.
 - (2) **Cannery Village and McFadden Square.** On all bayfront lots in Cannery Village and McFadden Square from 31st Street to 19th Street.
 - (3) **Mariners' Mile.** On all bayfront lots in Mariners' Mile from the Coast Highway/Newport Boulevard Bridge to the Balboa Bay Resort.c.
Alignment. A lateral accessway shall align with existing lateral accessways, unless an alternative alignment is approved pursuant to subsection J. of this section.
 - d. **Minimum Width.** Lateral accessways shall be the following minimum widths:
 - (1) **Lots With Dry Sand or Rocky Coastal Beaches.** For lots with dry sand or rocky coastal beaches, a lateral accessway shall be a strip of land that extends landward from the mean high water line the greater of the following distances:
 - (a) 10 feet; or
 - (b) If the width of the beach is greater than 10 feet, to a fixed point at the most seaward of the primary extent of development, the toe of the bluff, or the first line of terrestrial vegetation. For purposes of this paragraph, the primary extent of development shall mean the intersection of sand with toe of revetment, the vertical face of a bulkhead, or other appropriate boundary (e.g., drip line of a deck, etc.).

- (2) **Lots With Shoreline Protective Devices.** For lots with shoreline protective devices, a lateral accessway shall be a minimum of 10 feet in width as measured landward from the shoreline protective device.
 - (3) **Lots on Coastal Blufftops.** For lots on a coastal blufftops, a lateral accessway shall be a minimum of 10 feet in width as measured upland from the bluff edge.
 - e. **Construction Design.** A lateral accessway may include open or enclosed unobstructed walkways; exterior decking and/or boardwalks; interior breezeways and/or walkways with a minimum vertical clearance of 8 feet above-grade, provided that the breezeways are located as close as possible to the water and are designed to provide the most direct, convenient connection between adjacent existing or potential lateral access. Exterior access is preferred over interior access.
- 8. **Vertical Access Design Features.**
 - a. **Location.** Where feasible, a minimum of one vertical accessway at every street stub, or where there are no street stubs, at every 500 feet.
 - b. **Linkage.** Where feasible, vertical accessways shall link with lateral accessways.
 - c. **Minimum Width.** A vertical accessway shall be a minimum of 6 feet in width.
- 9. **Coastal Bluff Access Design Features.**
 - a. **Lateral Access.** See Section 21.30A.050 (A)(7).
 - b. **Street and Trail Connections.** Public access to coastal bluff areas shall be provided through design of the local street system and through the location of public trails and walkways adjacent to the bluffs.
 - c. **View Parks and Vista Points.** Areas adjacent to coastal bluffs having significant view potential shall be designated for use as view parks or vista points consistent with parkland dedication requirements.
- 10. **Bayfront Amenities.** Nonresidential development along the bayfront shall provide amenities to assure access for coastal visitors. Bayfront amenities include, but are not limited to seating, trash enclosures, water fountains, lighting, viewing areas, lighting, and other pedestrian-oriented improvements.
- B. **Usage Limits.** Controls on the time, place, and manner of uses (e.g., limiting access to pass and repass; restricting hours of use; etc.) may be imposed in compliance with Chapter 21.52 (Coastal Development Review Procedures) and Section 21.30A.090(A) (Management and Maintenance – Controls).
- C. **Signage.** Public accessways shall be identified by signs that conform to the Coastal Access Signing Program contained in Appendix B and any specific sign requirements established in a coastal development permit.

- D. **Removal of Unauthorized Structures.** Unauthorized development, including, but not limited to signs, landscaping, **gates**, and fences that inhibit public access shall be removed.
- E. **Parking.**
1. **Off-Street Parking Spaces Required.** Any required off-street parking spaces shall be provided in compliance with Chapter 21.40.
 2. **Public Parking Restrictions Prohibited.** Restrictions on public parking (e.g., the posting of “no parking” signs, painting curbs red, installation of physical barriers, etc.), shall be prohibited.
 - a. **Exception.** Where there is substantial documented evidence of a public safety problem, the reviewing body may waive this standard where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.
 - b. **Mitigation.** Development that results in restrictions on public parking shall provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.
 3. **Protection of Existing Public Parking.** Existing public parking that supports public access shall be protected. Any development that results in a reduction of public parking supporting public access shall provide an equivalent quantity of public parking nearby as mitigation.
 4. **Use of Parking Areas During Low-Demand Periods.** Commercial or institutional development causing or contributing to adverse impacts to public access or recreation may be conditioned to allow public use of private parking areas for public access outside of normal business hours (i.e., on weekends and holidays), where feasible. Parking areas may be used for motor vehicle parking, bicycle parking, or in conjunction with public transit or shuttles that serve coastal recreational areas.
 5. **Parking for Vertical Accessways.** Parking shall be provided by the developer in conjunction with new or improved vertical accessways, whenever feasible and consistent with site constraints, environmental constraints, and safety conditions.
- F. **Interference with Public Use Prohibited.** After making an offer to dedicate public access in compliance with this Chapter, the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.
- G. **Encroachments Prohibited.** Encroachments or the installation of non-access-related private improvements into public accessways shall be strictly prohibited, except as provided by Section 21.30A.100 (Permitted Encroachments into Public Accessways).
- H. **Vacation of Public Accessways.** Vacations of public accessways, including, but not limited to, easements and public street ends identified as providing public access, shall require a coastal development permit pursuant to Section 21.44.045 (Vacations and Abandonments).

I. **Public Prescriptive Rights.**

1. **Location of Development Where Public Prescriptive Rights Identified.** The design and siting of development shall not interfere with the potential public rights based on historic public use; unless the review authority determines that replacement public access of an equivalent type (i.e. vertical or lateral access), existing intensity of use by the public, and area will be provided on, or immediately adjacent to, the development site.
2. **Condition Not Determinative of Public Prescriptive Rights.** An access condition shall not serve to extinguish, adjudicate or waive potential public prescriptive rights. The following language shall be added to the access condition in a permit with possible public prescriptive rights:

"Nothing in this condition shall be construed to constitute a waiver of, or a determination on, an issue of public prescriptive rights that may exist on the lot itself or on the designated easement."

J. **Modification or Waiver of Public Access Design Standards.** The public access **design standards** specified in Section 21.30A.050(A) may be modified or waived if, based on a feasibility analysis, supported by substantial evidence, it is not feasible to comply with the City-preferred public access requirement.

1. **Marine Service Equipment Detours.** Where marine service equipment and operations present security or public safety concerns, waterfront access detours are necessary in order to maintain facilities and services essential to the operation of the harbor.
2. **Coastal Bluff Access.** The coastal bluff access **design standards** specified in Section 21.30A.050 (B) may be waived or modified in the following situations:
 - a. When the design of the existing local street system and/or the location of existing public trails and walkways cause all or a portion of such access to be physically infeasible and there are no design alternatives capable of overcoming these constraints.
 - b. When the applicant can demonstrate, based on an engineering analysis, including slope stability analysis and erosion rate estimates, that all or a portion of such access is physically infeasible and there are no design alternatives capable of overcoming topographical or site constraints that jeopardize public safety or fragile coastal resources.
3. **Mitigation.** Should public access **design standards** specified in Section 21.30A.050(A) be modified or waived, the reviewing authority shall require the applicant to mitigate for the project's access impacts in an alternative manner that is roughly proportional to the project's impact on public access and in substantial conformance with the requirements **of this section**.

K. **California Coastal Trail (CCT).** The City shall coordinate and collaborate with state agencies in planning and implementing the Newport Beach segment of the California Coastal Trail.

1. **Goals and Objectives.** It is intended that the CCT system shall be designed and implemented to achieve the following goals and objectives:
 - a. Provide a continuous walking and hiking trail as close to the ocean as possible;
 - b. Provide maximum access for a variety of non-motorized uses by utilizing parallel trail segments where feasible;
 - c. Maximize connections to existing and proposed local trail systems;
 - d. Ensure that the trail has connections to trailheads, parking areas, transit stops, inland trail segments, etc. at reasonable intervals;
 - e. Maximize ocean views and scenic coastal vistas; and,
 - f. Provide an educational experience where feasible through interpretive programs, kiosks, and other facilities.

2. **Site Planning and Design Standards.** In addition to the site planning and design criteria in Section 21.30A.50(A), implementation of the CCT shall:
 - a. Be sited and designed to be located along or as close to the shoreline as is physically and aesthetically feasible. Where it is not feasible to locate the trail along the shoreline due to natural landforms or legally authorized development that prevents passage at all times, inland bypass trail segments located as close to the shoreline as possible should be utilized. Shoreline trail segments that may not be passable at all times should be augmented by inland alternative routes. Special attention should be given to identifying any segments that may need to be incorporated into water-crossing structures and that necessarily must be placed within Caltrans right-of way.
 - b. Where gaps are identified, interim segments should be employed to ensure continuity of the coastal trail. Interim segments should be noted as such, with provisions that as opportunities arise, the trail shall be realigned as close as possible to its optimum location. Interim trail segments should meet as many of the CCT objectives and standards as possible.
 - c. Be designed and located to minimize impacts to environmentally sensitive habitat areas and prime agriculture lands to the maximum extent feasible. Where appropriate, trail access should be limited to pass and repass. Where necessary to prevent disturbance to sensitive species, sections of the trail may be closed on a seasonal basis. Alternative trail segments shall be provided where feasible. For situations where impact avoidance is not feasible, appropriate mitigation measures should be identified, including but not limited to use of boardwalks, reducing width of trails, protective fencing and drainage measures along edges of agricultural land, etc.
 - d. Be located to incorporate existing oceanfront trails and paths and support facilities of public shoreline parks and beaches to the maximum extent feasible.

- e. Be designed to avoid being located on roads with motorized vehicle traffic where feasible. In locations where it is not possible to avoid siting the trail along a roadway, the trail should be located off of the pavement and within the public right-of-way, and separated from traffic by a safe distance or by physical barriers that do not obstruct, or detract from, the scenic views and visual character of their surroundings. In locations where the trail must cross a roadway, safe under- or over-crossings or other alternative at-grade crossings should be considered in connection with appropriate directional and traffic warning signage.
- f. To maximize access to the CCT, adequate support facilities, such as parking areas and trailheads, should be provided.

21.30A.060 – Access Title and Guarantee

Where public coastal accessways are proposed by an applicant or required as a condition of approval of a coastal development permit or other authorization, a guarantee of the access through deed restriction, or dedication of right-of-way or easement shall be required. Prior to the issuance of a coastal development permit or other authorization, the method and form of the access guarantee shall be approved by City Attorney, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access. The method of access guarantee shall be chosen according to the following criteria:

- A. **Deed Restriction.** A deed restriction shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the public access area, subject to approval by the Director.
- B. **Grant of Fee Interest or Easement.** A grant of fee interest or easement shall be used when a public agency or private organization approved by the City Council is willing to assume ownership, maintenance and liability for the access.
- C. **Offer of Dedication.** An offer of dedication shall be used when no public agency or private organization is known to be willing to accept fee interest or easement for accessway maintenance and liability. These offers shall not be accepted until maintenance responsibility and liability is established.
- D. **Maintenance.** A dedicated public accessway shall not be required to be opened to public use until a public agency or private association approved by the City Council agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction.

21.30A.070 [RESERVED]

21.30A.080 – Timing of Access Requirements

The type and extent of access to be dedicated, and/or constructed and maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of coastal development permit approval or other authorization, as provided by this section.

- A. **Guarantee Precedes Permit Issuance.** The guarantee of public access in the form required in compliance with Chapter 21.52 (Coastal Development Review Procedures)

shall occur before issuance of construction permits or the start of construction activity not requiring a permit.

- B. **Construction of Improvements.** Construction of improvements shall occur at the same time as construction of the approved development, unless another time is established through conditions of coastal development permit approval or other authorization.
- C. **Interference with Public Use Prohibited.** Following an offer to dedicate public access pursuant to this section; the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.

21.30A.090 – Management and Maintenance

- A. **Controls.** Based on substantial evidence and documentation, submitted in conjunction with a coastal development permit application, the City may impose controls on the time, place, and manner of public access when justified by site characteristics, including topographic and geologic conditions, the intensity of use and the capacity of the site to sustain the use, the fragility of natural resource areas, the need to protect the privacy or security of residential development, public safety services access, and the provision of support facilities. Such controls shall only be imposed with a clause requiring periodic re-evaluation for its continued need.
- B. **Management and Maintenance Plan.** A management and maintenance plan that maximizes public access may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. The plan shall be a condition of approval of the coastal development permit and shall at minimum address:
 - 1. Regular inspections;
 - 2. Vegetation maintenance to ensure accessway remains safe and unobstructed;
 - 3. Regular trash/litter pickup; and
 - 4. Signage.