



Town of Fort Myers Beach Administrative Code 1-1 Transportation- Right-of-Way

PURPOSE

This Administrative Code includes a process for protecting Town of Fort Myers Beach rights of way (ROW) from unauthorized use. This is necessary to avoid potential loss of title to previously acquired rights of way and to avoid delays to transportation or Public Works projects caused by the necessity to recover possession of right of way, prior to project lettings. This Code is not intended to suggest that the Town must allow existing encroachments, but it is merely a tool that provides options for how to handle encroachments whether the decision is made to remove or authorize their existence. This Code also standardizes the process of issuing licenses to park in the Town's rights of way. The Code also sets forth the means by which these licenses are enforced by Beach and Street Enforcement (B.A.S.E.).

DEFINITIONS

Authorized Use: The occupation of the Town's rights of way by virtue of an executed permit, lease, license or easement document.

Encroachment: An occupation or use of the Town's rights of way which has not been authorized by the execution of a permit, lease, license or other appropriate document.

Rights of Way: A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway, road, street, bridge, alley, or public utility easement, for which the Town is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface.

Standard Parking Space: For purposes of this code, a standard parking space is 162 square feet measured nine (9) feet by eighteen (18) feet.

GENERAL

The basic principle underlying this Code is that no person or entity may lawfully occupy or use the Town's rights of way without authorization to do so. Discovery of persons "in possession" or things built in or occupying the Town's rights of way are a red flag that action is needed. Once identified, such encroachments must either be removed or authorized.

IDENTIFYING ROW ENCROACHMENTS

When identified, encroachment should be reported to the Public Works Director. The Public Works Director has the authority to call the attention of the encroachment to the Town Council.

Town Council has the authority to direct the Public Works Director to have the encroachment removed or to execute a permit, lease, license or easement document to legitimize the encroachment.

The Town recognizes that there are various historic uses of rights of way from commercial businesses, religious organizations and residents. This code provides a process for commercial businesses to obtain a permit or license to continue using rights of way by submitting an application and undergoing review and possible approval. This code is not meant to address such short term uses of rights of way such as parking of landscaping vehicles to support yard maintenance of residents, garage sales or one-time parties.

MAKING THE DECISION TO ALLOW THE USE TO CONTINUE

An encroachment which has existed for an extended period of time, which poses no safety hazard or operational impediment and which does not interfere with a transportation or Public Works project **may** be a candidate for consideration of a permit, lease, license or easement authorizing the use. By specifically authorizing previously existing encroachments, the Town exercises control of its rights of way which is important in demonstrating the Town's legal right to possession. The authorizing document specifies the terms and conditions under which the use will be allowed and provides a method for the termination of the use should it become necessary.

In determining whether to authorize an encroachment or require its removal, the following factors should be considered:

- Whether the encroachment has been in place for a long period of time or was recently added. NOTE: This may be a consideration, but is not a controlling factor;
- Whether the encroachment presents a safety hazard such as obstructing sight views or generally blocking the rights of way. In general, a safety hazard should be presumed to exist if an above ground improvement is located within the clear recovery zone established for the Town's facility. The Public Works Director will make the final determination as to whether a safety hazard exists;
- Whether the property on which the encroachment exists will be needed for transportation or Public Works purposes within the near future;
- Whether the encroachment presents an operational impediment;
- Whether the encroachment benefits the Town or advances transportation or Public Works objectives.

REMOVING THE ENCROACHMENT

If the Town determines that the encroachment should be removed, the first step in requiring removal is to deliver a request to remove the encroachment. The request will be a written warning and should allow a reasonable time for compliance. This request should emphasize

that the unauthorized use of the Town's rights of way is defined as a second degree misdemeanor under the law.

If the previous action does not result in removal of the encroachment, the matter should be referred to B.A.S.E. or law enforcement. Sheriff and Town Staff have the authority to issue citations for unauthorized use of the rights of way.

Repeated instances of encroachment at the same location should be referred to the Town Attorney for initiation of legal proceedings.

AUTHORIZING THE ENCROACHMENT

When a determination has been made to allow an encroachment to remain, a decision must be made as to the appropriate document to be used. Each decision should be coordinated with the Town Attorney. Appropriate documents are lease agreements or licenses. An application must be submitted to the Town by permittee to obtain a lease agreement or a license to utilize the Town's rights of way. The lease agreement or license may not be subleased.

DETERMINING THE APPROPRIATE DOCUMENT

Selecting the appropriate document for authorizing uses of Town's rights of way depends on the purpose, type and duration of the use. The following may be used as a guide:

- Commercial uses of rights of way which do not benefit the Town or advance transportation or Public Works objectives should be leased for a fair market rental;
- Only leases to a governmental entity for a 'public purpose' is allowed without requirement of receiving fair market value rental compensation. This does not include non-profit or charitable uses or entities;
- Uses which primarily benefit the Town or advance transportation or Public Works objectives, even if they also secondarily advance a commercial purpose may be authorized, either by permanent or temporary easements or by general use permits;
- Easements constitute an interest in real estate and should be used for major improvements built in the rights of way which are permanent or which are intended to continue for a long period of time. Easements should contain appropriate language establishing limiting uses, conditions, liability, etc. An example might be a pedestrian overpass constructed between a commercial operation and a parking facility;
- Permits should be used for shorter term or temporary non-commercial uses. Permits may also be issued by the Town for temporary uses of the Town's rights of way.

The Town will maintain an application for applicants to fill out to obtain a lease agreement or license to utilize Town rights of way.

LICENSES FOR PARKING IN TOWN'S ROWs

Licenses can be obtained to park in specific rights of way locations approved by the Town Manager. The fair market value will be utilized to establish the license fee. The period of the license will run from October 1 through September 30. Only abutting property owners are eligible to obtain this license. The fair market value is determined by the average yearly parking meter revenue per metered space. This license fee will be set each July 1st, using the previous year's average. Any construction within the rights of way needs a right of way permit. The area of a parking space to be utilized through a license is nine (9) feet by eighteen (18) feet (standard parking space.)

FEE OCTOBER 1 THROUGH SEPTEMBER 30 - \$990/year (\$82.50/month) per standard parking space and any additional Administrative Fees

In certain circumstances, the Town may grant a license to utilize Town rights of way for parking that is less than the standard parking space. An area proposed to be utilized in a license agreement that is less than a standard parking space will be prorated against the established fee. The established fee will be converted to a per square footage rate then multiplied by the proposed license area.

Applications and fees for licenses under this section must be submitted to the Department of Community Development by August 1. These applications will be reviewed by the Town Staff including the Department of Community Development and Public Works. The Town Manager will issue the licenses.

OTHER LICENSES TO UTILIZE TOWN ROWs

Licenses can be obtained to place tables and chairs in the Old San Carlos right of way consistent with the Comprehensive Plan and Chapter 34 Commercial Design Standards. The fee to utilize the right of way will be consistent with the Times Square Business Utilization of the Town's Rights of Way (Administrative Code 1-2).

Structures within the Town right of way (Ex. S.O.B.) require a license or lease agreement calculated utilizing fair market value. Applications for licenses will be due by August 1st.

ENFORCEMENT OF THE TOWN'S ROWs

B.A.S.E is responsible for the enforcement of the provisions of this Code and applicable ordinances.

APPEAL PROCESS

An applicant that is denied a lease or license to use Town rights of way may appeal the Staff decision to Town Manager upon filing the request for appeal with Staff.



Private Use of Right-of-Way License Application

(see Town Administrative Code 1-1 Transportation-Right of Way, regarding Private Use of Public Streets, Parking in Public Rights-of-Way)

NOTE: Additional requirements, such as liability insurance, financial surety documents, and other items may be required by the Public Works Director before this application can be approved. Upon approval, a separate License Agreement may be required between the Applicant and the Town. All licenses must conform to the requirements of Town Administrative Code 1-1 Transportation- Right of Way.

Applicant: _____

Property Owner (if different from Applicant): _____

Property Address: _____ Phone: _____

Mailing Address: _____
 (All approved Private Use of Right-of-Way License Requests must be picked up by Applicant)

Abutting Strap Number: _____

Abutting Zoning Districts: _____

Proposed Private Use of Public ROW (Provide total square footage & sketch on separate sheet):

Applicant must submit a scale sketch drawing of the property along with this request.

Signature of Applicant	Date
Signature of Owner (if different from Applicant, & if required by DPW)	Date

OFFICE USE ONLY	Application Fee Paid (Amount/Date):
Additional Info Required:	
Approved by DPW:	Date:
Approved by DCD:	Date:
Approved by Town Manager	Date:
Conditions:	