



# Memorandum

**TO: CITY COUNCIL**

**FROM: Mayor Sam Liccardo**

**SUBJECT: IMPROVING THE PUBLIC  
REALM THROUGH BETTER  
ARCHITECTURE & DESIGN**

**DATE: April 13, 2021**

**APPROVED:**

**DATE: 04/13/21**

## RECOMMENDATION

Approve the staff recommendation, while:

1. Directing the City Attorney to revise the ordinance regarding encroachments of private development into the public realm to match that of the International Building Code, or of cities such as Los Angeles and Seattle, permitting encroachments more than 15 feet above the ground without limitation;
2. Where not legally feasible for a specific reason articulated to Council, direct Staff to explore more creative options that might enable such projects to get built without constraint, e.g., through agreements for City to claim title to the encroaching portion of a building but with exclusive leases to the property owner for a substantial duration matching the building's useful life (e.g., 99 years), in those circumstances where the City Manager and City Council find:
  - a. Greater flexibility will substantially improve the architecture and design viewable to the public, or some mechanism for exists for public to recapture value (such as for publicly accessible rooftop amenities, or additional contributions to the public realm with some nexus to the encroachment); and
  - b. encroachment occurs at an elevation—eg, 50 feet above the street, or 50 feet below—where it appears unlikely to have any adverse impact on the public's use of the public right of way; and
  - c. the lease is subjected to a Brown Act-compliant public hearing and vote of the Council.
3. Should no options exist under California law, then in the coming year, discuss with our state delegation a legislative proposal that would allow encroachment of private development into the public realm under conditions similar to those stated above.

## **BACKGROUND**

Good architecture and urban design fundamentally affect how we experience great cities—including our own.

Due to the imposition of severe height restrictions in San Jose’s Downtown, however, our private - sector architecture has seemed less than inspiring. Developers face unique financial constraints from lenders and investors that force them to maximize buildable space, but with far fewer floors to enable that buildout, which has left our city a pattern of fully squared, squatty buildings. We should demand better, but that first requires us to enable better.

Three times in the last half-decade, however, Downtown project builders have faced months-long (or year-long) delays over features that appear to intrude in some way into the public right-of-way. The solution we’ve offered—a fully revocable permit—makes it difficult, if not impossible, for builders to convince financing sources to move forward with construction.

Most recently, Sobrato’s “Block 8” design pushed form and functionality, presenting to the public a unique twisting design that put some elements of the building intruding over the street, many dozens of feet above where any member of the public could possibly use that space. The public and architectural observers cheered. Nonetheless, San Jose’s building codes punished them for that, and after a year of back-and-forth, they stripped usable space to comply with Public Works dictates to fit within the box. This is not how we should reward innovation in Silicon Valley.

After a quick internet search, it appears difficult to understand whether the State of California seems uniquely restrictive on this issue, or whether San Jose simply is viewing the issue too conservatively. The [International Building Code](#), for example, allows private encroachments for awnings and balconies as we do with some limitation, but then further permits all pedestrian walkways and encroachments more than 15 feet above the ground without limitation. The [California Building Code appears to allow the same](#). [Los Angeles also follows this more permissive model, placing no limitation on encroachments at that elevation](#), as did [Seattle, which more recently allowed even greater discretion to its building officials](#).

While we understand that the City of San Jose holds our streets and sidewalks in the public trust, this does not negate our ability to find win-win opportunities that reward awe-inspiring architecture and provide enhanced public amenities. Policy innovations can enable new architecture and urban experiences that will bring our city forward in the coming decades.