



City Attorney's Office

AGENDA REPORT

DATE:	May 17, 2022
TO:	Mayor Butt and Members of the City Council
FROM:	Dave Aleshire, Interim City Attorney Joe Leach, Director of Public Works
Subject:	Reintroduce an Ordinance (First Reading) to Revise and Amend Richmond Municipal Code Chapter 12.30
FINANCIAL IMPACT:	There is no financial impact related to this item at this phase of consideration. However, the proposed amendment to Chapter 12.30 does add provision(s) addressing "private landowner" encroachments into the public Right-of-Way. These newly added provisions may potentially increase costs in staff time for application review; notice provisions; et al. Any private owner applying for an encroachment agreement pursuant to Chapter 12.30 would also remit fees as set forth in the Master Fee Schedule; such additional revenue may offset potential increases in staff time.
PREVIOUS COUNCIL ACTION:	9/28/21: City Council directed City staff to draft an Ordinance addressing encroachments into the public ROW. 12/21/21: City staff presents Ordinance to City Council for consideration. City Council directs City staff to provide revisions. 4/5/22: Revised Ordinance presented for first reading; City Council directs City staff to make minor revisions. 4/19/22: Revised Ordinance presented for second reading. City Council requests further revisions and continues the matter.

STATEMENT OF THE ISSUE:	The City's Municipal Code (the "RMC") contains two chapters that address encroachments into the public Right-of-Way ("ROW") -- Chapter 12.29 ("Street Opening and Pavement Restoration Regulations") and Chapter 12.30 ("Video Service Provider, Utility and Special District Encroachments"). Neither chapter addresses private landowner encroachments into the unimproved public ROW. City has used a variable ad hoc process to grant Encroachment Agreements in the past. Further, neither chapter currently addresses easements or street vacations. Consideration of proposed amendments include: revise Chapter 12.30 to include Chapter 12.29 and remove chapter duplications; and add provisions for private landowner encroachments into the public ROW; easements; and street vacations. Thereafter, Chapter 12.29 would be rescinded in its entirety, and the amended and revised Chapter 12.30 would be retitled "Encroachments and Easements."
RECOMMENDED ACTION:	REINTRODUCE an Ordinance (first reading) amending RMC Chapter 12.30 ("Video Service Provider, Utility and Special District Encroachments") by incorporating Chapter 12.29 ("Street Opening and Pavement Restoration Regulations"); adding provisions that address private landowner encroachments into the public Right-of-Way (ROW); easements; and street vacations; retitling Chapter 12.30 "Encroachments and Easements," and rescinding Chapter 12.29 in its entirety - City Attorney's Office/Public Works Department (Dave Aleshire 510-620-6509/Joe Leach 510-620-3008).

DISCUSSION:

Presently, the Richmond Municipal Code (RMC) contains two chapters that address encroachments in the public Right-of-Way ("ROW"). Both chapters reside in Article XII ("Public Works") – Chapter 12.29 ("Street Opening and Pavement Restoration Regulations"); and Chapter 12.30 ("Video Service Provider, Utility and Special District Encroachments").

Broadly speaking, Chapter 12.29 governs trenching, pavement, etc. in the public ROW; whereas Chapter 12.30 provides for the utilization of public ROW by specific entities, under certain circumstances, and directs when an entity must acquire a permit. Although separate Chapters, both 12.29 and 12.30 contain procedural redundancies, and neither chapter addresses private landowner encroachments into the unimproved public ROW. Further, neither existing Chapter addresses easements or street vacations.

The proposed amendments would revise Chapter 12.30 such that it includes Chapter 12.29 and removes duplications between existing chapters. The amendments also add provisions addressing private landowner encroachments into the unimproved public ROW; easements; and street vacations. Thereafter, Chapter 12.29 would be rescinded in its entirety, and the amended and revised Chapter 12.30 would be retitled “Encroachments and Easements.”

The newly proposed Chapter 12.30 (“Encroachments”) divides itself into six Parts – Part 1 (“General”), Sections 12.30.10 through 12.30.110; Part 2 (“Street and Paving”), Sections 12.30.120 through 12.30.160; Part 3 (“Private Landowner Encroachments into Unimproved Portions of the Public ROW”), Sections 12.30.170 through 12.30.200; Part 4 (“Easements”), Section 12.30.210; Part 5 (“Street Vacations”), Sections 12.30.220 through 12.30.240; and Part 6 (“Violations, Revocations, Other Penalties, and Appeals”), Sections 12.30.250 through 12.30.290. This newly proposed division allows for separate categories of encroachments where relevant requirements, technologies, regulations, et al. may be categorically curated. The revision also eliminates section or chapter duplication(s) by establishing separate portions for general terms and violations, et al. The overall effect both clarifies and streamlines the City’s encroachment provisions and permitting requirements and also allows a chapter whose structure will scale to include future categorial amendments, if needed.

Historically, the City entered into Encroachment Agreements with private landowners for ROW encroachments. These Encroachment Agreements were recorded on the property’s title and became binding on successors. However, even the informal practice has not been consistent, with some agreements approved by Council and others approved by the City Manager. The RMC has been silent on private landowner encroachments into the public ROW, so the City’s past practice of Encroachment Agreements with private landowners has not been documented previously within the Code. Thus, as it relates to the newly proposed Part 3 (“Private Landowner Encroachments into Unimproved Portions of the Public ROW”), the RMC now outlines a process for Application and attendant requirements, Notice, Appeal, et al. for private landowner Encroachment Agreements.

The Mayor suggested changes on first reading with the added language requiring a minimum, unobstructed passageway of at least nine (9) feet for one lane or eighteen (18) feet for two lanes with a four (4)-foot sidewalk. Subsequently, after checking field conditions, there are two (2) areas proposed for Encroachment(s) of which City staff is aware – one at 8 Western Drive and one at 130 Scenic Drive – where meeting the newly proposed condition may be challenging, but we cannot tell without plans. Moreover, an unknown number of other Encroachment conditions exist in this area, and in other parts of the City, where the newly proposed condition may not be met.

Staff believes these projects should be considered at a public hearing under the new ordinance and suggests further language to complement the Mayor’s suggestion. That would be to add a finding that the special conditions, including the minimum street

width, can be modified by the Council. It would be in Section 12.30.190(a)(1)(G), and states:

“The Encroachment conflicts with a specific condition below, but the Encroachment is warranted due to special circumstances specifically identified and addressed in the Encroachment Agreement.”

At its April 19th meeting, City Council received a joint presentation from the Public Works Department and the City Attorney’s Office. The City Council then took public comment and subsequently directed City staff to continue its research into the points above. We believe the above language gives the Council flexibility and recommend that you proceed.

ENVIRONMENTAL REVIEW:

This Ordinance is not a project under the requirement(s) of the California Environmental Quality Act and its related State CEQA Guidelines (collectively, “CEQA”) because it can be seen with certainty to have no possibility of a significant effect on the environment and thus meets the CEQA exemption contained in CEQA Guidelines section 15061(b)(3). CEQA applies only to projects that have the potential to cause significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Ordinance would have no, or only a de minimis, impact on the environment because changing the provisions within existing Municipal Code chapters to clarify the permitting process, et al. does not have direct or indirect physical environmental impact(s). The foregoing determination is made by the City Council in its independent judgment.

DOCUMENTS ATTACHED:

- Attachment 1 - Proposed Ordinance to Amend Chapter 12.30
- Attachment 2 - Proposed Amended Chapter 12.30 (clean version)
- Attachment 3 - Proposed Amended Chapter 12.30 (tracked changes)
- Attachment 4 - Proposed Amended Chapter 12.30 (original version)
- Attachment 5 - Proposed Rescinded Chapter 12.29 (tracked changes)
- Attachment 6 - Proposed Rescinded Chapter 12.29 (original version)