

Chapter 12.30 – ENCROACHMENTS AND EASEMENTS IN THE PUBLIC RIGHTS OF WAY

12.30.010 – PURPOSE

The Public Rights-of-Way are unique, physically limited public resources held in trust for the public's benefit, and they require proper management to maximize their efficiency and minimize the taxpayers' costs; to protect against foreclosure of future economic expansion due to premature exhaustion of these resources; and to minimize the inconvenience to, and negative effects on, the public from use of these rights-of-way by individuals, contractors, utility companies, video service providers, utilities, special districts, et al.

To achieve this Chapter's purpose, the City shall endeavor to coordinate its Capital Improvement Programs with those of Utility Companies and Franchisees with Facilities in, on, under, or above the Public Rights-of-Way. Information about planned work in the Right-of-Way shall be communicated as early in the process as possible. Utility owners and franchisees should strive to coordinate street excavations to allow for simultaneous work and to prevent a street from multiple excavations within a twelve (12)-month period.

PART 1 - GENERAL

12.30.020 - Definitions

As used in this chapter:

"Agreement" means "Encroachment Agreement," as defined below.

"Applicant" means any person, firm, partnership, association, corporation, company, entity, or organization who proposes to encroach upon a public place, right of way, sidewalk, or street and who has applied for a permit for the proposed encroachment, pursuant to the provisions of this chapter.

"Arterial street" means any street with a traffic volume of 7,500 to 15,000 vehicles per day, including Barrett Avenue, Castro Ranch Road, Garrard Boulevard, Harbor Way, Macdonald Avenue, Pennsylvania Avenue, Potrero Avenue, Rheem Avenue, Seventh Street, Solano Avenue and Thirty-Seventh Street.

"Asphalt concrete" or "AC" means blend of aggregate and asphalt binder meeting the specifications set forth in the City of Richmond Standard Specifications Section 39, "Asphalt Concrete" and the Caltrans Standard Specifications Section 39, "Asphalt Concrete."

"Chip Seal" (see the definition of "Slurry Seal").

"City Projects" mean any city-funded construction or reconstruction, including but not limited to, public works projects and community facilities (e.g. libraries, community centers, et al.), excluding public/private partnerships.

“Communications service equipment” and “communications service facilities” mean the equipment and Facilities used by a video service provider to provide cable or video service.

“Easement” or “Easements” mean interest(s) in land of another entitling easement owner to limited use or enjoyment of other’s land, evidenced by an instrument recorded on and burdening the landowner’s title, and as provided in California Civil Code Section § 887.010, et seq.

“Encroach” or “Encroaching” means constructing or placing temporary or permanent structures, improvements, Facilities or materials in, on, over, or under any ROW or using any ROW so as to prevent, obstruct, or interfere with the normal use of that way. The right to encroach is in the nature of a license and is revocable by the City at any time as provided herein. Encroachment includes, but is not limited to, the performance of any of the following acts:

- (a) Excavating or disturbing the ROW;
- (b) Erecting or maintaining any post, sign, pole, fence, guardrail, wall, pipe, conduit, cable, wire, communication service equipment, or other Facility or structure on, over, or under a ROW;
- (c) Planting any tree, shrub, grass or other growing thing within the ROW;
- (d) Placing or leaving on the ROW any rubbish, brush, earth or other material;
- (e) Constructing, placing, or maintaining on, over, under or within a ROW any pathway, sidewalk, driveway, or other surfacing; any culvert or other surface drainage or subsurface drainage Facility; or any pipe, conduit, wire, communication service equipment or Facilities, or cable;
- (f) Constructing, placing, planting, or maintaining any structure, embankment, excavation, tree, or other object adjacent to the ROW, which causes, or may cause, an encroachment.

“Encroachment Agreement” means a written, contractual license agreement between the City and a private landowner regarding the terms and conditions of a Facility in the ROW; and, which agreement is recorded on the property’s title and binding on its successors thereafter unless revoked by the City.

“Encroachment” means the act of encroaching, as defined above.

“Excavation” means any trench cuts within the street ROW to access or install a utility line or any related Facility in excess of four (4) square feet or four (4) feet long, whichever is smaller. All such excavations shall require an Encroachment Permit.

“Facility” or “Facilities” mean any fiber-optic, co-axial, or copper cable; communication service equipment; telephone, telecommunications, electric or other wire, line or equipment; utility structure; oil, gas, or other pipeline; duct; conduit; cabinet; tunnel; vault; drain; manhole; splice box; surface location marker; pole; subsurface tiebacks; soil nails; stairs; access ramps; subsurface foundations; landscape features, including but not limited to: curbs around planter areas; planter boxes; clocks; bus shelters; phone booths; bike racks; fencing; retaining walls; benches; stockpiles; building materials; and other appurtenances or tangible things located in, upon, above, beneath, or across any ROW.

“Landowner” means any real-property owner abutting or adjacent to the ROW as defined herein.

“Licensee” means the “Permittee” under the Permit; or could be the person with the right to Encroach under an “Encroachment Agreement;” or the person with pre-existing or other Encroachment right(s) hereunder.

“Major arterial street” means any street with a traffic volume of more than 15,000 vehicles per day, including Carlson Boulevard, Central Avenue, Cutting Boulevard, Hilltop Drive, May Road, Richmond Parkway, Robert H. Miller Drive, San Pablo Avenue, San Pablo Dam Road, Thirteenth Street, Twenty-Second Street, and Twenty-Third Street.

“Major defects” means any defects greater than the deficiency tolerances specified in the City of Richmond Standard Plans and Details; the Caltrans Standard Specifications and Details; or Individual Contract Plans and Specifications.

“Micro Paving” (see “Slurry Seal” definition).

“Micro Surfacing” (see “Slurry Seal” definition).

“Parklet” is the use of existing parking spaces in the public street as non-exclusive outdoor dining spaces for restaurants on abutting properties. See RMC Chapter 14.46.

“Permit” means any Permit referenced in, or required by, this Chapter.

“Permittee” or “Licensee” means any means any person, firm, partnership, association, corporation, company, entity, or organization who proposes to encroach upon a public place, right of way, sidewalk, or street, and who has been issued a permit for the proposed encroachment pursuant to the provisions of this Chapter, including any lawful successor, transferee, or assignee of the original Permittee.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization,

or the manager, lessee, agent, servant, officer, or employee of any of them, or any other entity, which is recognized by law as the subject of rights or duties, not including the City or its officers, employees, or agents.

“Prohibition Street” means streets that have been reconstructed or resurfaced within the past three to five years (see Section 12.30.140, below).

“Public Right-of-Way” or “ROW” means the area in, upon, above, beneath, or across any land or interest therein which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for, or dedicated to, the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway or emergency vehicle easement.

“Public Street” means the full width of the surfaced or traveled portion, including shoulders, of any road, street, path, lane or alley dedicated to, reserved for, or used by or for the general public when those roads, streets, paths, lanes and alleys have been accepted as, and declared to be part of, the City system of public streets, except highways forming a part of the State highway system.

“Slurry Seal” means a mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, properly proportioned, mixed, and spread in accordance with the City of Richmond Standard Plans and Details and the Caltrans Standard Specifications; usually less than one-half (½)-inch thick.

“Special District” means any agency of the State for the local performance of governmental or proprietary functions within limited boundaries, and includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefitting that area.

“Street Overlay” means one or more courses of asphalt construction on an existing pavement; usually greater than one-half (½)-inch thick; and generally includes an asphalt leveling course to contour-correct old pavement.

“Street Vacation” means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement. A street or highway is defined as all or part of, or any right in, a state highway or other public highway, road, street, alley, trail, or other public right-of-way or easement.

“Public Service Easement” means an easement acquired for public use by dedication or otherwise, for sewers, pipelines, electrical or water transmission lines, storm drains, drainage canals, and other limited use public easements other than for street or highway purposes.

“Structure” means any physical alteration or improvement, including, but not limited to, a building, post, cabinet, fence, vault, sign, pole, guard-rail, wall, Facility, pedestrian walking path, sidewalk, driveway, track, surfacing, culvert, drainage Facility, pipe, embankment, or excavation.

“Underground utility district” has the meaning set forth in Chapter 12.48 of the Richmond Municipal Code.

“Utility company” shall mean any public utility company or entity authorized to work in the public right of way providing public utility services such as water, electricity, natural gas, telephone, and communication.

“Utility” means any person or entity providing electricity, gas, telephone, telecommunications, water, or other services to customers, and which pursuant to State law or local franchise, is entitled to install its Facilities in the ROW.

“Video Service” has the meaning set forth in California Public Utilities Code Section 5830(s).

“Video Service Provider” has the meaning set forth in California Public Utilities Code Section 5830(t) and, in addition, refers collectively to any cable operator as defined in Public Utilities Code Section 5830(b), or open-video system operator as defined in Public Utilities Code Section 5830(n).

2.30.030 – Applicability and Exceptions

Any person must obtain a Permit or Agreement in accordance with this Chapter before placing any Encroachment in, on, over, or under any ROW within the City.

(a) For purposes of this Chapter, a person may include, but is not limited to: Video Service Provider, Utilities, and Special Districts; or construction by private contract of any work in the ROW (e.g., sewer laterals, et al.). Where the provisions conflict with franchise provisions or other agreement between a Permittee and the City or state, the franchise’s provisions or other agreement shall control.

(b) Notwithstanding subsection (a), above, no Permit or Agreement shall be required for any of the following:

(1) Actions of any City officer or employee engaged in the discharge of official duties;

(2) Performance of work under contracts to the City, including work for City project(s);

(3) Encroachments existing prior to this Chapter’s effective date; however, nothing in this Chapter shall preclude City Engineer from requiring an appropriate Permit or Agreement documenting the rights and obligations of the licensee, and any preexisting Encroachment remains subject to removal at any time when City

Engineer determines the Encroachment adversely affects the safety, capacity, or integrity of the ROW and interferes with public use;

(4) Maintenance or repair of existing pipes, Facilities, conduits, or other structures lawfully on, or under, a ROW where such maintenance or repair work will not disrupt traffic in an arterial or major arterial street;

(5) Emergency street cut or excavation in ROW to repair a broken or defective pipe, Facility, or conduit lawfully on, or under, a public arterial street, for the preservation of life and property when an urgent necessity arises, and City offices are closed. Reasonable vehicular and pedestrian barriers, or other traffic controls, shall be provided during the performance of these repairs. Person performing the repair work shall notify the City's Engineering and Police Department(s) by telephone at the time any such repair work is commenced and must apply for a Permit within one (1) calendar day after City offices re-open;

(6) Planting, trimming, pruning or removal of any new or existing tree, shrub, or plant within the ROW where a Permit is issued for such work pursuant to the Code's Chapter 10.08, and where no traffic lane closure is anticipated;

(7) Sidewalk cafes and restaurants, which shall be governed by the provisions and requirements of the Code's Chapter 15.04;

(8) City Council-approved street closures for special events.

(c) Notwithstanding subsections (a) and (b), above, none of the provisions in this Chapter shall apply to "Part 3 – Private Landowner Encroachment(s) Into Unimproved Portions of the ROW" unless expressly stated.

(d) Any Encroachment that requires, but does not have, a Permit shall be deemed a violation of this Chapter and a public nuisance, which the City may abate pursuant to any applicable provision of law including, but not limited to, this Code's Chapter 9.22.

12.30.040 – Permit Applications, Generally

(a) Any and all construction work, including but not limited to work involving streets and paving, including excavations and trenching, within the City's ROW shall require an Encroachment Permit.

(b) For additional permit application requirements, et al. related to any excavation work within the City's ROW, see Section 12.30.060 and Part 2 ("Streets and Paving").

(c) Permit application(s) may be obtained from the City's Engineering Services Department.

12.30.050 – Permit Application Requirements

(a) An application for an Encroachment Permit, including renewal of an existing Permit, shall be on a City Engineer-prescribed form. The Applicant shall sign the form, which shall include all the following materials unless the City Engineer provides a written waiver:

- (1) Name, address, and telephone number of the Applicant;
- (2) Name, address, and telephone number of the contractor, if a contractor will perform any proposed work and contractor is not Applicant;
- (3) Location, purpose, extent, and nature of the proposed work;
- (4) Period of time when the proposed work will be performed;
- (5) Traffic and pedestrian control plan(s) for the proposed work's location;
- (6) Certificate of insurance from Applicant's and/or contractor's insurance carrier in a form satisfactory to the City, and which names the City as an additional insured;
- (7) Key map and detailed improvement plan showing all Facilities to be located in the ROW, including the material of construction; horizontal and vertical locations with respect to property and grade line(s); existing utilities; and all other pertinent Facilities and information the City Engineer requires. Unless exempted by State law, a California Registered Professional Civil Engineer shall prepare a detailed improvement plan;
- (8) Any other specifications, analyses, or materials required by the City Engineer to describe the work; its location in, and its effect on, the ROW, including the mode of operation, maintenance and use;
- (9) Current maps and records of the underground Facilities at the site;
- (10) Encroachment Permit fee set forth in the City's Master Fee Schedule.
- (11) A deposit sufficient to cover the cost of mailed notice if required.

(b) In signing the application, Applicant attests that all information in support of the application is true and correct. When Applicant submits a completed and signed application form, all supporting documents and information, and the required fee, the application will be deemed complete. The City Engineer shall act upon an application for an Encroachment Permit within sixty (60) days after the application is complete.

(c) Registration. Prior to applying for a Permit, the City may require an individual performing the encroachment work to register with the City for a Permit and to provide the following:

- (1) Warranty Bond: a cash deposit equal to the greater of five-hundred dollars (\$500.) or twenty-five percent (25%) of the work's value. Companies working under a franchise agreement that includes a bond are not required to post the cash deposit unless/until they have been issued a notice or citation for a violation by the City's standards or Permit requirements;
- (2) A current City Business License;
- (3) Current Certificate of Insurance meeting the requirements of Section 12.30.090, below;
- (4) 24-hour phone number for emergencies; and
- (5) The name, telephone number, and mailing address (fax number, cell phone, and e-mail address if available) of the individual who will receive all City

correspondence.

(d) As a condition of the Permit, Permittee shall provide evidence of a regional notification center-issued (e.g., Underground Service Alert, USA) inquiry identification number pursuant to California Government Code Section 4216.

(e) Permittees shall pay close attention to the location and alignment of all USA markings while performing their work.

USA Codes:

Electric: Red
Gas-Oil: Yellow
Communication-CATV: Orange
Water: Blue
Sewer: Green
Temporary Survey Markings: Pink
Proposed Excavation: White

(f) Excepting emergencies, Permits shall be pulled in advance of work. An emergency exists only for: life or property endangerment; or when an essential utility service is, or may be, interrupted during weekends, holidays, or between 5:00 p.m. and 8:00 a.m. of normal working days.

(g) In an emergency occurs, Permittee shall notify the City, and apply for a Permit for "emergency work," within four (4) hours after the City offices open.

(h) Pre-construction meeting:

- (1) A pre-construction meeting shall be held for all projects scheduled to take more than fifteen (15) working days to complete.
- (2) Meeting attendees shall include the owner, contractor, any other involved agency, and the City.
- (3) The City may issue administrative citations if a project scheduled for completion within fifteen (15) days exceeds the fifteen-day timeline and a pre-construction meeting was not held
- (4) The City shall approve the traffic control plan prior to the pre-construction meeting.

(i) By accepting a Permit, the Facility's Permittee and/or Owner to whom the Permit has been issued agree to all the following:

- (1) To follow all laws, rules, regulations, and Permit conditions.
- (2) To assure that their employees, contractors, and subcontractors, comply with all laws, rules, regulations, and Permit conditions.
- (3) To indemnify the City against all claims for personal injury or property damage that may arise in connection with the work.

12.30.060 – Permit Application Requirements for Excavations

In addition to the general permit application requirements in Section 12.30.50, any permit application related to excavation work shall also be subject to the provisions of this section.

(a) Any excavation work within the City's ROW shall require a Permit specifically for excavation in addition to other required Permits. The individual performing the work shall apply for the Permit.

(b) All Permit applications for excavation work shall include plans that indicate the following:

- (1) Street name to be excavated and nearest cross street.
- (2) Distance of proposed excavation from face of curb.
- (3) Distance of proposed excavation from intersection.
- (4) Size of the excavation (length and width).
- (5) Location of any aboveground Facilities to be installed, showing:
 - (A) Distance from curb and any street Facilities/furnishings.
 - (B) Purpose of the Facility.
 - (C) Size of the Facility.
 - (D) Location of doors and door swings.
- (6) Location of any existing and to-be-installed underground Facilities showing:
 - (A) Conduit vaults, maintenance holes, pipes, etc.
 - (B) Structural detail and additional information for structures to be installed such as vaults and maintenance holes.
 - (C) Construction method of the structure to be installed.
 - (D) Construction detail, location, size, design criteria and the purpose of the Facility to be installed.
- (7) Cross-section of a typical trench indicating:
 - (A) Approximate depth of the installed Facility.
 - (B) Trench-backfill depth, compaction, and layer depths.
 - (C) Pavement section detail (type and depths).
 - (D) Plans, structural details, and trench cross-section must be signed and stamped by a licensed civil engineer, when legally required.
- (8) The plan may show the approximate excavation location, provided that the excavation's exact location is shown on the "as-built" plan. These "as-built" plans shall be submitted prior to the City's Permit finalization.

(c) If Permittee damages other Facilities during excavation work, Permittee will need a separate Permit to repair the damaged Facility with additional excavation and trenching. Permittee shall maintain the site and restore the pavement and any affected signage or striping.

(d) For permit expiration, see Section 12.30.100(c)(5), et seq.

(e) For notice requirements, see Section 12.30.110, et seq.

12.30.070 – Permits and Encroachment Agreements - City’s Rights and Privileges, Generally

(a) At City’s request, Permittee shall relocate, remove, or abandon the encroachment at their sole expense for any of the following reasons, unless this requirement conflicts with any applicable local Code, state statute, or franchise agreement:

(1) City requires construction, reconstruction, or maintenance work (collectively, “work”) in the ROW that necessitates relocation, removal, or abandonment of an encroachment; or

(2) ROW placement of structures and/or Facilities conflicts with City construction, reconstruction, or maintenance work therein.

(b) When City requires relocation, City Engineer shall give Permittee written notice designating a reasonable time for encroachment relocation or removal, and Permittee shall act accordingly and to City Engineer’s satisfaction. In determining a reasonable time under this Section, City Engineer shall consider the following: nature of the encroachment, urgency of removal need; cost of removal, difficulty of removal; value of the property to the owner, and any other pertinent facts.

(c) City Engineer reserves the right to suspend the Encroachment Permit or Agreement to protect the public from danger and to take such action necessary to correct the danger-posing condition. In the event of suspension, City Engineer shall notify the Permittee and provide opportunity for hearing.

(d) City Engineer may require other reasonable conditions, including installation of Facilities or structures to address accessibility and drainage to protect the public health, safety, and welfare.

(e) City reserves the right to inspect any structure or Facility in ROW

(f) The City Engineer shall approve an Encroachment Permit upon making the following findings, and Permittees shall be subject to the relevant requirements of this Chapter and to all the following conditions, as applicable:

(1) Findings.

(A) Proposed encroachment contains no potential to cause a significant environmental effect(s); nor will it be detrimental to public’s health, safety, and welfare;

(B) Complete application contains all necessary, supporting information;

(C) Applicant made reasonable efforts to erect, construct, use, operate, and/or maintain underground Facilities; provided, however, from and after the effective date of an underground utility district establishment, the Applicant shall erect, construct, use, operate, and maintain its Facilities underground. Where

undergrounding is not feasible (excepting any area declared to be an underground utility district), the Applicant has made reasonable efforts to co-locate Facilities on existing poles or other aboveground structures;

(D) Proposed Facilities' location is the best available option to minimize adverse impacts on the use of the ROW and on adjoining properties;

(E) If application is for Permit renewal, Permittee has complied, and is in compliance with, current Permit and its conditions;

12.30.080 – Permits - Permittee's and Licensee's Obligations, Generally

(a) The Permittee shall:

- (1) Provide accurate, detailed information regarding the location of existing and proposed structures in the ROW at the request of any person contracted to perform work in/on ROW;
- (2) Timely correct any maintenance or operational deficiencies;
- (3) Produce current, complete, and accurate maps, plans, diagrams, and records pertaining to any structure or Facility installed in the ROW within ten (10) business days of City's request;
- (4) Complete installation or construction of structures and Facilities in the ROW and all construction-related damage to the ROW shall be repaired within two (2) years from the date the Encroachment Permit or Agreement issues. Exception: City Engineer may grant written extension of the time to complete installation, construction, or repair for good cause;
- (5) Operate and use structures and Facilities in the ROW solely and exclusively for the purposes and uses as stated in the application;
- (6) Not alter the purpose, use, or operator of the structures and Facilities without transfer approval;
 - A. Exception: any Landowner Encroachment Agreement shall be binding upon, and inure to the benefit of, Permittee's successors in interest, heirs, or devisees.
- (7) At their own expense, restore ROW to the same or better condition than before installation of at their own expense, restore ROW to the same or better condition than before installation of Facilities or structures upon removal or abandonment of same;
 - A. Failure to restore ROW may be deemed a violation of this Chapter and a public nuisance subject to City abatement pursuant to any applicable provision of law, including but not limited to RMC Chapter 1.04.
- (8) During construction, Permittee shall do all the following:
 - (A) Maintain a copy of Permit issued pursuant to this Chapter at the job site

- during work periods until project completion and City Engineer approval.
Permit(s) shall be shown to City employees upon request;
- (B) Provide City Engineer-approved, appropriate traffic warnings, safeguards, and controls;
 - (C) Provide temporary pedestrian-access Facilities as necessary to comply with local, state and federal law(s), including the Americans with Disabilities Act, and with the written direction of the City Engineer, if any.
 - (D) Maintain all structures, Facilities, and landscaping within the encroachment area in a safe and clean manner and shall observe and enforce all applicable local, State, and Federal safety orders, rules, and regulations at all times.
 - (E) Promptly remove all graffiti on any structure or Facility within the encroachment area.
 - (F) Notify the City's Police Department and the City Engineer, and shall promptly repair, any damage to structures or Facilities caused by criminal activity, including, but not limited to, copper theft.
- (9) As may be required by California Government Code Section 4216 et seq., Permittee shall contact Underground Service Alert (USA) prior to commencing, and as appropriate during, any Permitted work.
- (10) It shall be unlawful for Permittee to erect, construct, use, operate or maintain their Facilities aboveground whenever any area of the City is declared as an underground utility district.
- (11) All work done under the Permit shall conform to standard specifications or, in the absence of standard specifications, to recognized standards of design, construction, and practices in placing encroachments in, on, under or above the ROW.
- (12) All Facilities shall be constructed, operated, and maintained in the time, place, and manner that cause the least interference with the public's use of the public ROW; the City's management and use of the ROW, and the rights or reasonable convenience of property owners adjoining the ROW.
- (13) Comply with all laws, rules, regulations, and Permit conditions and assure that their employees, contractors, and subcontractors do the same.

12.30.090 – Permittees' Indemnification and Insurance

- (a) Where the insurance conditions stated below conflict with franchise provisions or other agreement between a Permittee and the City or state, the franchise's provisions or other agreement shall control.
- (b) To the maximum extent allowed by law, Permittee and Licensee shall indemnify, defend, release, and hold harmless the City, its agents, officers, employees, boards, commissions and contractors ("Indemnitees") against any and all liabilities, losses, claims, actions, causes of action or demands whatsoever against any of them, including

claims for any injury to or death of any person or damage to property or other liability of any nature, including, but not limited to: attorney's and expert's fees and court costs, arising out of, or connected in any way with, the installation, operation, and maintenance of any Facilities in, or the use of, any ROW by Permittee or Permittee's employees, officers, officials, agents, transferees, contractors, or subcontractors pursuant to the Permit or Agreement issued under this Chapter; provided, that the obligation to indemnify the City under this subsection shall not apply to any liabilities, losses, claims, actions, causes of action, or demands caused by Indemnitees' sole negligence, willful misconduct, or criminal acts.

(c) To the maximum extent allowed by law, Permittee shall indemnify, defend, release, and hold harmless Indemnitees against any claim, action, or proceeding brought to attack, set aside, void or annul the environmental review process for and/or approval of a Permit or Agreement issued pursuant to this Chapter.

(d) Permittee and their contractors who perform ROW work shall secure a policy of broad form commercial general liability insurance naming City as additional insured in an amount not less than two million dollars (\$2,000,000.00) per occurrence, or as approved by City's Risk Manager, unless Permittee is exempt by law from having to procure such insurance before establishing or maintaining any works or Facilities in, on, under or above the ROW. All contractors' policies secured in compliance with this condition shall be in effect for the duration of contractor's work in the ROW; all Permittees' policies secured in compliance with this condition shall be in effect for as long as the encroachment remains in the ROW.

(e) Permittee and their contractors performing work in the ROW shall furnish to the City, and file with the City Clerk a corporate surety bond guaranteeing the faithful performance of the construction of such work and a separate bond to secure claims payments of laborers, mechanics, and material suppliers employed in the construction of such work. The performance bond and payment bond shall each be in an amount equal to one hundred percent (100%) of the total amount of the construction costs of the work to be performed in the ROW. All bonds shall be issued by a corporate surety admitted in the State of California and shall name the City as a co-obligee.

12.30.100 – Terms and Conditions, Permits Generally

(a) As a condition of the Permit, Permittee shall provide evidence of a regional notification center-issued (e.g., Underground Service Alert, USA) inquiry identification number pursuant to California Government Code Section 4216.

(b) All application materials are incorporated by reference into the Permit; and all representations made within the application are conditions of Permit approval.

(c) Permit duration shall be indicated on the Permit:

(1) All Permits shall include estimated start and completion dates. A Permit is valid from the construction's start date specified on the approved Permit until the specified completion date.

(2) Permits are not valid if there is failure to: obtain other, required Permits; or to provide required notifications.

(3) No traffic disruptions allowed before 8:00 a.m. and after 4:00 p.m. unless specifically approved.

(4) Some Permits may be valid on specific dates and approved with special conditions:

(A) When work shall occur.

(B) When work shall be completed.

(C) Before which work shall not start.

(5) Permits expire and become void, unless otherwise amended:

(A) Sixty (60) days after the start date if no work has commenced.

(B) If work does not proceed diligently, and if delays exceed four (4) working days once the work begins, unless the delay is caused by weather or other circumstances beyond the Permittee's control.

(C) When the excavation, including trench restoration, is completed; or on the date the Permit specifies as the Permit expiration date.

(6) Work proceeds diligently if:

(A) After a project begins, work continues regularly, except on: weekends and holidays; during inclement weather, labor disputes, or any emergency beyond Permittee's control.

(B) Permittee ensures that all necessary materials and supplies are at hand and ready for use to avoid delaying the excavation and to ensure the prompt restoration of the ROW.

(d) Termination. An Encroachment Permit shall terminate on the date specified therein, or upon abandonment of the Facilities and/or structures constructed pursuant to such Permit. If the Encroachment Permit specifies no date, the Permit shall be considered of indeterminate duration.

(e) Extension. A Permittee may extend a valid Permit by requesting an extension prior to the Permit's expiration date. Said request shall specify the change of date(s) and detailed reason(s) for the extension. The City Engineer reserves the right to deny the extension request.

(f) Renewal. A renewal application, supporting materials, and fee must be submitted at least sixty (60) days prior to the termination date an Encroachment Permit or the Permit may lapse. A lapsed Permit may be deemed a violation of this Chapter, and the unpermitted encroachment may be considered a public nuisance, subject to City

abatement pursuant to any applicable provision of law, including but not limited to RMC Chapter 9 22.

- (g) Fees. Permit fees are due at the time the Permit issues.
- (1) Permit-application processing fees are non-refundable.
 - (2) Prior to Permit issuance, all past due fees, fines, and penalties must be paid.
 - (3) If a Permit violation occurs, the City will not process other application(s) until payment of all fines and penalties and until all Permit conditions have been met.
 - (4) If a permit application is withdrawn or if an approved permit is cancelled prior to the start of work, the Applicant or Permittee may request a refund of bond funds. To request a refund, submit a written request to the City Engineer, which shall include: The reason for cancellation or withdrawal and the Permit number.
- (h) If an account is past due, or not in good standing, a Permit will not issue until the account is brought into good standing with all fees and fines remitted.

12.30.110 – Notice Requirements

(a) All Encroachment Permits and Licenses (Agreements) shall require Notice as follows:

- (1) Applications: For applications that propose an aboveground encroachment, City Engineer shall provide written notice by first class mail to occupants and to owners (as shown on the County Assessor's latest tax roll) of properties located within 300 feet of the proposed encroachment, and to the Neighborhood Council and any homeowners' association in the neighborhood of the proposed encroachment, advising of the filing of an application for approval of an encroachment into the ROW, describing the proposed encroachment and its location, and providing an opportunity to submit written comments regarding the application to the City Engineer within fifteen (15) days from the date of the letter and prior to the City Engineer's action on the application. Notwithstanding the foregoing, no notice shall be required for any application limited to installation of utility poles, anchors, or small cabinets less than four (4) cubic feet in size or for any underground excavations or related work.
- (2) Generally. Excepting necessary emergency repairs, at least forty-eight (48) hours before commencing any work, which will obstruct or impede the flow of vehicular and/or pedestrian traffic, Permittee shall post notifications within the affected area to the satisfaction of City Engineer.
- (3) Permitted Work. Permittee shall provide public notifications when excavating in the ROW as follows:
 - (A) Minor projects lasting longer than forty-eight (48) hours but fewer than fifteen (15) working days shall provide posters sized eleven-by-seventeen inches (11" x 17") with one (1)-inch minimum-sized letters. Posters shall be displayed

at the project's initial and terminal point(s) and every 300 feet in between.

(B) Posters must contain:

- (i) Permittee's name(s), address(es), and telephone number(s);
and
- (ii) Project's start and completion date(s).

(C) For Major Projects lasting fifteen (15) working days or longer, Permittee shall do all the following:

(i) After Permit issuance, and at least five (5), but no more than thirty (30) calendar days, before the anticipated start date of work, Permittee shall mail or deliver written notice to:

- (1) Residents and occupants along the affected street;
- (2) Schools, churches, and other assembly uses within three hundred (300) feet of the affected street; and
- (3) The City's Engineering Services and Public Works Department(s)

(ii) At least five (5) calendar days, but not more than fifteen (15) calendar days, prior to starting work: Permittee shall post and maintain notices in accordance with paragraph (3)(a) above. The notices must be sized eleven by seventeen inches (11" x 17") and shall contain:

- (1) Permittee's name(s), address(es), and telephone number(s);
- (2) Project description;
- (3) Project start and completion date(s);
- (4) Project contact person's name, address and twenty-four (24)-hour telephone number.

PART 2 – STREETS AND PAVING

In addition to the requirements in Sections 12.30.020 through 12.30.110, above, the following shall be required for Permits involving Streets and Paving, including but not limited to excavations.

12.30.120 – Newly Constructed or Resurfaced Streets – Prohibition Period

(a) Newly constructed or resurfaced streets shall be termed "Prohibition Streets" within this section. Permission to excavate in Prohibition Streets will not be granted for five (5) years following street-overlay completion; an overlay is at least one-half (½)-inch-thick asphalt layer. For streets with Chip Seal, Slurry Seal Coating, or Micro Paving with less than one-half (½)-inch of new pavement, the prohibition period shall be three (3) years. Permittees shall perform advanced planning to determine alternate methods of

necessary repairs to avoid excavating in newly resurfaced streets. Exceptions to the above policy are:

- (1) Emergencies endangering life or property.
- (2) Interruption of essential utility service.
- (3) Work mandated by City, state, or federal law(s).
- (4) Building service where no other reasonable means of providing service exists.
- (5) Situations in which no alternative course of action exists, as determined by the City Engineer in writing and setting forth facts concluding that no alternative exists.

(b) Prohibition Street excavations shall require a waiver.

(1) To request a waiver, Permittee shall submit a written request to the City Engineer that includes all the following:

- (A) Excavation location;
- (B) Description of the work to be performed;
- (C) Reason(s) the work was not performed before the street was paved;
- (D) Reason(s) the work cannot be deferred until after the Prohibition Period;
- (E) Reason(s) the work cannot be performed at another location; and
- (F) Reason(s) that justify the excavation of a Prohibition Street.

(2) Any Prohibition Street excavations will be repaired with full lane-width paving on the street as follows (refer also to Section 12.30.150, Paving):

(A) Overlaid or reconstructed streets: All lanes that are affected shall be ground down two (2) inches and repaved with two (2) inches of asphalt concrete, OR all affected lanes shall be resurfaced pursuant to Section 12.30.150, Paving.

(B) Slurry Sealed, Chip Sealed, or Micro Surfaced streets: All affected lanes shall be resurfaced pursuant to Section 12.30.150, Paving.

(C) If a lateral-cut excavation, a minimum of one (1)-foot on either side of the trench shall be resurfaced. For longitudinal trenches, the entire length shall be resurfaced plus one (1) foot on either end.

(D) Exception: Full lane-width restoration shall not be required if either of the following applies:

(i) The work is not defined as an excavation in Section 12.30.010.

(ii) The work is performed on behalf of a low-income household to bring an owner-occupied, single-family residence into compliance with sanitary sewer regulations at any time other than as part of the residence's sale. Low-income is defined as eighty percent (80%) of area median family income. This exception's purpose is to prevent hardship to property owners with limited means, and it shall be interpreted and applied solely to achieve that purpose.

(3) Before a Permit issues for Prohibition Street work, City Engineer will verify that Applicant analyzed all feasible alternatives for necessary repairs using a trenchless method in Prohibition Streets to avoid excavating a newly resurfaced street whenever possible.

12.30.130 – Excavation Material

(a) Pavement shall be cut to a straight, neat, vertical line prior to excavation.

(b) All excavated material shall be removed from the job site within twenty-four (24) hours.

(c) Every trench shall be backfilled or covered by trench plates daily. The City may issue administrative citations or may pursue other legal remedies if trenches are improperly covered or not backfilled in a timely manner. Backfill must meet the requirements specified in Section 12.30.140.

12.30.140 – Backfill

(a) Trenches shall be backfilled with Class 2 Aggregate Base as specified in the Caltrans Standard Specifications Section 26, "Aggregate Base" or suitable material as required by the City's Standard Plans and Specifications. Backfill compaction shall accord with the City's Standards.

(b) When undermining occurs, existing pavement shall be removed as required to compact the backfill and to restore pavement.

(c) An independent laboratory shall certify compaction tests. The test results shall be submitted to the City Engineer who may require the Contractor to recompact and retest until the test results show achievement of proper compaction.

12.30.150 – Paving

(a) Trenches shall be paved in accordance with the City's Standard Plans and Specifications. After the trench has been backfilled, and immediately prior to placing asphalt concrete, the existing asphalt concrete shall be saw cut, or milled according to City's Standards, to a vertical face. The cut shall be a "T-Cut" according to City's Standards, and the new asphalt concrete paving shall be butt-joined to the existing asphalt concrete vertical face. Neither new nor existing paving shall be feathered. Vertical faces shall be tack-coated. In Prohibition Streets, a paving machine or a spreader box shall place the final two (2) inches of asphalt concrete wearing surface. Asphalt concrete shall be delivered and compacted in accordance with the City's Standard Plans and Specifications.

For proper placement of the new pavement section, damaged pavement outside of the original trench cut lines shall be removed by cutting in lines perpendicular, or parallel, to original trench lines. No diagonal cuts shall be made. When two damaged pavement

areas exist, any undamaged pavement area of three feet or less between the two damaged areas shall also be removed.

(b) Trenches in recently paved Prohibition Streets shall have the entire lane key-cut two (2)-inches deep and repaved with asphalt concrete, unless the Engineer provides written authorization to resurface with a polymer-modified slurry seal instead. When specifying the use of slurry seal instead of asphalt concrete, the Engineer's authorization shall set forth the reasons for the specification.

(c) Trenches in recently slurry sealed Prohibition Streets shall have the entire lane resurfaced with polymer-modified slurry seal.

(d) Trenches in concrete streets shall be repaved with concrete. New pavement thickness shall equal the existing pavement's thickness, with a minimum six (6)-inch thickness in the roadway.

(e) Trenches in arterial and collector streets shall be paved with not less than six (6)-inches of asphalt concrete; or to the existing pavement's thickness, whichever is greater.

(f) Pavement shall be restored within fourteen (14) working days – and within thirty (30) working days for minor excavations – beginning from the time the entire trench is backfilled, absent an excused delay for circumstances beyond the contractor's control, such as inclement weather.

(g) Asphalt pavement shall be compacted to obtain a ninety-five percent (95%) minimum relative compaction. The asphalt concrete wearing surface shall contain no irregularity exceeding five-sixteenths (5/16) of an inch in ten (10) feet within any direction.

(h) On all streets steel plates shall be used to facilitate traffic flow and to protect the excavation until restoration of finish pavement. Steel plates used to bridge street openings shall be ramped to match the adjacent pavement's elevation and be secured against any directional movement. Temporary ramps shall be constructed of asphalt and shall have a gradual, 30:1 slope or flatter using asphalt cutback.

(i) Permittee shall remove all painted USA markings after completion of work.

(j) Permittee shall replace and restore all damaged pavement markings and striping.

12.30.160 – Defects

(a) Depressed trench pavement shall be repaired as follows:

- (1) Wearing surface defects: remove and restore wearing surface.
- (2) Major defects: excavate, remove and restore surface and base.

(b) City Inspector will determine the severity of the defect. Work that does not comply with the above requirements shall be rejected, removed, and redone by Permittee to City Engineer's satisfaction.

(c) Permittee bears responsibility for any roadway defects over and adjacent to the trench that appear after Permittee restores the trench. Permittee shall maintain, repair, and/or reconstruct the excavation site's affected area until City reconstructs, repaves, or resurfaces the street.

(d) If trench-related failure occurs after City reconstructs, repaves, or resurfaces the street, the Facility's owner shall be responsible for repair if the failure occurs within one (1) year of trench repair.

(e) When City determines that an excavation, or a defect, is hazardous or constitutes a public nuisance, or poses an imminent threat to public health, safety, or welfare, City Engineer may order Permittee to remedy the condition immediately.

(f) If Permittee refuses or fails to make the needed repairs immediately as ordered by City, then City will make the repairs and:

(1) Permittee will be charged all the actual costs including administration, construction, consultant fees, equipment, inspection, notification, and remediation made necessary by Permittee's action or inaction.

(A) City's repair or restoration does not relieve the Permittee from liability for future pavement failures.

(2) If Permittee fails or refuses to pay the restoration cost, City may use any legal means to recover the costs, including but not limited to, property liens and/or court action. In such action, City shall be entitled to recover its reasonable attorneys' fees and costs.

PART 3 – PRIVATE LANDOWNER ENCROACHMENT(S) INTO UNIMPROVED PORTIONS OF PUBLIC ROW

12.30.170 – Private Landowner Encroachments

(a) As a general rule, a Landowner has no authorization to construct or place Facilities in the ROW. Under special circumstances, Facilities may be allowed on a ROW provided the Landowner applies for, and enters into, an Encroachment Agreement. No placement or building of Facilities in the ROW adjacent to, or abutting, Landowner's property shall be allowed without an Encroachment Agreement.

(b) Generally, all provisions of Part(s) 1 and 2 shall apply to this Part 3; except, in the event of conflict, the provisions hereof shall apply to this Part 3.

(c) The Encroachment Agreement shall be in a form approved by the City Attorney; and include all relevant provisions of this Chapter; and be enforceable by the City. As a license, the Encroachment is revocable, pursuant to Part 6 hereof, at any time.

(d) Exemptions.

(1) A Landowner may install minimal, low-height landscaping (e.g., ground cover; native grasses; succulents) in the adjacent or abutting ROW without an Encroachment Agreement.

(2) A Landowner may install curb cuts and driveways if part of a permitted improvement to provide on-site parking. See RMC Chapter 12.36.

12.30.180 – Encroachment Agreement Application

(a) To apply, the Landowner shall send a letter to the City Engineer requesting an Encroachment Agreement. The Landowner's written communication shall provide justification(s) as to why the proposed encroachment into the ROW creates a unique circumstance necessitating an Encroachment Agreement.

The Landowner's written letter of application shall include each of the following:

- (1) Name, address, and telephone number of the Applicant;
- (2) Name, address, and telephone number of the contractor(s) if a contractor will perform any proposed work;
- (3) Location, purpose, extent, and nature of the proposed work;
- (4) Period of time when the proposed work will be performed;
- (5) Traffic and pedestrian control plan for the proposed work's location;
- (6) Certificate of insurance from Applicant's and contractor's insurance carrier in a form satisfactory to the City;
- (7) Detailed plan(s) showing all Facilities to be located in the ROW, including the material of construction; horizontal and vertical locations with respect to property and grade line(s); existing utilities; and all other pertinent Facilities;
- (8) The City shall provide written notice by first class mail to adjacent and abutting owners of properties located within 300 feet of the proposed Encroachment.
- (9) Any other specifications, analyses, or materials required by the City Engineer to describe the work; its location in, and its effect on, the ROW, including the mode of operation, maintenance and use;

(10) Encroachment Agreement fee set forth in the City's Master Fee Schedule.

(11) A deposit sufficient to cover the cost of notice specified by Section 12.30.200, below.

(12) A deposit sufficient to cover costs of preparation and recordation of the Encroachment Agreement as determined by the City Attorney and shall include title review.

(b) When the written application for the Encroachment is submitted to the City, the Owner must also:

(1) Post and maintain notices at proposed Encroachment's initial and terminal point(s) and every 300 feet in between, unless the length is less than 100 feet, in which case only one (1) notice need be posted at a prominent and readily visible location;

(2) Notices will be sized eleven by seventeen inches (11" x 17") and include one (1)-inch minimum sized letters containing:

- (A) Applicant's name(s), address(es), and telephone number(s);
- (B) Description and diagram of proposed Encroachment;
- (C) Proposed Encroachment project's start and completion date(s);
- (D) Contact person's name, address and twenty-four (24)-hour telephone number for proposed Encroachment, if different from (2)(A), above;
- (E) Location and date of public hearing on application;
- (F) Method by which interested parties may acquire a copy of said application.

(3) The notice(s) shall remain posted in good condition so long as the project is active and until its completion.

(c) In signing the application, the Landowner attests that all information in support of the application is true and correct.

12.30.190 – Findings and Conditions

(a) Applicants shall be subject to the conditions that follow below:

(1) Findings.

(A) Complete application contains all necessary, supporting information.

(B) The Encroachment does not conflict with adopted street improvements or similar plans, or any in development or that can be anticipated.

(C) The Encroachment does not pose a public health or safety hazard as determined by City Engineer.

(D) The Encroachment does not substantially obscure the main property frontage.

(E) The Encroachment does not adversely impact or affect adjacent properties; and/or result in Facilities discordant or inconsistent with other structures placed or erected upon the main property or in the existing ROW; and or make gratuitous use of ROW if the property is not strictly necessary for the proposed use.

(F) The Encroachment has a sufficient setback from street curbs or pavement edges and does not negatively impact the area's reasonable use. A standard setback should be no fewer than three (3) feet, subject to City Engineer's determination that the area's conditions or environment allows otherwise.

(G) 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.

(2) Conditions.

(A) Landowner shall obtain all necessary approvals from City's Planning, Building, and Engineering Department(s), and any impacted utility companies or video service providers, prior to the placement and construction of Encroachment(s).

(B) Landowner shall provide City with Certificates of General Liability Insurance, subject to the City Attorney's and City Manager's satisfaction. Landowner will provide these Certificates to the City annually by the anniversary date. Landowner must notify City thirty (30) days prior to any cancellation or change in their insurance.

(C) Placement and construction of the Encroachment, if granted, shall be solely at the landowner's expense. City Engineer shall establish standards by which the Encroachment shall be placed and shall be constructed in conformance with same.

(D) Landowner shall maintain the Encroachment as required by City Engineer and shall remove any and all of the Encroachment without any expense to, or replacement of improvements by City or public utility company upon ninety (90) days' notice by City, or immediately by City, whenever, in City's opinion, the condition of the Encroachment is determined to constitute a hazard to safety, health or public welfare or the affected area is needed for municipal or public utility purposes. City Engineer may require a deposit, or other security in a form approved by the City Attorney, for any damage to infrastructure or removal of the Encroachment. Following the removal of the Encroachment, the Landowner shall restore the ROW to a condition approximately the same as the condition of the right of way prior to installation of the encroachments.

(E) Landowner shall remove the curb side parking in front of the Encroachment if the City determines that public health or safety necessitates it.

(F) Landowner shall maintain the area over which said Encroachment is located, in a manner the City Engineer requires, for the life of the Encroachment Agreement.

(G) Landowner shall restore the sidewalks over the Encroachment for the public use when the Encroachment is terminated, modified, deviated from the original Encroachment improvement, or rescinded by City for any reasons.

(H) Landowners shall indemnify, defend, and hold harmless City and all its Councilmembers, employees, officers and agents from all liability, claims, suits, damages, attorney's fees, costs and expenses resulting from injury or damage to persons or property which may result from the maintenance, placement and/or construction of the Encroachment.

(I) Insurance.

(i) Landowner shall provide certificates of general liability insurance satisfactory to the City Attorney and Risk Manager. Certificates of liability insurance must be provided to the City annually.

(ii) Landowner must notify City thirty (30) days prior to cancellation or change in said insurance. General Liability insurance with minimum limits of \$1 million per occurrence and \$2 million in the aggregate shall be maintained at all times during the term of the Encroachment Agreement.

(iii) Additional insured: The City, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of ownership, maintenance or use of the part of the premises located within the Encroachment area. An additional insured form CG 2012, or equivalent, is required. Landowner shall provide Certificate of Insurance naming the City as additional insured with the liability insurance limit(s) of \$1 million for each occurrence and \$2 million in the aggregate.

(iv) Landowner's insurance coverage must be primary as it pertains to the City, and the City's insurance or self-insurance shall not be called upon to contribute to any loss or claim.

(v) Landowner's insurance will provide a waiver of subrogation in favor of the City by virtue of payment of loss by landowner's insurance coverage.

(vi) Landowner shall maintain continuous coverage for the life of the Encroachment Agreement. Should Landowner fail to maintain insurance as required, the City may take such action as it deems necessary to

protect the City's interests. Such action may include, but is not limited to, termination of the Encroachment Agreement or other action as the City deems appropriate.

(vii) If the Encroachment Agreement application is approved, the finalized Encroachment Agreement shall be recorded in the office of the County Recorder of Contra Costa County, California. The terms and conditions of the Encroachment Agreement shall be binding on the legal owner(s) of the property and any legal successor(s) or assign(s), including future bona fide purchaser(s).

(J) The Encroachment does not obstruct:

(i) More than nine (9) feet of a one (1)-way street travel lane, which includes space for a four (4)-foot sidewalk on one side;

(ii) More than eighteen (18) feet of two (2)-way street travel lanes, which includes space for a four (4)-foot sidewalk on one side.

12.30.200 – Public Hearing Required

All Encroachment Agreement applications shall be subject to a public hearing by the granting authority, which shall be the City Council.

(a) The City Council shall conduct a public hearing on the application for an Encroachment Agreement. The City Clerk's Office shall set a time and place for such hearing, which shall be held within thirty (30) days of the City's receipt of a complete application.

(b) At least ten (10) days before the public hearing, the City shall make available to the public copies of the Encroachment Agreement application in the office of the City Clerk.

(c) Additionally, at least ten (10) days before the hearing, if the hearing date is different than the date on the notice provided in Section 12.30.180, the date on the posted notice shall be corrected.

(d) In addition to the posting of notice, a public hearing notice shall be mailed not fewer than ten (10) days prior to the date of such hearing to all property owners having property, and each residential or other unit, within three hundred (300) feet of the application's subject property.

(e) After receiving public comment at the hearing, the City Council shall approve, deny, or modify the Encroachment Agreement based on the required findings of Section 12.30.190 within thirty (30) days following the hearing.

(f) Findings for approving an Encroachment Agreement are set forth in Section 12.30.190(a)(1)(A-G).

(g) The City shall promptly notify the Applicant in writing of its decision on the Encroachment Agreement application. The City shall also mail notice of its decision to members of the public who have requested notice.

PART 4 – EASEMENTS

12.30.210 – Easements

(a) In addition to any other method for the creation of an Easement, an Easement may be created by a recorded declaration and covenant of Easement made by an owner of real property to the City, or granted by the City, in accordance with the procedures set forth in this chapter.

(b) Purpose. An Easement may be created pursuant to this chapter for one or more of the following purposes: parking, ingress, egress, emergency access, light and air access, landscaping, open space purposes, or other purposes in accordance with law.

(c) Methods of Creation.

(1) Dedication.

(A) With City's consent, an irrevocable offer of dedication may be made of real property for any public purpose, including, but not limited to, streets, highways, paths, alleys, including access rights and abutter's rights, drainage, open space, public utility or other public Easements, parks, or other public places.

(B) Dedication shall be executed, acknowledged, and recorded in the same manner as a conveyance of real property and in a form approved by the City Attorney.

(C) Such offer of dedication, when recorded in the office of the county recorder where the property is located, shall be irrevocable. Any offer must be accepted to be effective pursuant to section (B), above. Once the offer is recorded and irrevocable, it can be accepted by the City Council.

(D) Offer of dedication for street and highway purposes may be terminated and right to accept offer may be abandoned pursuant to the Street Vacation provisions below, in Part 5.

(E) The above procedure shall be alternative to any other procedure authorized by law.

(2) Ordinance.

(A) The City Council may adopt an ordinance pursuant to Government Code Section 65870, et seq., imposing a private covenant for a public Easement as follows:

(1) Recording a covenant of Easement made by an owner of real property to the City.

(2) At the time of the recording, all real property benefited or burdened by the covenant shall be in common ownership.

(3) Covenant shall be effective when recorded and shall act as an easement pursuant to Chapter 3 (commencing with Section 801) of Title 2 of Part 2 of Division 2 of the California Civil Code, except that it shall not merge into any other interest in the real property. Section 1104 of the Civil Code shall be applicable to conveyance of the affected real property.

(4) A covenant of Easement so recorded shall describe the real property subject to the easement and the real property benefited thereby. The covenant of Easement shall also identify the approval, permit, or designation granted which relied upon or required the covenant.

(5) A covenant executed pursuant to this section shall be enforceable by the City. Covenants shall run with the land and shall be equitable servitudes. The City's interest may include the streets and highways and other interests abutting the burdened property.

(6) The creation or release of the interests may require review by the Planning Commission for conformity with the General Plan under California Government Code Section 65402.

(7) Ordinance shall provide a procedure for the release of the covenant. The procedure shall require a public hearing by the agency designated by the ordinance for that purpose. The hearing shall be held at the request of any person whether or not that person has title to the real property.

(8) Upon a determination that the restriction of the property is no longer necessary to achieve the City's land use goals, a release shall be recorded by the City in the county where the restricted property is located.

(9) The ordinance may provide for the imposition of fees to recover the reasonable costs of processing the release from those persons requesting the release pursuant to this section.

PART 5 – STREET VACATIONS

12.30.220 – Street Vacations

(a) Under certain conditions, an existing public Easement may no longer be necessary due to a variety of reasons such as changed conditions, topography, etc. The property owner can seek a vacation of an Easement by submitting an application and paying the applicable fees. The City typically only has Easement-holder status in the ROW of public streets, alleys, or walks, and the adjoining property owners have the underlying fee interest. Applicant should contact a title company to perform a title search of the underlying fee interest of the proposed vacation area prior to submitting application. If the City owns the underlying fee interest, a request for purchase of the City-owned property must be processed through the appropriate City department.

(b) Applications may be obtained from City Engineer. Requirements include payment of filing fees as listed in the Master Fee Agreement, signature of the Applicant, a legal description, and a scaled plot plan.

12.30.230 – Summary Vacations

(a) Pursuant to California Streets and Highways Code section 8300, et seq., if the vacation affects a street or highway, the following circumstances will qualify for a summary vacation:

(1) The street or highway has been superseded by relocation, and the vacation would not terminate all access to another person's property or terminate a public service Easement; or

(2) For a period of five (5) consecutive years, the street or highway has been impassable for vehicular travel, and no public money was expended for maintenance purposes during the same period; or

(3) The street or highway is excess ROW and not required for street or highway purpose(s); or

(4) The portion of a street or highway to be vacated lies within property under one (1) ownership and does not continue through such ownership or end touching property of another.

(b) If the vacation would affect a public service Easement, the following circumstances would qualify for summary vacation:

(1) The Easement has not been used for its dedicated purpose for five (5) consecutive years immediately preceding the proposed vacation; or

(2) The date of dedication or acquisition is fewer than five (5) years, but more than one (1) year, immediately preceding the proposed vacation, and the Easement was not used continuously since that date; or

(3) The Easement has been superseded by relocation, and there are no public facilities located within the Easement.

12.30.240 – General Vacations

If the proposed vacation does not meet any of the criteria in Section 12.30.230 it is a General vacation.

(a) City Council may, on its own initiative, may hold a public hearing on the street vacation whose process shall follow Streets and Highway Code Section 8300, et seq. and as amended from time to time.

(b) City Council's decision is final and not subject to appeal. City Council may conditionally approve a vacation and thus any conditions must be complied with prior to the vacation becoming effective.

(c) Once the City Council adopts its Resolution of Vacation, which is then recorded with the County, the vacation shall be complete.

PART 6 – VIOLATIONS, REVOCATIONS, OTHER PENALTIES, AND APPEALS

12.30.250 – Violations and Other Penalties.

Any violation of this Chapter may be enforced as an infraction, misdemeanor, or by any remedy available to City under this Code or state or federal law(s). These provisions are equally applicable to enforcement action(s), including of Permits and Encroachment Agreements. Potential enforcement measures include but are not limited to:

(a) Fine. Whenever a City Inspector finds that anyone or any entity subject to this Chapter is placing, or has placed, an encroachment in the ROW without the appropriate Permit, the City Inspector will require (1) stop work, if construction is ongoing; (2) application for a Permit; and (3) payment of Permit fee and a fine equal to same;

(b) Violations and Penalties.

(1) Working without a Permit may result in an Administrative Citation, a Stop Work Order, and a mandate to apply and pay for the required Permit.

(2) The following violations may result in an administrative citation:

(A) General.

(i) Failure to abide by the requirements of Chapter 12.30.

(ii) Violation of any Permit condition(s).

(iii) Failure apply for and obtain a Permit.

(iv) Failure to maintain a Permit on-site.

(v) Improper public notice.

(B) Excavation (Streets and Paving).

(i) Failure to hold a pre-construction meeting in advance of a "Major Project."

(ii) Improper site protection (e.g., improper plating, path of travel,

- barricading, etc.)
- (iii) Improper trench trimming.
- (iv) Trenches left open after allowed work hours when not backfilled and covered.
- (v) Failure to comply with trench restoration requirements.
- (vi) Improper housekeeping (e.g., failure to remove spoil, dirty site, no sweeping, etc.).
- (vii) Failure to provide notice will result in an Administrative Citation and a Stop Work Order.
- (viii) Any other excavation code violations.

(c) Suspension.

When City Engineer finds that protection of public health or safety from imminent danger necessitates suspension of Encroachment Permit, City Engineer may suspend the Permit immediately, pending a hearing for remedial action or suspension.

12.30.260 – Procedures for Suspension or Revocation.

(a) Within three (3) working days of the emergency suspension or revocation, City Engineer will give Permittee written notice of same. Notice shall be delivered to Permittee's last known address by personal service or by first-class mail, postage prepaid.

(b) Within fifteen (15) days following service of written notice for either suspension or revocation, Permittee may file a request for hearing with the City Manager. City Manager shall schedule a hearing on the suspension or revocation within five (5) working days of receipt of a request for hearing.

(c) After the hearing, if City Manager finds that public health or safety requires correction or alteration of any condition caused by, or existing on the site of, the encroachment, City Manager shall issue one or more of the following:

- (1) Order to correct any noncompliance;
- (2) Revocation of the encroachment Permit;
- (3) Continued suspension of the Encroachment Permit, until such time as the dangerous condition is corrected;
- (4) Modification or reinstatement of the Encroachment Permit, with necessary conditions to prevent public harm.

(d) City Manager, within ten (10) days after the close of the hearing, shall render a written opinion, stating the findings upon which the decision is based, and the action taken. City Manager's decision may be appealed to the City Council by filing a written appeal with the City Clerk within ten (10) business days of the date notice of the decision is mailed to the Permittee.

12.30.270 – Revocation.

(a) City Engineer may recommend that City Manager revoke a Permit or Encroachment Agreement when:

- (1) Permittee has violated any provision of this Code or any Permit condition; or
- (2) Permittee fails to pay any required fees or to post or maintain any bond or insurance this Chapter requires; or
- (3) Encroachment for which the Permit was granted adversely affects safety, capacity or integrity of City's ROW or increases City's liability exposure; or
- (4) Encroachment causes City to incur substantial additional maintenance costs; or
- (E) Permit application contained material misrepresentations, omissions, or inaccuracies.

12.30.280 – Appeals.

(a) Decisions on Permits and Encroachment Agreements.

(1) Denial. City Engineer shall put their decision to grant or to deny a Permit in writing and deliver it to Applicant within five (5) calendar days following the decision. Notice of a decision to deny the Permit shall enumerate the reason(s) for denial.

(2) Approval. City shall post a notice of decision to approve a Permit at its Engineering Services' public counter beginning on the date of the decision. The approval notice shall be posted at the site of the encroachment for no fewer than ten (10) calendar days beginning within five (5) calendar days from the date of City Engineer's the decision. This cumulative period of 10 days shall be known as the "appeal period."

(b) Appeal Period.

No Permit shall be issued until after the ten (10)-day appeal period expires. If City does not receive a timely filed appeal, it may issue the Permit after the appeal period expires. If City receives a timely filed appeal, it shall not issue a permit until the appeal's final resolution.

12.30.290 – Appeals and Hearings.

(a) Any person aggrieved by City Engineer's decision may appeal by submitting a written appeal to City Clerk within fifteen (15) days of the date of the decision. Appeal fee shall be remitted as listed in the City's Master Fee Schedule at the time of appeal submission.

(b) City Council shall hold a hearing on the appeal at a regularly scheduled meeting not fewer than fourteen (14) days and not greater than forty-five (45) days after City receives the appeal. City shall provide appellant at least ten (10) days' written notice of the hearing's date and time. City Council's decision on the appeal shall be final and binding.