

## **Chapter 12.30 - VIDEO SERVICE PROVIDER, UTILITY AND SPECIAL DISTRICT ENCROACHMENTS**

### **12.30.010 - Purpose.**

The public rights-of-way are unique public resources held in trust for the benefit of the public. These physically limited resources require proper management to maximize their efficiency and minimize the costs to taxpayers, to protect against foreclosure of future economic expansion because of premature exhaustion of the public rights-of-way, and to minimize the inconvenience to and negative effects on the public from use of the public rights-of-way by video service providers, utilities and special districts.

### **12.30.020 - Definitions.**

As used in this chapter:

"Agency" means the Richmond Community Redevelopment Agency, a public body corporate and politic.

"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.

"City" means the government of the City of Richmond, a chartered city and a municipal corporation duly organized and validly existing under the laws of the State of California, and all departments, divisions and offices thereof.

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

"Encroach" means constructing or placing temporary or permanent structures, improvements, facilities or materials in, on, over, or under any public right-of-way or using any right-of-way so as to prevent, obstruct, or

interfere with the normal use of that way, including, but not limited to, the performance of any of the following acts:

- (1) Excavating or disturbing the public right-of-way;
- (2) Erecting or maintaining any post, sign, pole, fence, guard-rail, wall, pipe, conduit, cable, wire, communication service equipment, or other facility or structure on, over, or under a public right-of-way;
- (3) Planting any tree, shrub, grass or other growing thing within the public right-of-way;
- (4) Placing or leaving on the public right-of-way any rubbish, brush, earth or other material;
- (5) Constructing, placing, or maintaining on, over, under or within a public right-of-way 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;
- (6) Constructing, placing, planting or maintaining any structure, embankment, excavation, tree or other object adjacent to the public right-of-way which causes or may cause an encroachment.

"Engineer" means the City Engineer, or his or her designee.

"Facility" means 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 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 thing located in, upon, above, beneath, or across any public right-of-way.

"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, R.H. Miller Drive, San Pablo Avenue, San Pablo Dam Road, Thirteenth Street, Twenty-Second Street and Twenty-Third Street.

"Permittee" means any person, video service provider, utility or special district that has been issued a permit pursuant to this chapter, including any lawful successor, transferee, or assignee of the original permittee. All obligations, responsibilities, and other requirements of the permittee shall be binding on successors in interest 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 of Richmond, the Richmond Community Redevelopment Agency, or the City's or Agency's officers, employees or agents.

"Public right-of-way" 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.

"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.

"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 this Code.

"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 public rights-of-way.

"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).

### **12.30.030 - Applicability.**

(a) Except as specified in subsection (b), below, before placing any encroachment in, on, over, or under any public right-of-way within the City, a video service provider, utility, or special district must obtain a permit in accordance with this chapter.

(b) Notwithstanding subsection (a), above, no permit shall be required pursuant to this chapter for any of the following:

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

(2) The performance of work under contracts to the City or Agency, including work for City or Agency projects;

(3) Encroachments existing prior to the effective date of this chapter; provided, however, that nothing in this chapter shall preclude the Engineer from requiring an appropriate permit or license for or

removal of any such preexisting encroachment where the Engineer determines the encroachment adversely affects the safety, capacity or integrity of the City's public right-of-way;

(4) Maintenance or repair by a video service provider, utility or special district of existing pipes, facilities, conduits or other structures lawfully on or under a public right-of-way where such maintenance or repair work will not disrupt traffic in an arterial or major arterial street;

(5) The making of an emergency street cut or excavation in the public right-of-way by a video service provider, utility or special district to repair a broken or defective pipe, facility or conduit lawfully on or under a public arterial street, as may be necessary for the preservation of life and property when an urgent necessity therefor arises and the offices of the City are closed, provided that reasonable vehicular and pedestrian barriers or other traffic controls shall be provided during the performance of any such repairs. The video service provider, utility or special district performing the repair work shall notify the City's Engineering Department and Police Department by telephone at the time any such repair work is commenced and must apply for a permit within one calendar day after the offices of the City are again opened;

(6) Tree work, including, but not limited to, planting, trimming, or removal of any new or existing tree within the public right-of-way where a permit has been issued for such work pursuant to Chapter 10.08 of this Code, and no traffic lane closure is anticipated;

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

(8) Street closures for special events specifically approved by the City Council.

(c) Any video service provider, utility or special district encroachment that requires but does not have a permit shall be deemed a violation of this chapter and a public nuisance, which may be abated by the City pursuant to any applicable provision of law including, but not limited to, Chapter 9.22 of this Code.

#### **12.30.040 - Application.**

(a) An application for a video service provider, utility or special district encroachment permit, including renewal of an existing permit, shall be on a form prescribed by the Engineer, shall be signed by the applicant, and shall include all of the following materials unless the submittal is waived in writing by the Engineer:

- (1) The name, address and telephone number of the applicant;
- (2) The name, address and telephone number of the contractor(s) if any proposed work is to be done by a contractor(s);
- (3) The location, purpose, extent and nature of the proposed work;
- (4) The period of time when the proposed work will be performed;
- (5) A traffic and pedestrian control plan for the location of the proposed work;
- (6) A certificate of insurance from the applicant and contractor's insurance carrier in a form satisfactory to the City, and naming the City as additional insureds;
- (7) A key map and detailed improvement plan showing all facilities to be located in the public right-of-way, including the material of construction and horizontal and vertical locations with respect to the property lines and grade lines, existing utilities and all other pertinent facilities and information required by the Engineer. Unless exempted by State law, the detailed improvement plan shall be prepared by a California Registered Professional Civil Engineer;
- (8) Any other specifications, analyses or materials the Engineer may require to describe the work, its location in and its effect on the right-of-way, including the mode of operation, maintenance and use;
- (9) Current maps and records of the underground facilities at the site;
- (10) The encroachment permit fee set forth in the City's Master Fee Schedule.

(b) For those applications where an aboveground encroachment is proposed, the 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 public right-of-way, describing the proposed encroachment and its location, and providing an opportunity to submit written comments regarding the application to the Engineer within fifteen (15) days from the date of the letter and prior to the

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.

(c) In signing the application, the applicant attests that all information provided in support of the application is true and correct. When the applicant has submitted a completed and signed application form, all supporting documents and information, and the required fee, the application will be complete. The Engineer shall act upon an application for a video service provider, utility or special district encroachment permit within sixty (60) days after the application is complete.

(d) A renewal application, supporting materials, and fee must be submitted at least sixty (60) days prior to the termination date of a video service provider, utility or special district 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 abatement by the City pursuant to any applicable provision of law including but not limited to Chapter 9.22 of this Code.

### **12.30.050 - Findings and conditions.**

A video service provider, utility or special district encroachment permit shall be approved by the Engineer upon making the following findings, and shall be subject to all requirements of this chapter and to all of the following conditions:

(1) Findings.

(A) The proposed encroachment has no potential for causing a significant effect on the environment.

(B) The application is complete and all of the necessary supporting information has been provided.

(C) The applicant has made reasonable efforts to erect, construct, use, operate, and maintain facilities underground; provided, however, from and after the effective date of the establishment of any underground utility district, the applicant shall erect, construct, use, operate, and

maintain its facilities underground. Where undergrounding is not feasible (except in 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) The proposed location of the facilities is the best available option to minimize adverse impacts on the use of the public right-of-way and on adjoining properties.

(E) If the application is for a renewal of an existing permit, the permittee is in compliance with the current permit and conditions.

(F) With the conditions imposed, the proposed encroachment shall not be detrimental to the public health, safety and welfare.

(2) Conditions.

(A) All application materials are incorporated into the permit by reference and all representations made in the application are conditions of permit approval.

(B) The permittee and all of its contractors performing work in the public right-of-way shall secure a policy of broad form commercial general liability insurance naming the City as additional insured in an amount not less than two million dollars (\$2,000,000.00) per occurrence, or as approved by the 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 public right-of-way. All contractors' policies secured in compliance with this condition shall be in effect for the duration of the contractor's work in the public right-of-way; all permittees' policies secured in compliance with this condition shall be in effect for as long as the encroachment remains in the public right-of-way.

(C) The permittee and all of its contractors performing work in the public right-of-way shall furnish to the City, and file with the City Clerk, a corporate surety bond to guaranty the faithful performance of the construction of such work and a separate bond to secure payment of the claims 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 cost of construction of the work to be performed in the public right-of-way. All bonds shall be issued by a corporate surety admitted in the State of California and shall name the City as a co-obligee.

(D) 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 public right-of-way.

(E) 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 right-of-way, the City's management and use of the right-of-way, and the rights or reasonable convenience of property owners who adjoin the public right-of-way.

(F) Except when emergency repairs are required, at least forty-eight (48) hours prior to commencing any work that will obstruct or impede the flow of vehicular and/or pedestrian traffic, the permittee shall post the area that will be affected with notifications satisfactory to the Engineer.

(G) During construction, the permittee shall keep a copy of the permit issued pursuant to this chapter at the job site.

(H) During construction and maintenance, the permittee shall provide appropriate traffic warnings, safeguards and controls, as approved by the Engineer.

(I) During construction and maintenance, the permittee shall provide temporary pedestrian access facilities as necessary to comply with local, State and Federal law, including the Americans with Disabilities Act, and with the written direction of the Engineer, if any.

(J) The permittee shall maintain all structures, facilities, and landscaping within the encroachment area in a safe and clean manner, and shall at all times observe and enforce all applicable local, State, and Federal safety orders, rules and regulations.

(K) The permittee shall promptly remove all graffiti on any structure or facility within the encroachment area.

(L) The permittee shall notify the Richmond Police Department and the Engineer and shall promptly repair any damage to structures or facilities caused by criminal activity, including, but not limited to, theft of copper.

(M) As may be required by Section 4216 et seq. of the California Government Code, the permittee shall contact Underground Service Alert (USA) prior to commencing, and as appropriate during, any permitted work.

(N) Upon the request of any person who has contracted to perform work on a public right-of-way, the permittee shall provide accurate detailed information regarding the location of its existing and proposed structures in the public right-of-way.

(O) To the maximum extent allowed by law, permittee 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 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 public right-of-way 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 indemnitee's sole negligence, willful misconduct or criminal acts.

(P) 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 issued pursuant to this chapter.

(Q) The City reserves the right to inspect any structure or facility installed in the public right-of-way and to demand of the permittee timely correction of any deficiencies in operation or maintenance. The City further reserves the right to demand at any time that within ten (10) business days the permittee produce current, complete and accurate maps, plans, diagrams, and records pertaining to any structure or facility installed in the public right-of-way.

(R) Installation or construction of structures and facilities in the public right-of-way shall be completed and all construction-related damage to the public right-of-way shall be repaired within two (2) years from the date the encroachment permit is issued, unless for good cause the Engineer grants a written extension of the time to complete installation, construction or repair.

(S) The permittee shall operate and use the structures and facilities placed in the public right-of-way solely and exclusively for the purposes and uses expressly stated in the application. A change in purpose, use, or operator of the structures and facilities requires approval of a transfer in accordance with Section 12.30.080 of this chapter.

(T) The Engineer reserves the right to suspend the encroachment permit if necessary to protect the public from imminent danger and to take such action as is necessary to correct the condition posing the danger. In the event of an emergency suspension, the Engineer shall notify the permittee and provide an opportunity for a hearing in accordance with the procedures set forth in Section 12.30.090 of this chapter.

(U) If placement of structures and/or facilities in the public right-of-way conflicts with the City's construction, reconstruction or maintenance work in the public right-of-way, the permittee shall, at its own expense, relocate the structures and/or facilities in accordance with Section 12.30.070 of this chapter.

(V) When the facilities and/or structures encroaching in the public right-of-way are removed and/or abandoned, the permittee shall, at its own expense, restore the public right-of-way to a condition the same as or better than its condition before the facilities and/or structures

were installed. Failure to so restore the public right-of-way may be deemed a violation of this chapter and a public nuisance, subject to abatement by the City pursuant to any applicable provision of law including, but not limited to, Chapter 9.22 of this Code.

(W) Such other reasonable conditions, including installation of facilities or structures to address accessibility and drainage, as may be deemed necessary by the Engineer to protect the public health, safety and welfare.

(X) Notwithstanding anything to the contrary in Section 12.30.050(1)(C) of this chapter, whenever any area of the City is declared to be an underground utility district, it shall be unlawful for any video service provider, utility or special district to erect, construct, use, operate or maintain their facilities aboveground.

(3) Where the insurance and indemnification conditions stated in subsection (2), above, conflict with the provisions of a franchise or other agreement between a video service provider, utility or special district and the City or State, the provisions of such franchise or other agreement shall apply.

(4) A video service provider, utility or special district encroachment permit shall terminate on the date specified therein, or upon abandonment of the facilities and/or structures constructed pursuant to such permit. If no date is specified in the encroachment permit, it shall be considered to be of indeterminate duration.

### **12.30.060 - Posting and appeal.**

(a) Posting of Decision. The Engineer's decision to grant or to deny a permit shall be in writing and shall be delivered to the applicant within five (5) calendar days of the decision. Notice of a decision to deny a permit shall specify the reason(s) for denial. Notice of a decision to approve a permit shall be posted at the City of Richmond Engineering Services public counter commencing on the date of the decision and shall be posted at the site of the approved encroachment for a period of not less than ten (10) calendar days commencing within five (5) calendar days from the date of the decision (cumulatively, the "appeal period"). No permit shall be issued until after the expiration of the appeal period, if no appeal is timely filed, or until the final resolution of any appeal.

(b) Appeal. Any person aggrieved by the Engineer's decision on a video service provider, utility or special district encroachment permit application may appeal by submitting a written appeal to the City Clerk, along with the applicable appeal fee as provided in the City's Master Fee Schedule, within fifteen (15) days of the date of the decision. The City Council shall hold a hearing on the appeal at a regularly scheduled meeting not less than fourteen (14) days and not more than forty-five (45) days after receipt of the appeal, and shall give the applicant and the appellant at least ten (10) days written notice of the date and time of the hearing. The decision by the City Council on the appeal shall be final.

#### **12.30.070 - Relocation of facilities.**

(a) If any future construction, reconstruction or maintenance work is required by the City or Agency in the public right-of-way that necessitates the relocation, removal or abandonment of an encroachment, the permittee shall relocate, remove or abandon the encroachment at the permittee's sole expense, unless such requirement is in conflict with any applicable State or local statute or franchise.

(b) When relocation is required, the Engineer shall make written demand of the permittee that the encroachment be relocated within the public right-of-way to a satisfactory location provided by the Engineer, and shall designate a reasonable time for such relocation or removal. In determining what is a reasonable time under this section, the Engineer shall take into consideration the nature of the encroachment, the urgency of the need for its removal, the cost of its removal, the difficulty of its removal, the value of the property to the owner, and other facts peculiar to the particular situation.

#### **12.30.080 - Transfer.**

No video service provider, utility or special district encroachment permit may be transferred by the permittee to another person or entity without the express written consent of the Engineer, at his or her sole discretion.

#### **12.30.090 - Violations—Revocation and other penalties.**

Any violation of this Chapter may be enforced either as an infraction or as a misdemeanor, or by any remedy available to the City under this Code or

under State law. Potential enforcement measures include but are not limited to the following:

(1) Fine. Whenever a City inspector finds that a video service provider, utility or special district subject to this chapter has placed or is placing an encroachment in the public right-of-way without the appropriate permit, the video service provider, utility or special district shall be required to (1) stop work, if construction is on-going, (2) apply for a permit, and (3) pay both the permit fee and a fine equal to the permit fee;

(2) Suspension. Whenever the Engineer finds that a suspension of an encroachment permit is necessary to protect the public health or safety from imminent danger, the Engineer may immediately suspend any such permit pending a hearing for remedial action or revocation. The Engineer shall, within three (3) working days of the emergency suspension, give written notice of such suspension to the permittee, by personal service or by first class mail, postage prepaid, to the last known address of the permittee. The permittee may, within fifteen (15) days after service of such a written notice of suspension, file with the City Manager a request for hearing regarding the suspension. The City Manager or his or her designee shall schedule a hearing on the suspension within five (5) working days of receipt of a request for hearing. If the City Manager or his or her designee, after the hearing, finds that the public health or safety requires correction or alteration of any condition caused by, or existing on the site of the encroachment, he or she shall issue one or more of the following:

(A) An order to correct any particular noncompliance,

(B) A revocation of the encroachment permit,

(C) A continued suspension of the encroachment permit, until such time as the dangerous condition is corrected,

(D) A modification or reinstatement of the encroachment permit, with conditions as necessary to prevent harm to the public.

The City Manager or his or her designee shall, within ten (10) days of the hearing, render a written opinion, stating the findings upon which the

decision is based, and the action taken. The decision of the City Manager or his or her designee shall be final, except a decision to revoke the permit which may be appealed to the City Council in accordance with Section 12.30.060(b) of this chapter;

(3) Revocation. The Engineer may recommend that the City Manager revoke a permit where she or he finds that:

(A) The permittee has violated any provision of this Code or condition of the permit,

(B) The permittee has failed to pay any required fees, or to post or maintain any bond or insurance required by this chapter, or

(C) The encroachment for which the permit was granted adversely affects the safety, capacity or integrity of the City's public right-of-way or increases the City's liability exposure,

(D) The encroachment is causing the City to incur substantial additional maintenance costs, or

(E) Material misrepresentations, omissions or inaccuracies were made in the application for the permit.

The Engineer shall give the permittee at least ten (10) days' written notice of a hearing before the City Manager or his or her designee on the proposed revocation of a permit issued pursuant to this chapter, setting forth the grounds for such action. If, after reviewing all evidence presented before or at the public hearing, the City Manager or his or her designee makes any one of the five findings set forth above, he or she may revoke the permit. The City Manager or his or her designee shall, within ten (10) days after the close of the hearing, render a written opinion, stating the findings upon which the decision is based, and the action taken. The decision of the City Manager or his or her designee may be appealed to the City Council in accordance with Section 12.30.060(b) of this chapter.

(Source: Ordinance No. 21-08 N.S.)