



City Attorney's Office

AGENDA REPORT

DATE:	April 5, 2022
TO:	Mayor Butt and Members of the City Council
FROM:	Dave Aleshire, Interim City Attorney Joe Leach, Public Works Director
Subject:	Consider and Introduce, if desired, an Ordinance to Revise and Amend Richmond Municipal Code Chapter 12.30
FINANCIAL IMPACT:	There is no financial impact related to this item at this phase of consideration. However, the proposed amendment to Chapter 12.30 does add provision(s) addressing "private landowner" encroachments into the public Right-of-Way. These newly added provisions may potentially increase costs in staff time for application review; notice provisions; et al. Any private owner applying for an encroachment agreement pursuant to Chapter 12.30 would also remit fees as set forth in the Master Fee Schedule; such additional revenue may offset potential increases in staff time.
PREVIOUS COUNCIL ACTION:	At its September 28, 2021 meeting, City Council directed City staff to draft an ordinance addressing encroachments into the public ROW by adjacent, private-property owners. City staff subsequently drafted a proposed ordinance for consideration, which it presented to City Council at the December 21, 2021 meeting.
STATEMENT OF THE ISSUE:	The City's Municipal Code (the "RMC") contains two chapters that address encroachments into the public Right-of-Way ("ROW") -- Chapter 12.29 ("Street Opening and Pavement Restoration Regulations") and Chapter 12.30 ("Video Service Provider, Utility and Special District Encroachments"). Neither chapter addresses private landowner encroachments into the unimproved public

	ROW. Further, neither chapter currently addresses easements or street vacations. Consideration of proposed amendments include: revise Chapter 12.30 to include Chapter 12.29 and remove chapter duplications; and add provisions for private landowner encroachments into the public ROW; easements; and street vacations. Thereafter, Chapter 12.29 would be rescinded in its entirety, and the amended and revised Chapter 12.30 would be retitled “Encroachments and Easements.”
RECOMMENDED ACTION:	CONSIDER and INTRODUCE, if desired, an ordinance for a first reading amending RMC Chapter 12.30 (“Video Service Provider, Utility and Special District Encroachments”) by incorporating Chapter 12.29 (“Street Opening and Pavement Restoration Regulations”); adding provisions that address private landowner encroachments into the public Right-of-Way (ROW); easements; and street vacations; retitling Chapter 12.30 “Encroachments and Easements,” and rescinding Chapter 12.29 in its entirety - City Attorney’s Office/Public Works Department (Dave Aleshire 510-620-6509/Joe Leach 510-620-3008).

DISCUSSION:

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

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

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

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

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

ENVIRONMENTAL REVIEW:

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, “CEQA”) because it has no potential for resulting in a physical change in the environment, either directly or ultimately, in that changing the affordability of residences has no potential for resulting in a physical change in the environment, either directly or indirectly; and the authorization for in-lieu fees and non-residential linkage fees is also not a project, because a project does not include the creation of a government funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378(b)(4)); and the ordinance commits no fees to any specific project.

In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Ordinance would have no or only a de minimis impact on the environment because changing the affordability of housing does not have any direct or indirect physical impacts on the environment. The foregoing determination is made by the City Council in its independent judgment.

DOCUMENTS ATTACHED:

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