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# CITY OF OAKLAND



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Date: November 24, 2019  
To: Members of City Council and Members of the Public  
From: Council President Kaplan  
Re: File No. 18-2516  
Ordinance Amending The Oakland Municipal Code, Chapter 12.08, Encroachments, By Transferring Sole Permit Issuance For Minor Encroachments To The Director Of The Department Of Planning And Building For Any Encroachments Twelve ("12") Feet Or More Above Grade

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Dear Colleagues on the City Council and Members of the Public,

## RECOMMENDATION

I am asking my colleagues to adopt an Ordinance amending the Oakland Municipal Code, Chapter 12.08, Encroachments, by transferring sole permit issuance for minor encroachments to the director of the Department of City Planning for any encroachments twelve ("12") feet or more above grade.

## LEGISLATIVE SUMMARY

This legislation seeks to ensure that the Director of City Planning have the sole and exclusive authority over minor encroachments twelve ("12") feet or more above grade and shall be precluded from delegating or transferring such authority to other City Departments. It also states that only the City Council shall have the ability to add or change what City Departments are authorized or required to review, approve, or issue minor encroachment permits.

## ANALYSIS

One of the factors that has been named by developers as a hindrance to swift construction is the City of Oakland's permitting process and particularly the minor encroachment process. Development is key to the growth of a City, and for Oakland it not only provides a much needed tax base and impact fees but also delivers needed commercial and residential space for the City to expand. In a 2019 Oakland Chamber of Commerce poll revealed 48% of Oakland residents "thought the rate of development was too slow."<sup>1</sup>

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<sup>1</sup> Oakland Chamber 2019 Voter Poll Key Results (October 2019)  
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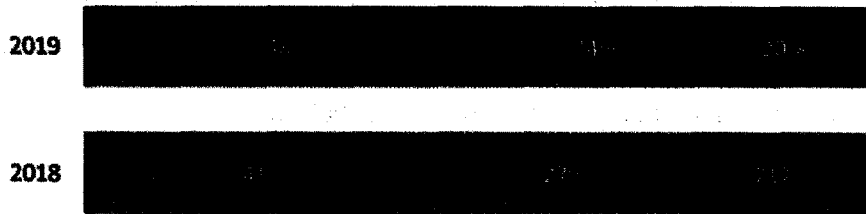
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### Voters tend to think the rate of housing development is too slow.

*Do you think the rate of housing development in Oakland is....?*

■ Too Slow ■ About Right ■ Too Fast



\*Oakland Chamber 2019 Voter Poll Key Results (October 2019)

For this reason, the proposed legislation is necessary, to speed up development, in particular housing development. For clarification, Chapter 12.08 only references the Department of Public Works, not the Department of Transportation (“DOT”), which was created in 2015 (Ordinance No. 13325). DOT is overseeing much of the minor encroachment permits, including those that do not have any impact on transportation. This legislation seeks to clarify that minor encroachment permits that do not have an impact to transportation, since they are too high up to impact the transportation right of way, will not go to DOT, but rather will be handled within Planning, so as to not slow down or confuse the process.

Among developers there is confusion about the process, and anecdotal evidence speaks to a duplication of efforts across different departments that lead to a waste of city resources. By creating a simpler approval process for minor encroachments, we are not only encouraging good governance, supporting the building of much needed affordable housing, and building our tax base, but also encouraging transit oriented development which is turn good for the environment. To establish a thoughtful threshold of when the Director of City Planning should have jurisdiction in minor encroachments, twelve feet or above grade was listed as it equals about one story or above the public right of way.

#### FISCAL IMPACT

Speedy development of projects will result in an increase to the city’s tax base and spurring economic growth.



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## **PUBLIC OUTREACH**

We worked with stakeholders closely involved with permit issuance on this legislation. We look forward to a robust discussion in committee and are doing outreach to the community to attend this hearing.

## **COORDINATION**

The City Attorney's office and the City Administration will be consulted in the development of the legislation. Council President Kaplan's office reached out to the Department of Building and Planning and to the Department of Public Works to seek input.

## **SUSTAINABLE OPPORTUNITIES**

**Economic.** Fixing the encroachment process by removing unnecessary bureaucratic barriers will ensure faster construction of affordable housing construction and incentivize much needed job growth.

**Environmental:** There are positive impacts of transit-oriented development associated with this report.

**Social Equity:** Fixing the encroachment process by removing bureaucratic barriers to construction will bring to the city the much needed the second installment of affordable, transit, and jobs housing impact fees and thereby increasing the City's ability to provide affordable housing.

For questions regarding this report, please email Bobbi Lopez, Policy Director for the Council President, at [blopez@oaklandca.gov](mailto:blopez@oaklandca.gov) or call at 510.238.7082.

Sincerely,

Rebecca Kaplan  
Oakland City Council President

2019 NOV 25 PM 3:09

**DRAFT**

CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**INTRODUCED BY COUNCIL PRESIDENT KAPLAN**

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**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE, CHAPTER 12.08, ENCROACHMENTS, BY TRANSFERRING SOLE PERMIT ISSUANCE FOR MINOR ENCROACHMENTS TO THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND BUILDING FOR ANY ENCROACHMENTS TWELVE ("12") FEET OR MORE ABOVE GRADE**

**WHEREAS**, encroachment permits a broad range of activities in using the public right-of-way by privately owned items or facilities; and

**WHEREAS**, the process for obtaining an encroachment permit is codified in the Oakland Municipal Code Chapter 12.08; and

**WHEREAS**, anecdotal evidence by business owners, developers, and other stakeholders have pointed to concerns about the City of Oakland's encroachment process that has resulted in delays to projects; and

**WHEREAS**, a 2019 Oakland Chamber of Commerce poll revealed 48% of Oakland residents "thought the rate of development was too slow" and many believe "the best step toward addressing housing needs is to speed up the development process;" and

**WHEREAS**, facilitating and removing burdensome and duplicative bureaucratic processes for development in the City of Oakland will provide much needed housing and commercial space and stimulate economic growth; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

**SECTION 2. Amendments.** Chapter 12.08 of the Oakland Municipal Code is hereby amended to read as follows (additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; any portions not cited or not shown in underscoring or strike-through type are not changed):

**12.08.010 - Public telephones and bus shelters.**

- A. The Director of Public Works is authorized to issue minor encroachment permits from time to time to the serving telephone company and the serving public transportation agency in compliance with the provisions of this Title. Such permits shall be required for the serving telephone company to install and maintain public telephones on the public sidewalks of the city and shall also be required for the serving public transportation agency to install and maintain public bus shelters on said public sidewalks. The number, location and design of public telephones or bus shelters allowed under each such permit shall be subject to the approval of the Director of Public Works so as to best serve the public interest.
- B. Permits issued pursuant to subsection A of this section shall include the following provisions:
1. The permittee shall maintain the public telephones (telephones and booths) or public bus shelters in good repair and safe and sightly condition at permittee's expense and to the satisfaction of the Director of Public Works. All necessary electrical and telephone connections, cables, wires and associated appurtenances shall be installed underground in appropriate conduits and in accordance with applicable codes.
  2. The permittee shall save the city harmless from any and all losses, claims or judgements for damage to any person or property arising from the installation or maintenance of the public telephones or public bus shelters.
  3. The permit shall be revocable on thirty (30) days' prior written notice to the permittee from the Director of Public Works, in which event the permittee shall at his or her own expense remove the public telephone or telephones, bus shelter or bus shelters installed pursuant to the permit and shall restore the sidewalk as nearly as practicable to its condition prior to such installation.
  4. For permits granted to the serving telephone company for installation and maintenance of public telephones, the permit shall require that the city receive an amount equal to at least fifteen (15) percent of the receipts in lawful currency of the United States (exclusive of Federal Communications Excise Taxes) from the coin receptacles of the public telephone installed under authority of this title.

**12.08.011 - Bicycle sharing stations.**

"Bicycle sharing stations" (bike share stations) are stations where members of a bike sharing program can dock and undock public bicycles, electric assist bicycles (E-Bikes), tricycles, and electric mopeds using a key fob, credit card, mobile phone application, or

other technology suited to the purpose. The stations feature a payment kiosk, wayfinding elements, and advertise a program sponsor on the equipment.

Bike share stations are classified as a minor encroachment in accordance with Oakland Municipal Code Chapter 12.08, and will be subject to all requirements applicable to minor encroachment permits.

The Director of Public Works is authorized to issue minor encroachment permits to a bike sharing organization in compliance with the provisions of this title. Such permits shall be required for the bike sharing organization to install and maintain public bike sharing stations on the public right-of-way, including streets, sidewalks, and plazas of the City. The number, location and design of bike share stations allowed under each such permit shall be subject to the approval of the Director of Public Works so as to best serve the public interest.

#### **12.08.012 - Dockless scooter sharing minor encroachment permits.**

Operators of dockless scooter share systems as defined in Chapter 10.18.10 are required to obtain a minor encroachment permit before commencing any operation of such programs within the City's right-of-way.

The City Administrator, or her designee, is authorized to issue minor encroachment permits to a dockless scooter sharing Operator in compliance with the provisions of this title. Such permits shall be required for the dockless scooter sharing operator to maintain public dockless scooter sharing systems on the public right-of-way, including streets, sidewalks, and plazas of the City. The number and location of shared dockless scooter vehicles allowed under each such permit shall be subject to approval of the City Administrator, or her designee.

The City Administrator, or her designee, shall not issue permits for dockless scooter sharing systems in contradiction with terms of any existing agreement.

A dockless scooter share operator shall be required to obtain a minor encroachment permit from the City Administrator, or her designee, prior to and in order to provide a dockless scooter share system in the City of Oakland. Encroachment permits will be effective for a period of one (1) year and are renewable annually.

It shall be unlawful for a dockless scooter share operator to provide a scooter share system within the City without first obtaining an encroachment permit from the Department of Transportation.

#### **12.08.020 - Flagpole sockets, flagpoles and flags.**

No flagpole shall be erected or maintained in the sidewalk area of any street in the city in violation of the provisions of this title.

Flagpoles shall be set in sockets in such a manner that they can be easily removed. The sockets shall be set twelve (12) inches back from the curb face and must be eight inches in depth and truly vertical. Where basements exist beneath the sidewalk area in which said sockets are to be placed, the waterproofing thereof shall be done to the satisfaction of the Building Inspector. At all times when not in use, said sockets shall be covered with a metal cap which must fit the socket snugly and shall be flush with the sidewalk surface. In cases where there is no concrete sidewalk, the top of the socket when the cap is affixed must be flush with top of the concrete block in which it is set.

It is unlawful to permit any flagpole to be in its socket except on the days and occasions enumerated below. Flagpoles shall fit snugly in sockets and shall not extend more than fourteen (14) feet six inches and not less than eleven (11) feet above the level of the sidewalk when inserted in said sockets. Said flagpoles shall not be used for the display of any advertising matter, and shall have only displayed thereon the National Flag, the flag of this state, or insignia of a fraternal or patriotic character, which such flags or insignia shall not exceed four by six feet in size. No flag or insignia shall be displayed on said flagpoles except on legal holidays and on occasions when permission is granted by the City Council by resolution.

#### **12.08.030 - Public sidewalk encroachments—Types and definitions.**

For the purpose of this title, encroachments upon the public street, alley, or "sidewalk area" shall be of three types: major, minor, and short term. The sidewalk area shall be defined as that area between the property line and the edge of the pavement or face of the curb. "Improved streets" shall be defined as streets with concrete curbs, gutters and sidewalks. It is unlawful for any person to use the sidewalk area in the city for the display and sale of goods, wares and merchandise, except as may be permitted:

1. By regulations set forth elsewhere in the Municipal or Planning Codes;
2. By any ordinance or resolution establishing and regulating a street market in the city;
3. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
4. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

A major encroachment, for the purposes of this title, shall be anything attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, kiosks, covered conveyors, crane extensions, earth retaining structures, and structure connected planter boxes, fences, or curbs. Projections over any public street, alley or sidewalk in excess of the limitations specified in the Oakland Building Code shall also be classified as major encroachments, including theater marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

A minor encroachment, for the purposes of this title, shall be any encroachment into the public right-of-way resting on or projecting into the sidewalk area, but not structurally attached to a building such as flowerpots, planter boxes, clocks, flagpole sockets, bus shelters, phone booths, bike racks, fences, non advertising benches, curbs around planter areas, displays of flowers, fresh fruits and vegetables. Such displays of fruits and vegetables shall not be allowed except when similar fruits and vegetable items are sold indoors on the premises at that location. In commercial zones, minor encroachments shall basically be for decorative or public service purposes with advertising signs specifically prohibited.

Short term encroachments into the public right-of-way, for the purposes of this title, shall be events open to the public which take place upon streets and sidewalks such as semiannual art and handicraft shows and semiannual sidewalk sales sponsored by merchant associations representing the majority of merchants in the area of the show or sale, and semiannual block parties and other events.

#### **12.08.040 - Permit requirements for major encroachments.**

No major encroachment shall be allowed in the dedicated public right-of-way except in compliance with the terms of a permit to be granted to the property owner of abutting real property or his or her authorized agent by resolution of the City Council. A separate permit must be obtained for each separate installation of a major encroachment.

A permit to install a major encroachment shall contain, in addition to the requirements therefor contained in this title, such additional requirements as, in the judgment of the City Council, the location and nature of the proposed major encroachment shall require for public health, safety and appearance.

#### **12.08.050 - Permit requirements for minor encroachments.**

No minor encroachments shall be allowed in the dedicated public right-of-way except in compliance with the terms of a permit to be granted to the permittee by the Director of Planning and Building. The permittee shall be the property owner of abutting real property or his or her authorized agent, or an applicant that has submitted an appropriate performance bond in an amount determined by the Director of Planning and Building.

In addition to the requirements contained in this title, a permit to install a minor encroachment shall contain requirements pertaining to the location and nature of the proposed minor encroachment if, in the judgement of the Director of Planning and Building, additional requirements are necessary for public health, safety or appearance.

When the minor encroachment permit is not linked to abutting real property by county recordation, and if, as determined by the Director of Planning and Building, said encroachment or the removal of said encroachment may require the restoration of public improvements, the applicant shall submit a performance bond subject to the approval of and in an amount determined by the Director of Planning and Building. The performance



bond shall remain in effect for the life of the encroachment and until all permit conditions have been performed to the full satisfaction of the city.

#### **12.08.060 - Permit requirements for short term encroachments.**

No short term encroachment shall be allowed in the dedicated public right-of-way except in compliance with the terms of a permit to be granted by the Chief of Police. A separate permit must be obtained for each separate event to be held on public right-of-way and shall remain in force for a maximum period of three days unless permission to encroach for a longer period is granted by resolution of the City Council.

A necessary condition of granting a short term encroachment permit is that the applicant must be sponsored by or represent a local merchant association or community organization, except that in residential areas an applicant may be granted a short term encroachment permit to hold a block party when he or she represents a majority of residents on the concerned block. Any such merchant association, community organization or group of residents may semiannually sponsor only one application for short term encroachment. In commercial or industrially zoned areas the majority of the tenants must support the proposed encroachment.

A permit for short term encroachment shall contain, in addition to the requirements therefor contained in this title, such additional requirements as, in the judgment of the Chief of Police, the proposed short term encroachment shall require for public health and safety.

Upon approval of an application for a short term encroachment permit, the Chief of Police shall provide the applicant with a statement of the estimated cost of providing police officers for pedestrian and traffic control at the location described in the application. The applicant/sponsor shall be required to prepay the traffic control fees prior to the issuance of a short term encroachment permit. Traffic control includes clearing the encroachment site of unauthorized vehicles, diversion of traffic around the encroachment area, and directing pedestrian and vehicular traffic at the encroachment location.

The police personnel costs shall be computed by determining the number of police officers who will be required beyond that which would otherwise be needed at that time multiplied by the number of hours for which such additional service is rendered at the rate of the city's full overtime cost of providing officers on an hourly basis as established by the city's master fee schedule.

If the actual cost for police personnel on the dates of the encroachment are less than the estimated cost paid by the applicant/sponsor, the applicant/sponsor will be refunded the difference by the city from the general fund. If more police hours are required than originally charged, the applicant/sponsor will be billed the additional costs.

## **12.08.070 - Permit procedure for major encroachment.**

A separate application must be filed by the property owner or his or her authorized agent for each permit for a major encroachment. Application for a permit to install a major encroachment shall be filed in the office of the Director of Public Works. After filing of the application, the Director of Public Works shall have an investigation made of the site where the proposed encroachment would be installed. The application must be accompanied by a sketch or plan showing the dimensions and exact location of the proposed encroachment and its relationship to the remainder of the structure and the street lines. A plan and elevations shall be required in all cases in addition to a brief written description of the encroachment. Fees shall be in accordance with the master fee schedule.

The Director of Public Works shall refer each application for a major encroachment permit to the Director of City Planning for review and comment. If response or statement of delay is not received by the Director of Public Works within thirty (30) days, the approval of the Director of City Planning shall be assumed.

When such application for a major encroachment permit and the details shown upon the accompanying sketch or plan have been reviewed by the Director of City Planning and comply with the terms of this title and any further requirements set by the Director of Public Works, the Director of Public Works shall recommend approval of the application.

If the Director of Public Works does not recommend approval of the application, the applicant may appeal the decision of the Director of Public Works to the City Council. Such appeal shall be made on a form prescribed by the Office of the City Clerk. The appeal shall be filed with such office within thirty (30) days of the rejection of the application.

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Public Works or wherein the decision for denial of application is not supported by evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Office of the City Clerk shall within thirty (30) days set a time for hearing such appeal. The City Council at such time shall consider the merits of the appeal and render a decision within sixty (60) days from the close of the hearing unless a continuance is agreed to by all affected parties.

The City Council by resolution, if it determines to authorize a major encroachment permit, shall prescribe special conditions for granting a conditional revocable permit in compliance with the terms of this title and such other conditions as may be prescribed by the City Council for public health, safety and appearance. Such resolution constitutes a conditional revocable permit for encroachment which shall take effect when all other conditions set forth therein shall have been complied with, and such permit shall remain in effect as long as the permittee complies with all conditions established for the granting of such permit. The permit shall become null and void upon the failure of the permittee to comply with any conditions established for the granting of such permit or upon a termination by resolution of the City Council as being in the city's best interest.

**12.08.080 - Permit procedure for minor encroachment.**

A separate application must be filed for each permit for a minor encroachment. Application for a permit to install a minor encroachment shall be filed in the office of the Director of Public Works unless the encroachment is twelve ("12") feet or more above grade. The Director of Planning and Building shall have the sole and exclusive authority over minor encroachments twelve ("12") feet or more above grade and shall be precluded from delegating or transferring such authority to other City Departments. Only the City Council shall have the ability to add or change what City Departments are authorized or required to review, approve or issue minor encroachment permits. After filing of the application, the Director of Public Works shall have an investigation made of the site where the proposed encroachment would be installed. Such application shall be accompanied by a sketch or plan showing the dimensions and exact location of the proposed encroachment and its relationship to any structure, and/or the sidewalk area. A plan and elevations shall be required in all cases-in addition to a brief written description of the encroachment. Fees shall be in accordance with the master fee schedule.

Any applications that are part of a project reviewed and approved by the Planning Department or Planning Commission shall be evaluated only for consistency with the plans previously reviewed and approved. The Director of Public Works shall refer each application all other applications for a minor encroachment permit to the Director of City Planning for review and comment. If response or statement of delay is not received by the Director of Public Works within seven days, the approval of the Director of City Planning shall be assumed.

When such application for a minor encroachment permit and the details shown upon the accompanying sketch or plan have been reviewed by the Director of City Planning and comply with the terms of this title, and any further requirements set by the Director of Public Works for public health, safety and appearance, the Director of Public works shall approve the application. Such approval constitutes granting of a conditional revocable permit for minor encroachment and such permit shall remain in effect as long as the permittee complies with all conditions established for the granting of such permit. The permit shall become null and void upon the failure of the permittee to comply with any conditions established for the granting of such permit or upon termination by written notification from the Director of Public works as being in the city's best interest.

**12.08.090 - Permit procedure for short term encroachment.**

A separate application must be filed for each permit for short term encroachment. Application for a permit for short term encroachment shall be filed in the Office of the Chief of Police. After filing of the application, the Chief of Police shall consider the advisability of issuing a short term encroachment permit. Fees shall be in accordance with the master fee schedule.

When an application for a short term encroachment permit complies with the provisions of this title and any further requirements set by the Chief of Police for public health and safety, the Chief of Police shall approve the application. Such approval constitutes granting of a conditional revocable permit. A permit for short term encroachment shall become null and void upon the failure of the permittee to comply with any condition established for the granting of such permit.

**12.08.100 - Extent of encroachment.**

No major or minor encroachment into the public right-of-way may be granted unless a minimum clear space of five and one-half feet at grade remains open for public use in the sidewalk area. Such encroachment shall not materially interfere with public use of the sidewalk or endanger the public welfare and convenience during said public use. For the purposes of determining the minimum clear space, poles, street light standards, traffic signal standards, parking meters, fire hydrants, official street trees, tree cutouts in the sidewalk, regulatory signs and other such objects (street hardware) may not be considered as part of the minimum horizontal clear space reserved for public use. Flowers may be planted in approved tree cutouts. Encroachments at grade that involve the placement of objects in paving or roadways shall not be considered within the minimum clear space provided they do not obstruct or materially interfere with public use of the public right of way and include clear color distinctions from standard City paving.

Bicycle racks and flagpole sockets may be placed in the area near a curb face if properly located and an encroachment permit is obtained. Phone booths, nonadvertising benches and bus shelters shall be placed in a location acceptable to the Director of Public Works. No other encroachments shall be allowed in any portion of the remaining sidewalk area except in that area adjacent to the building which remains after the minimum public use area and the area containing street hardware have been subtracted. In no event may a minor encroachment extend farther than two feet from the property line into the public right-of-way.

Major encroachments, except for structures below the walkway such as basement vaults and sidewalk elevators, and minor encroachments into the public right-of-way in the sidewalk area shall have a minimum height of twelve (12) inches and no portion shall project beyond the base projection of the encroachment unless at a height of eight feet or more above the sidewalk. There should be clear color differentiation between the sidewalk paving and objects placed or installed in the sidewalk area.

**12.08.110 - Disclaimer and agreement required.**

No major encroachment permit shall take effect until the permittee files a disclaimer and agreement with the city for recordation. The above disclaimer and agreement shall be subject to the approval of the City Attorney and the Director of Public Works.

The disclaimer shall be a statement to the effect that the permittee by the acceptance, either expressed or implied, of the encroachment permit thereby disclaims any right, title or interest in or to the portion of sidewalk or street area designated in the permit, and agrees that said temporary use of designated areas does not constitute an abandonment on the part of the city of any of its rights for street purposes or otherwise.

The agreement shall be a statement that the permittee accepts and shall comply with and be bound by each and all of the terms and conditions for the permit set by this title, the Director of Public Works, the City Manager, and the City Council.

#### **12.08.120 - Liability insurance required.**

No permit for installation of a major or minor encroachment or for undertaking, in commercial or industrially zoned areas, a short term encroachment shall be granted until the applicant therefor has placed on file with the City Clerk a written certificate of insurance or copy of the policy showing that insurance is in effect in compliance with this section. For short term encroachment permits an additional copy shall be submitted to the Office of the Chief of Police. Such insurance shall be issued by a responsible and solvent corporation, authorized to issue insurance policies under the laws of the state of California. The public liability policy or policies shall insure, in addition to the permit applicant, the city, its agents and employees against loss from any liability imposed upon the city, its agents and employees for injury to or death of any person, or damage to property growing out of the installation of any encroachment(s) for which a permit or permits is or are granted under the provisions of this title. The policy or policies shall contain an endorsement declaring the policy or policies as primary coverage on said liabilities. The minimum amounts specified in such public liability policy or policies shall be three hundred thousand dollars (\$300,000.00) for each occurrence for public liability insurance and fifty thousand dollars (\$50,000.00) for each occurrence for property damage insurance. Additional amounts may be required as circumstances warrant, at the sole discretion of the Director of Public Works or the Chief of Police. The policy of insurance shall be maintained in its original amount by the permittee at his or her expense at all times during the period for which the permit is in effect. Said policy shall also state that it shall not be cancelled or amended except upon thirty (30) days' prior written notice thereof to the City Manager.

#### **12.08.130 - Revocation of permit—Notice to remove encroachment.**

Any encroachment permit may be revoked, or renewal denied, if the permittee fails to comply with any of the provisions of this title or any of the special conditions set forth for the granting of such permit, at the discretion of the issuing authority. The issuing authority shall be that of the City Council, the Director of Public Works, or the Chief of Police, depending upon the type of encroachment permit, as stated hereinbefore.

Upon the revocation of any major or minor encroachment permit, it shall be the responsibility of the Director of Public Works to require the permittee at his or her sole expense to immediately remove the encroachment from the sidewalk or street area and to repair any damage resulting therefrom to the satisfaction of the Director of Public Works.

The notice to remove an encroachment shall be given in writing to the owner or his or her authorized agent. It shall be sent to the owner of record and to the permittee if he or she is other than the owner of record of the property fronting on the portion of sidewalk and street containing the encroachment.

**12.08.140 - Unlawful encroachment—Enforcement by citation—Enforcing officers other than Oakland Police.**

- A. No person shall, except in compliance with the terms of a major, or minor, or a short term encroachment permit issued according to the provisions of this title, encroach upon or into the public street or sidewalk area in the city in a manner or manners for which such permit or permits would be needed.
- B. No persons holding such encroachment permit shall, upon the revocation or denial of renewal of the permit, fail to remove said encroachment at his or her sole expense within the time period specified by notice or, for major and minor encroachments, by the third day prior to insurance lapse, whichever is the lesser. The normally specified period for removal of an encroachment shall be thirty (30) days for major encroachments, fourteen (14) days for minor encroachments, and one day for short term encroachments except as noted above. Further, the permittee shall repair at his or her sole expense any damage to sidewalk or street area resulting from the existence of said encroachment within the time period mentioned above.
- C. It shall be a separate violation of this title for each day that the holder of an encroachment permit fails to remove an encroachment within the time period specified by notice, or for major and minor encroachments by the third day prior to insurance lapse. It shall also be a violation of this title for any person to otherwise encroach unlawfully upon or into the public right-of-way.
- D. Any encroachment permit holder or owner of property abutting an encroachment who is informed in writing by the City Manager, his or her authorized delegate or those employees authorized to enforce this chapter of an unlawful encroachment shall have twenty-four (24) hours after the time of receipt of such notice to remove the encroachment at his or her sole expense. Notice may be given by mail or personal service. In the event the person so notified fails to accomplish such removal or removes said encroachment but fails to restore the public street or sidewalk to the satisfaction of the Director of Public Works, the Director of Public Works shall order city forces to remove said encroachment and/or restore the public area and shall charge all costs incurred by the city for such removal and/or restoration plus twenty (20) percent to the permittee or owner of record. A bill for such costs shall be presented to the owner of record of the property fronting on the portion of sidewalk

and street containing the encroachment. In the event that the encroachment has created a condition dangerous to the public requiring immediate removal, the Director of Public Works may immediately remove such encroachment, restore the public street or sidewalk and bill the permittee or owner of record as set forth above. The Director of Public Works shall forthwith inform the permittee or owner of record of said condition, work done and costs thereof.

- E. Any person violating any of the provisions of this section shall be deemed guilty of an infraction.
- F. Pursuant to Section 836.5 of the California Penal Code, the supervisory and field personnel of the Office of Public Works assigned to sidewalk inspection work and Office of Community Development, Housing Conservation, Supervising Housing Representatives are authorized to enforce this chapter and arrest violators thereof.
- G. The Director of Planning and Building shall be authorized to file a lien with the County Recorder against the property owner responsible for the illegal encroachment, to recover all costs expended by the city as described in subsection D of this section. Where a bond has been required, the Director of Planning and Building shall be authorized to exercise the city's rights under the bond to obtain compliance with the conditions of the permit and/or to recover all costs to the city in removing an illegal encroachment and restoring the public right-of-way.

#### **12.08.150 - Exceptions.**

The requirements for encroachment permits set forth in this title do not apply to certain types of sidewalk benches, covered in Chapter 12.52; to newspaper and periodical racks, covered in Section 12.04.080; to existing fences or walls at the back line of sidewalks on improved streets; or to Food Vending Facilities, covered in Chapter 5.51, as amended.

#### **12.08.160 - Encroachments on unimproved residential streets.**

The requirement for a major or minor encroachment permit to be obtained before encroachment is allowed, as set forth elsewhere in this title, shall not apply in areas with unimproved streets where zoning regulations restrict development to single-family dwellings. In such areas a waiver of damages and indemnity agreement must be executed between the property owner and the city before installation of an encroachment in the public right-of-way.

#### **12.08.170 - Encroachments on improved residential streets.**

Where zoning regulations restrict development to single-family dwellings a major or minor encroachment permit grants permission to abutting property owners to encroach upon a portion of the public right-of-way in areas with improved streets. In such areas a major or minor encroachment permit shall be obtained before encroachment is allowed

in that portion of the public area lying between the curbline and either the back line of existing concrete sidewalk or a line on the private property side of the curbline lying six feet distant from the curbline. Encroachment proposed in any remaining portion of the public right-of-way lying between the limits just described and the private property line will also require a waiver of damages and indemnity agreement.

#### **12.08.180 - Application procedure for waiver of damages and indemnity agreement.**

A waiver of damages and indemnity agreement shall be obtained before installation of encroachments on unimproved streets and before installation of encroachments on improved streets, in that area described in Section 12.08.170. Application for each such waiver shall be filed in the Office of the Director of Public Works. After filing of an application, the Director of Public Works shall have an investigation made of the site where the proposed encroachment would be installed. Fees shall be in accordance with the master fee schedule.

The Director of Public Works shall refer each application for a waiver of damages and indemnity agreement to the Director of City Planning for review and comments. If response or statement of delay is not received by the Director of Public Works within seven days, the approval of the Director of City Planning shall be assumed.

The Director of Public Works, after determining that such an encroachment will not interfere with present or immediately foreseeable public use of the area, shall cause the waiver of damages and indemnity agreement to be executed. A standard form, containing the necessary conditions of such agreement, shall be used. Execution of said agreement requires: (A) the signatures of the owner or authorized agent who is the applicant and the Director of Public Works or his or her authorized representative; (B) the notarization of said agreement; and (C) the recordation by the city of said instrument in the Office of the Recorder of Alameda County, California.

The Director of Public Works, upon establishment of the need for public use of the area affected by the encroachment, shall cause a resolution to be prepared to rescind the waiver of damages and indemnity agreement for said encroachment. When such resolution is passed by the Council of the city and filed with the Office of the Recorder of Alameda County, California, the waiver of damages and indemnity agreement for said encroachment shall be terminated and cancelled.

#### **12.08.190 - Appeals.**

An applicant shall have the right of appeal in cases where an application for a minor or short term encroachment is denied by the issuing authority. Any such administrative determination or interpretation denying application which is made by the Director of Public



works, for minor encroachments, or the Chief of Police, for short term encroachments, may be appealed to the City Administrator Manager. Such appeal shall be made on a form prescribed by the Office of the City Administrator Manager and shall be filed with such Office.

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Public works or the Chief of Police or wherein the decision for denial of application is not supported by evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Office of the City Administrator Manager shall set a time for hearing such appeal, and at such time shall consider the merits of the appeal.

#### **12.08.200 - Permit to obstruct streets—Limits of encroachment—Warning devices.**

No person, firm or corporation shall place, or cause to be placed, on any public street, or any portion thereof, in the city, any materials or appliances for use in the construction, alteration or repair of any building, or for any other purpose necessitating temporary occupancy of any portion of the public streets, without first obtaining a permit therefor from the Director of Public Works/Superintendent of Streets of said city. Such materials and appliances shall be adequately protected by barricades and flashers, and shall not occupy more than seven feet of the roadway of the street that is immediately adjacent to the curblineline, and not more than one-half of the width of the sidewalk (except where a temporary sidewalk is constructed), and shall be placed thereon under the direction and to the satisfaction of the Director of Public Works/Superintendent of Streets, but in no case shall they be placed or cause to be placed within five feet of a railroad track.

#### **12.08.210 - Portion of street obstructed.**

All materials intended for use in the permitted obstruction of streets shall be confined to and occupy only such portion of the street as the permit may designate, and all sand, dirt and other materials or debris of any kind shall be prevented from being blown or otherwise moved to any other portion of the street. No material of any kind shall be deposited in any gutterway of any street so as in any manner to obstruct the same.

#### **12.08.220 - Responsibility for accidents.**

The permittee shall be responsible for all claims and liabilities arising out of work performed under the permit or arising out of permittee's failure to perform the obligations with respect to street maintenance, warning devices or the use and occupancy of any sidewalk, street or sidewalk places by virtue of the permit. The permittee shall, and by acceptance of the permit agrees to, defend, indemnify, save and hold harmless the city, its officers and employees, from and against any and all suits, claims or actions brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under the permit or in consequence of permittee's failure to perform the obligations with

respect to street maintenance, warning devices or the use and occupancy of any sidewalk, street or sidewalk place by virtue of the permit.

**12.08.230 - Street obstruction guarantee deposits—Metered and unmetered areas.**

The permits required by Section 12.08.200 shall be granted only to the owner or lessee (or agent of either) of the lot upon which a building is proposed to be constructed, altered, or repaired. When an application is made for a permit, the person making such application shall make a deposit with the city for each and every twenty-five (25) feet of the frontage of said lot, or fraction thereof, which is to be occupied in a parking meter district or for each and every fifty (50) feet of lot frontage, or fraction thereof, which is to be occupied in unmetered areas, as the case may be. Said deposit shall guarantee to the city that the permittee will remove or cause to be removed, all dirt, debris and materials of any kind from the street, roadway, or sidewalk area, to the satisfaction of said Director of Public Works/ Superintendent of Streets, and shall reimburse the city for the loss of meter revenue where said obstruction exists in metered areas. Said removal shall be done immediately upon the completion of the construction, alteration or repair of said building, or within the time limit prescribed by said permit. Provided, however, that if at any time prior thereto the Director of Public Works/Superintendent of Streets declares that the public interest or convenience requires the removal of same, or any portion thereof, then said permittee shall promptly remove or cause to be removed said materials from said areas. Every permit granted as in Section 12.08.200 provided and every permit for temporary obstruction, shall be subject to such condition or guarantee.

**12.08.240 - Removal of street obstructions—Metered and unmetered areas.**

The Director of Public Works/Superintendent of Streets shall prescribe in every permit granted for the obstruction of street, roadway or sidewalk areas the time limitation of such occupancy, which shall in no event—exceed twelve (12) months for each permit in unmetered areas, and six months for each permit in metered areas. Upon the failure or neglect of a permittee to remove, or cause to be removed, to the satisfaction of said Director of Public Works/Superintendent of Streets all dirt, debris or materials as aforesaid within three days after being notified to do so by said Director of Public Works/Superintendent of Streets the money so deposited as a guarantee, or so much thereof as may be necessary, shall be used by said Director of Public Works/Superintendent of Streets in the removal of such dirt, debris, or materials.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

### **ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE, CHAPTER 12.08, ENCROACHMENTS, BY TRANSFERRING SOLE PERMIT ISSUANCE FOR MINOR ENCROACHMENTS TO THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND BUILDING FOR ANY ENCROACHMENTS TWELVE (“12”) FEET OR MORE ABOVE GRADE**

The Director of Planning and Building shall have the sole and exclusive authority over minor encroachments twelve (“12”) feet or more above grade and shall be precluded from delegating or transferring such authority to other City Departments. Only the City Council shall have the ability to add or change what City Departments are authorized or required to review, approve or issue minor encroachment permits.