



AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: Josh Rowan
OakDOT Director

SUBJECT: Amendments to OMC Chapter 12.08
– Encroachments

DATE: August 12, 2024

City Administrator Approval


Jestin Johnson (Aug 30, 2024 09:59 PDT)

Date: Aug 30, 2024

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending Chapter 12.08 Of The Oakland Municipal Code To (1) Facilitate Administrative Approval Of Bollards And Other Objects In The Public Right-Of-Way That Are Constructed In Place Or Attached To A Structure In Conformance With The Oakland Building Code, (2) Establish The Role Of The Director Of Transportation In Processing Encroachment Permits, And (3) Remove Binary Gender Designations; And Adopting Appropriate California Environmental Quality Act Findings.

EXECUTIVE SUMMARY

The Oakland Municipal Code (OMC) establishes permit requirements and procedures for encroachments, or projections, into the public right-of-way. The OMC currently classifies projections into the public right-of-way as either major or minor encroachments. Major encroachments are approved by the City Council, while minor encroachments are approved administratively by the Oakland Department of Transportation (OakDOT). This proposed ordinance revises the distinction between major and minor encroachments. After the passage of this proposed ordinance, a major encroachment would be any projection over the limitations of the Oakland Building Code, and a minor encroachment would be any projection within the limitations of the Oakland Building Code, or any projection not attached to a building or structure. This proposed ordinance allows more encroachments to be approved administratively, including bollards, retaining walls, and architectural features like certain oriel windows and cornices. This ordinance also updates references to the Departments administering OMC Section 12.08 and replaces binary gender designations with gender-inclusive and gender-neutral language.

BACKGROUND / LEGISLATIVE HISTORY

The Oakland Municipal Code (OMC) Section 12.08 currently classifies projections in the public right-of-way as either major or minor encroachments. Major encroachments are projections into the public right-of-way attached to a structure or constructed in place, including bollards, kiosks, electric vehicle charging stations, oriel windows, cornices, balconies, retaining walls, and basement vaults. Currently, major encroachments include any architectural projections attached

to a building, regardless of whether those projections are consistent with the Oakland Building Code, which is adopted by the City Council to ensure the safety and habitability of structures within the City of Oakland. Major encroachment permit applications are reviewed by the Department of Transportation (OakDOT) and the Department of Planning and Building, and the City Council authorizes major encroachments by resolution. All major encroachment permits are revocable. Major encroachment permits do not take effect until the applicant files an agreement disclaiming any right, title, or interest in any portion of the right-of-way; submits proof of liability insurance; and agrees to indemnify the city against any suits or claims related to the encroachment.

The OMC currently defines minor encroachments as elements resting on or projecting into the public right-of-way that are not structurally connected, including flowerpots, bike racks, fences, flagpole sockets, and displays of flowers, fruits, and vegetables. Minor encroachment permit applications are reviewed by the OakDOT and Department of Planning and Building and approved administratively by the (OakDOT). Like major encroachment permits, all minor encroachment permits are revocable and do not take effect until the applicant files an agreement disclaiming any right, title, or interest in any portion of the right-of-way; submits proof of liability insurance; and agrees to indemnify the city against any suits or claims related to the encroachment.

ANALYSIS AND POLICY ALTERNATIVES

Approval of this proposed ordinance would facilitate the installation of encroachments consistent with the Oakland Building Code and encroachments disconnected from adjacent buildings. In practice, certain architectural elements and sidewalk amenities could be reviewed and potentially approved administratively. Administrative approval reduces permitting timelines and costs, fosters a more nimble, responsive government, and promotes the Citywide priority of **vibrant, sustainable infrastructure**. For example, security bollards—or durable vertical posts designed to withstand an impact with a moving vehicle—are often installed on the perimeter of buildings and other sensitive infrastructure. Today, security bollards are classified as major encroachments because they are constructed in place. Approval of this proposed ordinance would allow administrative, not legislative, approval of security bollards. Similarly, adoption of this proposed ordinance would allow administrative approval of oriel windows. Oriel windows are bay windows that extend from a building's façade but do not reach the ground floor. Oriel windows are consistent with the Oakland Building Code. Today, OMC Chapter 12.08 names oriel windows as requiring a major encroachment permit. With the passage of this ordinance, approval of architectural element projections consistent with the Oakland Building Code (like oriel windows) and encroachments not attached to a building (like security bollards) would be done administratively, reducing the permitting timeline from over nine months to six weeks. Of the six major encroachment permits authorized by the City Council in the last fiscal year, three would be classified as minor encroachments and approved more quickly and at a lower cost to the applicant, after the adoption of the proposed amendments.

Approval of this proposed ordinance also updates references to the agency responsible for encroachment permitting. Prior to 2015, Oakland Public Works reviewed encroachment permits and approved minor encroachments. Oakland Department of Transportation (OakDOT)

assumed these functions after 2015. This ordinance updates the OMC to align with current practice.

Finally, approval of this ordinance replaces binary gender designations with gender-inclusive and gender-neutral language, replacing references to “him” and “her” with “their.”

Declining to approve this ordinance preserves the current definition of major and minor encroachments, continues to refer encroachment permitting to the Director of Public Works, and preserves binary gender designations.

FISCAL IMPACT

There is no fiscal impact on the City of Oakland associated with this proposed ordinance. Staff costs for processing major and minor encroachments will continue to be covered by fees set by the Master Fee Schedule and paid by the permittee.

PUBLIC OUTREACH / INTEREST

This proposed ordinance responds to community requests to reduce permitting timelines and costs, especially among Oakland business owners. No additional public outreach beyond the ordinance noticing requirements has been conducted.

COORDINATION

The agenda report and proposed ordinance were coordinated with the Department of Planning and Building, Budget Bureau, and Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: Amendments to clarify and simplify the encroachment permitting process reduce permitting costs for applicants and promote community investments in Oakland’s public space, including the installation of security bollards to protect life and property.

Environmental: These amendments streamline permitting certain encroachments, including electric vehicle charging stations, consistent with the Oakland 2030 Equitable Climate Action Plan and Zero Emissions Vehicle Action Plan.

Race & Equity: There are no direct racial equity impacts of these amendments to improve permitting.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)


This action is exempt from the California Environmental Quality Act (CEQA) on a separate and independent basis pursuant to CEQA Guidelines sections 15301 (existing facilities), 15061 (b)(3) (no significant effect on the environment), and 15183 (Projects Consistent with a Community Plan or Zoning).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt An Ordinance Amending Chapter 12.08 Of The Oakland Municipal Code To (1) Facilitate Administrative Approval Of Bollards And Other Objects In The Public Right-Of-Way That Are Constructed In Place Or Attached To A Structure In Conformance With The Oakland Building Code, (2) Establish The Role Of The Director Of Transportation In Processing Encroachment Permits, And (3) Remove Binary Gender Designations; And Adopting Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Emily Ehlers, Division Manager, at 510-238-2259.

Respectfully submitted,


Josh Rowan (Aug 12, 2024 15:24 PDT)

JOSH ROWAN
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Right-of-Way Management Division