


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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

WHEREAS, bollards are durable vertical posts which can be surface-mounted or constructed in place; and

WHEREAS, bollards are often used to protect sensitive infrastructure and are designed to withstand an impact with a moving vehicle; and

WHEREAS, the City of Oakland recognizes the importance of facilitating third-party installation of bollards to protect life and property; and

WHEREAS, Oakland Municipal Code (OMC) Chapter 12.08 currently classifies projections in the public right-of-way as either major or minor encroachments; and

WHEREAS, the OMC defines “major encroachments” as projections in the public right-of-way that are attached to a structure or constructed in place, including bollards, kiosks, electric vehicle charging stations, oriel windows, cornices, balconies, retaining walls, and basement vaults; and

WHEREAS, the OMC 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; and

WHEREAS, all encroachments in the public right-of-way require an approved, revocable encroachment permit; and

WHEREAS, the Oakland City Council is responsible for approving major encroachment permits; and

WHEREAS, the Oakland Department of Transportation (OakDOT) is responsible for approving minor encroachment permits administratively; and

WHEREAS, the Oakland Building Code is adopted by the City Council to ensure the safety and habitability of structures within the City of Oakland; and

WHEREAS, there is a material difference between projections attached to a structure in conformance with the Oakland Building Code and those that do not comply with the Oakland Building Code; and

WHEREAS, encroachments not attached to a building or structure, including constructed in place bollards, can be more easily removed from the public right-of-way without endangering public welfare and convenience than encroachments attached to a building or structure; and

WHEREAS, administrative approval of structural encroachments consistent with the Oakland Building Code and constructed in place encroachments not attached to a building or structure will streamline the permitting and installation of bollards, kiosks, electric vehicle charging stations, and other projections in the public right-of-way consistent with the Oakland Building Code; and

WHEREAS, OakDOT was created in 2015 to manage the right-of-way, enhance safety and access for the traveling public, and advance equity; and

WHEREAS, OakDOT is now the agency responsible for administering OMC Sections 12.08.010, 12.08.011, 12.08.012, 12.08.030, 12.08.050, 12.08.070, 12.08.080, 12.08.100, 12.08.110, 12.08.120, 12.08.130, 12.08.140, 12.08.150, 12.08.180, 12.08.190, 12.08.200, 12.08.230, and 12.08.240; and

WHEREAS, the City Council passed a resolution in 2020 establishing a city policy to use gender-inclusive and gender-neutral language in the drafting of new legislation or revised legislation; 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 are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Amendments to Chapter 12.08 of the Oakland Municipal Code. Oakland Municipal Code (OMC) Chapter 12.08 is hereby amended to read as follows (Additions to OMC Chapter 12.08 are shown as double underline and deletions are shown as ~~strikethrough~~).

12.08.010 – Public telephones and bus shelters.

A. The ~~Director of Public Works~~ Director of Transportation 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~~ Director of Transportation 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~~ Director of Transportation. 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~~ Director of Transportation, in which event the permittee shall at ~~his or her~~ their 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~~ Director of Transportation 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~~ Director of Transportation so as to best serve the public interest.

12.08.012 - Dockless vehicle sharing minor encroachment permits.

Operators of dockless vehicle share systems as defined in ~~Chapter~~ Section 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 ~~Director of Public Works~~ Director of Transportation is authorized to issue minor encroachment permits to a dockless vehicle sharing operator in compliance with the provisions of this title. Such permits shall be required for the dockless vehicle 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 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 vehicle 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 ~~Director of Public Works~~ Director of Transportation prior to and in order to provide a dockless vehicle 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 vehicle share operator to provide a vehicle share system within the City without first obtaining an encroachment permit from the Department of ~~Public Works~~ Transportation.

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 any portion of a building or anything attached to a building or 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, which also includes basement vaults. 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 an encroachment into the public right-of-way ~~resting on or projecting into the sidewalk area, but which that either (1) is not structurally attached to a building or (2) any portion of a building or structure projecting into the public right-of-way in conformance with the Oakland Building Code. Examples of minor encroachments include but are not limited to: such as~~ flowerpots, planter boxes, clocks, flagpole sockets, bus shelters, phone booths, bike racks, fences, nonadvertising benches, curbs around planter areas, oriel windows, utility vaults, utility transformers, bollards, kiosks, electric vehicle charging stations, and 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 or elements specifically prohibited, except by any ordinance or resolution expressly granting sponsorship rights.

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.

12.08.050 - 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~~ Director of Transportation. The permittee shall be the property owner of abutting real property or ~~his or her~~ their authorized agent, or an

applicant that has submitted an appropriate performance bond in an amount determined by the ~~Director of Planning and Building~~ Director of Transportation.

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~~ Director of Transportation, 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~~ Director of Transportation, 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~~ Director of Transportation. 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.

12.08.070 - Permit procedure for major encroachment.

A separate application must be filed by the property owner ~~his or her~~ their 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~~ Transportation. After filing of the application, the Director of ~~Public Works~~ Transportation 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~~ Transportation shall refer each application for a major encroachment permit to the Director of ~~City Planning and Building~~ for review and comment. If response or statement of delay is not received by the Director of ~~Public Works~~ Transportation within thirty (30) days, the approval of the Director of ~~City Planning and Building~~ 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 Building~~ and comply with the terms of this title and any further requirements set by the Director of ~~Public Works~~ Transportation, the Director of ~~Public Works~~ Transportation shall recommend approval of the application.

If the Director of ~~Public Works~~ Transportation does not recommend approval of the application, the applicant may appeal the decision of the Director of ~~Public Works~~ Transportation 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~~ Transportation 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~~ Transportation. After filing of the application, the Director of ~~Public Works~~ Transportation 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.

The Director of ~~Public Works~~ Transportation shall refer each application for a minor encroachment permit to the Director of ~~City Planning & Building~~ for review and comment. If response or statement of delay is not received by the Director of ~~Public Works~~ Transportation within seven days, the approval of the Director of ~~City Planning and Building~~ 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 Building~~ and-comply with the terms of this title and any further

requirements set by the Director of ~~Public Works~~ Transportation for public health, safety and appearance, the Director of ~~Public Works~~ Transportation 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~~ Transportation as being in the city's best interest.

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 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 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. The Director of Transportation may require additional clear space and issue additional administrative rules and regulations to protect the public welfare and use of the sidewalk.

Bicycle racks, wayfinding kiosks, electric vehicle charging stations, and flagpole sockets may be placed in the area near a curb face if properly located and an encroachment permit is obtained. Phone booths, bollards, nonadvertising benches, ~~and~~ bus shelters and other encroachments shall be placed in a location acceptable to the Director of ~~Public Works~~ Transportation. 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~~ Transportation.

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~~ Transportation, the City ~~Manager~~ Administrator, 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 City Administrator or their designee. 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)~~ one million dollars (\$1,000,000.00) for each occurrence, including contractual liability, naming the City of Oakland, its Councilmembers, officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way. ~~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~~ Transportation or the City Administrator, or their designee. The policy of insurance shall be maintained in its original amount by the permittee at ~~his or her~~ their 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 Administrator.

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~~ Transportation, or the City Administrator or their designee, 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~~ Transportation to require the permittee at ~~his or her~~ their 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~~ Transportation.

The notice to remove an encroachment shall be given in writing to the owner or ~~his or her~~ their 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~~ their 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~~ their 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~~ Administrator, ~~his or her~~

their 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~~ their 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~~ Transportation, the Director of ~~Public Works~~ Transportation 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~~ Transportation 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~~ Transportation 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~~ Department of Transportation 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.

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

The Director of ~~Public Works Transportation~~, 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 Transportation~~ or ~~his or her~~ their 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 Transportation~~, 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 Transportation~~, for minor encroachments, or the City Administrator or their designee, for short term encroachments, may be appealed to the Review Committee described under Section 9.52.090. Such appeal shall be made on a form prescribed by the office of the City Administrator 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 Transportation~~ or the City Administrator or their designee 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

Review Committee shall set a time for hearing such appeal, and at such time shall consider the merits of the appeal. The decision of the Review Committee shall be final.

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~~ Transportation. 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~~ Transportation, but in no case shall they be placed or cause to be placed within five feet of a railroad track.

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~~ Transportation, 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~~ Transportation 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~~ Transportation 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~~ Transportation 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~~ Transportation 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~~ Transportation in the removal of such dirt, debris, or materials.

SECTION 3. California Environmental Quality Act (CEQA). The City Council finds and determines that 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).

SECTION 4. Authority. This Ordinance is enacted to serve the public interest and is necessary to protect the health, safety, and/or welfare of the citizens of Oakland, and is enacted pursuant to Article XI, Sections 5 and 7 of the California Constitution, Section 106 of the Oakland City Charter, and the City’s home rule powers.

SECTION 5. 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.

SECTION 6. 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 Section. 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 7. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST:

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3369569v1_mcb