

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2008 DEC 22 AM 11:20

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 16, 2008

RE: A Report And Two Ordinances

- **Amending The Oakland Municipal Code To Add A New Section 12.08.034 Requiring The Licensing of Income-Producing Encroachments In The Public Right-Of-Way, And**
- **Amending Ordinance No. 12880 C.M.S. (Master Fee Schedule) To Add A New License Fee For Income-Producing Encroachments**

SUMMARY

Two ordinances are proposed which will:

- add a new section in the Oakland Municipal Code (OMC) requiring holders of encroachment permits to obtain a license (in addition to a business tax certificate) issued by the City Engineer for income-producing uses and activities within the public right-of-way; and
- provide a licensing exemption for non-profit organizations, telecommunication and newspaper companies, the federal government, state agencies, Alameda County, the Port of Oakland, and the City; and
- add a new annual license fee in the Master Fee Schedule, which will be a percentage of the appraised value of the adjoining property.

Two implementation policies are also proposed which will provide:

- a waiver for existing structural encroachments (balconies, floor space, etc.); and
- a postponement for two years for other existing encroachments (café seating, food booths, etc.).

The license program will be administered by Community and Economic Development Agency's (CEDA) Building Services division, and the license fee will be determined by CEDA's Real Estate division. The license fee will be allocated to offset CEDA's administration costs (16% of the fee) and supplement the General Purpose Fund (84% of the fee). Existing right-of-way permitting programs would not be impacted (pushcart food vending, etc.).

FISCAL IMPACT

CEDA's administration of the licensing program will not require a supplemental appropriation. CEDA's Real Estate Division and Building Services Division will cover the costs of

Item: _____
Public Works Committee
January 13, 2009

administering the licensing program with an allocation of 8% of the proposed licensing fee set by the Master Fee Schedule for each division (16% total). The remainder of the revenue from the proposed new license fee (84% total) will be deposited in the General Purpose Fund 1010. CEDA's Building Services Division will deposit its revenue in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

BACKGROUND

On June 10, 2008, staff presented an information report to the Public Works Committee which discussed options for establishing a licensing program where the City would collect an annual fee from property owners and businesses who hold encroachment permits for income-producing uses and activities in the public right-of-way. The committee members requested that staff return with legislation to implement such a program.

KEY ISSUES AND IMPACTS

General

An encroachment license will be a supplemental component of an encroachment permit, which grants occupancy of the public right-of-way. An encroachment license will impose an annual fee on for-profit uses and activities within the encroachment area. Not-for-profit organizations (eleemosynary), the federal government, state agencies, Alameda County, the Port of Oakland, and the City will be exempted. Examples of encroachments permits which will and will not require licenses are presented below:

R.O.W. ENCROACHMENT		ADJOINING BUILDING OCCUPANCY	LICENSE REQUIRED
PERMIT	COUNCIL APPROVAL		
Basement (leased storage/ parking, etc.)	Yes	Commercial	Yes
		Apartment	Yes
		Condominium	No
Floor space (above the sidewalk)	Yes	Commercial	Yes
		Apartment	Yes
		Condominium	No
Farmers market	Yes	All	No
Transformer vault	Yes	All	No
Balcony (above the sidewalk)	No	Commercial	Yes
		Apartment	Yes
		Condominium	No

License Fee

A license fee will be determined from several components:

- appraised value of the adjoining property
- location (overhead, underground, surface)
- market rate-of-return for the commercial use
- square footage (“footprint”) of the income-producing area

The permit holder will pay a “one-time” fee to cover the costs for CEDA’s Real Estate division to determine the appraisal and rate-of-return. CEDA’s Building Services division will in turn process the license and collect the fee. Real Estate will retain eight percent (8%) and Building Services will retain an additional eight percent (8%) of the license fee to cover staff costs, which is similar to the three percent (3%) retention Building Services applies to the development impact fee it collects for the Oakland Unified School District. The remainder of the fee will be deposited in the General Purpose Fund. An example of a fee calculation for an encroachment license is presented below:

ENCROACHMENT USE/ ACTIVITY	CEDA PROCESSORS	LICENSE FEE COMPONENTS	LICENSE FEE CALCULATIONS	LICENSE FEE ALLOCATION		
				Fund 1010	Real Estate	Bldg Services
Apartment balcony (15 total)	Real Estate	Appraisal	\$ 50 per sq. ft.			
	Real Estate	Rate-of-return	10%			
	Building Services	Footprint	15 x 50 sq. ft.			
	Building Services	Location	40%			
annual license fee			\$1,448	\$1,202	\$123	\$123

A licensee will have the opportunity to employ an approved private appraiser (cost = \$2,000+) to substantiate the appraised value determined by CEDA Real Estate.

Retroactivity

The ordinance will not apply to existing right-of-way permitting programs (pushcart food vendor, etc.). The ordinance will apply to future encroachment permits which meet the ordinance’s criteria. For existing encroachments, two (2) implementation policies are proposed which will ameliorate the impact on permit holders:

- a waiver for structural attachments to a building (balconies, floor space, etc.) for so long as the existing encroachment remains substantially modified; and

- a two (2) year postponement for other encroachments (café seating, food booths, etc.).

Establishing a waiver for existing structural encroachments would provide a “safe harbor” for owners who did not have the option of redesigning the building during the original permitting process in order to avoid a license and annual fee which was not known (or contemplated) at that time. Providing a two (2) year “moratorium” for implementing the license program on other existing encroachments will allow owners and business operators reasonable time to adjust their activities either by relinquishing their permit or incorporating the new fee into their sales structure.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed ordinances will provide supplemental revenue for the General Purpose Fund.

Environmental: The proposed ordinances will provide supplemental revenue which may be appropriated for environmental purposes.

Social Equity: The proposed ordinances will provide supplemental revenue which may be appropriated for social equity purposes.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed ordinances will not directly impact access for disabled or senior citizens.

RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council for adoption of the proposed ordinances.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed two (2) ordinances:

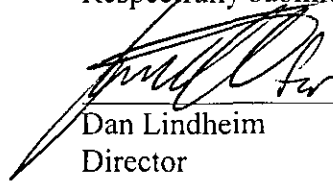
- adding a new section in the Oakland Municipal Code (OMC) requiring an encroachment license for income-producing uses and activities within the right-of-way, and
- adding a new annual license fee in the Master Fee Schedule; and

adopt the proposed two (2) implementation policies:

- waiving the licensing requirement for existing structural encroachments; and

- postponing the licensing requirement for two (2) years for existing non-structural encroachments.

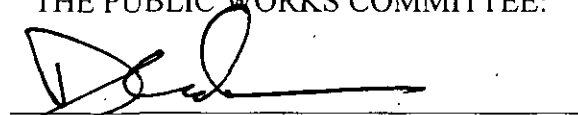
Respectfully submitted,



Dan Lindheim
Director
Community and Economic Development Agency

Prepared by:
Raymond M. Derania
Interim City Engineer
Building Services Division

APPROVED AND FORWARDED TO THE
THE PUBLIC WORKS COMMITTEE:


Office of the City Administrator

Introduced by

Councilmember

DRAFT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
Approved for Form and Legality
2008 DEC 22 AM 11:20

City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD
A NEW SECTION 12.08.034 REQUIRING THE LICENSING OF INCOME-
PRODUCING ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, pursuant to the California Streets and Highways section 1460 et seq. and the City of Oakland Municipal Code Chapter 12.08, property owners and businesses are required to obtain permits for short-term obstructions on and long-term encroachments below, on, and over the public right-of-way; and

WHEREAS, applicants for said obstructions and encroachments are assessed one-time fees as established in the Master Fee Schedule to compensate the City for the costs of processing applications and issuing permits; and

WHEREAS, said holders of said permits are not currently assessed continuing fees during the time that said permits remain valid; and

WHEREAS, issuance of said permits is a discretionary action by the Council or the City Engineer of the City of Oakland; and

WHEREAS, said permits, when issued, are conditioned and revocable; and

WHEREAS, said conditions include indemnifications for the City for the physical occupancy of the public right-of-way and limitations on physical changes to the encroachment and the public right-of-way and requirements for continuing maintenance; and

WHEREAS, certain of the uses and activities conducted by permit holders within the defined areas of their permitted obstructions and encroachments historically have provided them rental or capital gains income; and

WHEREAS, said conditions of these permits do not include fee entitlements associated with revenues derived from said income-producing uses or activities; and

WHEREAS, the City of Oakland is entitled to assess and collect supplemental fees from permit holders who conduct, perform, or control activities in the public right-of-way which are capable of producing income; and

WHEREAS, said supplemental fees should be distinguishable by calculation and rationale from an existing City program that taxes the gross receipts of sales transactions through the annual issuance of business tax certificates; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) this project is categorically exempted; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1.

- A. The Council of the City of Oakland finds and determines that the foregoing recitals are true and correct and hereby incorporates them as part of this ordinance.
- B. The Council of the City of Oakland further finds and determines that the adoption of an ordinance requiring the licensing of income producing activities for encroachments within the public right-of-way complies with the California Environmental Quality Act.

Section 2. A new Section 12.08.034, entitled Public Right-Of-Way Encroachments - Licensing, is hereby added to Title 12 – Streets, Sidewalks, and Public Place in the Municipal Code of the City of Oakland as follows:

12.08.034 Public Right-Of-Way Encroachments - Licensing

All holders of encroachment permits shall also obtain and maintain a valid Encroachment License to conduct, perform, or control activities capable of producing income, either in the form of capital gains or rental income, within the limits of the encroachment for each non-contiguous location at which that activity occurs. Fees shall be assessed as established in the Master Fee Schedule and shall be paid with the submittal of an application for the license and not less than annually thereafter.

Nothing in this section shall be construed to grant any person or entity obtaining and maintaining an Encroachment License any status or right other than the right identified on the face of the license nor shall it be construed to render inapplicable, supersede, or apply in lieu of, any other provision of any applicable federal or state statute or regulation or any County or City ordinance or code.

This section shall not apply to holders of encroachment permits who meet the criteria set forth in section 501(c)(3) of the Internal Revenue Code, nor to the government of the United States, the State of California, the County of Alameda, the City of Oakland, and the Port of Oakland, nor to any of their respective agencies or political subdivisions.

Section 3. Applicability

- A. Construction and Separability

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

C. Effective Date

Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

Introduced by

DRAFT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
City and County of Oakland and Legality

2008 DEC 22 AM 11:20
City Attorney

Councilmember

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE 12880 C.M.S. (MASTER FEE SCHEDULE) TO ADD A NEW FEE FOR LICENSING INCOME-PRODUCING ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY

WHEREAS, pursuant to the California Streets and Highways section 1460 et seq. and the City of Oakland Municipal Code Chapter 12.08, property owners and businesses are required to obtain permits for short-term obstructions on and long-term encroachments below, on, and over the public right-of-way; and

WHEREAS, applicants for said obstructions and encroachments are assessed one-time fees as established in the Master Fee Schedule to compensate the City for the costs of processing applications and issuing permits; and

WHEREAS, said holders of said permits are not currently assessed continuing fees for services during the time that said permits remain valid; and

WHEREAS, issuance of said permits is a discretionary action by the Council or the City Engineer of the City of Oakland; and

WHEREAS, said permits, when issued, are conditioned and revocable; and

WHEREAS, said conditions include indemnifications for the City for the physical occupancy of the public right-of-way and limitations on physical changes to the encroachment and the public right-of-way and requirements for continuing maintenance; and

WHEREAS, certain of the uses and activities conducted by permit holders within the defined areas of their permitted obstructions and encroachments historically have provided them rental or capital gains income; and

WHEREAS, said conditions of these permits do not include fee entitlements associated with revenues derived from said income-producing uses or activities; and

WHEREAS, the City of Oakland is entitled to assess and collect supplemental fees from permit holders who conduct, perform, or control activities in the public right-of-way which are capable of producing income; and

WHEREAS, said supplemental fees should be distinguishable by calculation and rationale from an existing City program that taxes the gross receipts of sales transactions through the annual issuance of business tax certificates; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) this project is categorically exempted; now, therefore,

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- B. The Council of the City of Oakland further finds and determines that the adoption of an ordinance requiring the licensing of income producing activities for encroachments within the public right-of-way complies with the California Environmental Quality Act.

Section 2. Master Fee Schedule

Ordinance 12880 C.M.S., know as the Master Fee Schedule of the City of Oakland, is hereby amended to establish new fees in the amounts set forth below for licensing income-producing uses and activities within the public right-of-way. Said fees may be increased, decreased, otherwise modified, or deleted by subsequent ordinance amending the Master Fee Schedule. Such amendments by ordinance of the Master Fee Schedule shall not also require amendments to this ordinance.

COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY

ENGINEERING

FEE DESCRIPTION **AMOUNT** **UNIT**

E. REVIEW AS REQUIRED BY THE OAKLAND MUNICIPAL CODE FOR ISSUANCE OF A PERMIT AND LICENSE FOR AN ENCROACHMENT WITHIN THE PUBLIC RIGHT OF WAY

1	Minor Encroachment Permit		
a.	New and legal non-conforming encroachment	818.00	Permit
b.	Legalizing illegal encroachment	1,573.00	Permit
c.	Private party bike rack installation, in accordance with City design process	35.00	Permit
d.	R3 occupancy	491.00	Permit
2	Major Encroachment Permit	1,380.00	Permit
3	Rescission to Encroachment	247.00	Rescission
4	Amendment to Existing Encroachment Permit	247.00	Amendment
5	<u>License for Income Producing Use of the Public Right-Of-Way</u>		

a. <u>annual fee</u>	<u>income producing area of the encroachment</u> x <u>appraised valuation of the adjoining property</u> x <u>percentage of rights-conveyed</u> x <u>annual rate-of-return</u>	<u>License</u>
b. <u>appraisal</u>	8% of annual fee or <u>Third-Party Actual Cost</u> 123.00 minimum	<u>License</u>
c. <u>processing</u>	8% of annual fee 123.00 minimum	<u>License</u>

Page N-5

Section 3. Applicability

A. Construction and Separability

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

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C. Effective Date

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IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

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

**AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD
A NEW SECTION 12.08.034 REQUIRING THE LICENSING OF INCOME-
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**AN ORDINANCE AMENDING ORDINANCE 12880 C.M.S. (MASTER FEE
SCHEDULE) TO ADD A NEW FEE FOR LICENSING INCOME-PRODUCING
ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY**

These ordinances would establish a new licensing program where the City would collect an annual fee from property owners and businesses who hold encroachment permits for for-profit uses and activities within the area of the encroachment. Not-for-profit organizations, the federal government, state agencies, Alameda County, the Port of Oakland, and the City will be exempted.