

ORDINANCE NO. 3508

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CERTAIN SECTIONS OF CHAPTER 12.28 OF THE CHULA VISTA MUNICIPAL CODE TO STREAMLINE THE CITY'S PERMIT PROCESSES FOR CERTAIN ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY

WHEREAS, Chula Vista Municipal Code Chapter 12.28—Streets and Sidewalks contains regulations for encroachments of structures, facilities, and improvements within the public right-of-way; and

WHEREAS, existing Chula Vista Municipal Code Section 12.28.030—Improvements not requiring Council authorization—Temporary encroachments, allows for the Director of Public Works and City Engineer to approve only a limited number of encroachments into the public right-of-way; and

WHEREAS, to streamline the approval process for certain encroachments, this ordinance delineates which significant encroachments require City Council approval, and which encroachments are authorized to be approved by the City Engineer or Director of Public Works; and

WHEREAS, this ordinance also clarifies the requirements for encroachment maintenance and removal agreements and updates outdated insurance and indemnity requirements for encroachments within the public right-of-way.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

Section I. That the List of Sections for Chapter 12.28 of Chula Vista Municipal Code is amended to read as follows:

**Chapter 12.28
ENCROACHMENTS**

Sections:	
12.28.010	Purpose and intent of provisions.
12.28.020	Council authorization required when – Procedure.
12.28.030	Improvements not requiring Council authorization.
12.28.040	Installations exempt from fee requirements.
12.28.041	Installations exempt from permit requirements.
12.28.050	Maintenance and removal agreement – Required when – Contents.
12.28.060	Fees – Payment required when – Schedule – Exemptions.
12.28.070	Refunds of permit fees.
12.28.080	Bond requirements.
12.28.090	Insurance and Indemnity requirements – Exemptions – Liability agreements.

Section II. That Section 12.28.010 of Chula Vista Municipal Code is amended to read as follows:

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12.28.010 Purpose and intent of provisions.

It is the intent of the City Council to authorize the use of, or encroachment into, the public rights-of-way for certain private purposes by property owners in those instances and under such circumstances that said use or encroachment does not interfere with or obstruct the overriding public use for which said rights-of-way have been dedicated. It is the purpose of the Council in adopting this chapter to provide procedures and regulations so that such property owners may make appropriate use of the dedicated public rights-of-way adjacent to or contiguous to their private property. The uses and encroachments permitted by this chapter are in addition to those specifically authorized under California Building Code as adopted by the City, which uses and encroachments are exempt from the provisions of this Chapter.

Except as otherwise provided in this Chapter, it is unlawful for any person to encroach or make or cause to be made any encroachment in the public right-of-way without first obtaining an encroachment permit. No use of any right-of-way or any other interest or property pursuant to this Chapter shall create or vest in a permittee any ownership or other interest in the right-of-way, streets, or other property or interest of the City. Permits issued in accordance with this Chapter may be revoked at any time deemed necessary by the Director of Public Works or City Engineer. In addition to any other remedies available to the City for violations of the Chula Vista Municipal Code (CVMC), any encroachment for which a permit is required and for which no permit has been issued pursuant to this Chapter shall be deemed a public nuisance which may be abated as provided in the CVMC.

Section III. That Section 12.28.020 of Chula Vista Municipal Code is amended to read as follows:

12.28.020 Council authorization required when – Procedure.

Prior to the issuance of an encroachment permit, the following encroachments are required to be approved by the City Council:

- A. Underground structures, facilities, or improvements within the public right-of-way.
- B. Overhead structures, facilities, or improvements within the public right-of-way with a vertical clearance of eight (8) feet or more above grade.
- C. Other encroachments within the public right-of-way which, in the opinion of the Director of Public Works or City Engineer, are of sufficient public interest to require City Council approval.
- D. Other encroachments within the public right-of-way which are not otherwise authorized by this Chapter.

In all cases requiring authorization by resolution of the City Council, the Director of Public Works or City Engineer shall submit the application with his or her recommendation to the City Manager for presentation to the City Council. Upon approval of the City Council, the Director of Public Works or City Engineer shall collect the prescribed fees, ensure execution of all required agreements, and issue the required permit.

Section IV. That Section 12.28.030 of Chula Vista Municipal Code is amended to read as follows:

12.28.030 Improvements not requiring Council authorization.

Unless required to be approved by the City Council pursuant to CVMC section 12.28.020, the Director of Public Works or City Engineer may permit encroachments in the public right-of-way upon submission and approval of an encroachment permit application, execution of an encroachment maintenance and removal agreement as required by CVMC 12.28.050, and payment of all required fees including but not limited to those required by CVMC 12.28.060.

Section V. That Section 12.28.041 of Chula Vista Municipal Code is amended to read as follows:

12.28.041 Installations exempt from permit requirements.

The following structures, facilities, and improvements shall be exempt from the requirements of this Chapter: sidewalk underdrains; irrigation systems that serve a single-family property, are located in the parkway, and are maintained by the fronting property owner; and structures, facilities, or improvements installed by the City.

Section VI. That Section 12.28.050 of Chula Vista Municipal Code is amended to read as follows:

12.28.050 Maintenance and removal agreement – Required when – Contents.

Applications for encroachment permits for any buildings, structures, facilities, or improvements of any nature shall be accompanied by the required application fee(s) in the sum as presently designated, or as may be in the future amended, in the master fee schedule. Encroachment permits will be issued in accordance with the terms of an encroachment maintenance and removal agreement, which shall authorize the construction and use of the building, structure, facility, or improvement and shall be signed by the property owner and properly acknowledged to allow for recordation. The agreement shall be prepared by the City Engineer, approved as to form by the City Attorney, and at a minimum contain the following terms:

A. The encroachment shall be installed and maintained in safe and sanitary condition at the sole cost, risk and responsibility of the owner, who shall agree to indemnify, defend, and hold the City harmless with respect thereto.

B. The agreement is made for the direct benefit of the property owner's land described in the agreement, and the covenants therein shall run with the property, shall constitute an obligation and burden upon the property, and shall be binding upon the assigns and successors of the owners.

C. The encroachment shall be abandoned, removed or relocated by the property owner upon demand in writing by the Director of Public Works or the City Engineer. Upon such demand, the property owner must remove or relocate the encroachment within 30 calendar days after such

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notice or within such longer period as may be provided specifically within the demand or agreement in the instance of buildings or structures which would require a longer period to effectuate such removal or relocation. If the property owner fails to remove or relocate the encroachment within the period allotted, the City Engineer may cause such work to be done and the cost thereof shall be imposed as a lien upon the property as provided in CVMC 12.12.110, relating to removal of unauthorized obstructions in the public rights-of-way.

D. The encroachment maintenance and removal agreement shall be recorded in the office of the county recorder of San Diego County; provided, however, that the agreement encompassing encroachments authorized by the City Engineer pursuant to CVMC 12.28.030 and 12.28.040 need not be recorded.

Section VII. That Section 12.28.060 of Chula Vista Municipal Code is amended to read as follows:

12.28.060 Fees – Payment required when – Schedule – Exemptions.

A. The required fee(s) for engineering and permits required by this section shall be collected by the Director of Public Works or City Engineer. No permit shall be issued and no work in the public rights-of-way shall be permitted until the fees applicable under this section have been received by the Director of Public Works or City Engineer.

B. The state of California, or any of its political subdivisions, or any governmental agency shall file applications for permits and shall be issued permits as required by this section; provided, however, that no fees shall be required when the work is done by persons working directly for the state or agency.

C. A contractor working for the state, or any of its political subdivisions, or any governmental agency shall obtain a permit and pay the required permit fee(s).

Section VIII. That Section 12.28.070 of Chula Vista Municipal Code is amended to read as follows:

12.28.070 Refunds of permit fees.

In the event a permit fee refund is requested by the permittee, and the Director of Public Works or City Engineer has determined that it is in the public interest to allow the permittee to abandon the work, the Director of Public Works or City Engineer shall cancel the permit and refund the unused portion of the fee, but no more than 90 percent of the plan preparation and preliminary survey fee, and 90 percent of the inspection fee, if no work has been done by the Development Services, Public Works, or Engineering Departments.

Section IX. That Section 12.28.080 of Chula Vista Municipal Code is amended to read as follows:

12.28.080 Bond requirements.

Every person constructing buildings or structures as encroachments in the public rights-of-way shall provide a performance bond as required by CVMC 12.20.020 through 12.20.090.

The Director of Public Works or City Engineer may, if approved by the City Attorney, waive the requirement for providing a performance bond, under the provisions of this Chapter if he or she determines doing so would not create a material risk to the City or the public.

Section X. That Section 12.28.090 of Chula Vista Municipal Code is amended to read as follows:

12.28.090 Insurance and Indemnity requirements – Exemptions – Liability agreements.

A. The Director of Public Works or City Engineer may require submission of evidence of liability insurance which has been approved by the City Attorney, executed and delivered by a reliable insurance company authorized to carry on an insurance business in the state, by the terms which said insurance company assumes responsibility for injuries to persons and property on behalf of its policy holder(s) as a result of constructing the work and/or storing materials in the street as set forth in the permit. The insurance, when required, will endorse City as an Additional Insured, and shall be in the following amounts:

1. Five hundred thousand dollars (\$500,000) for property damage;
2. One million dollars (\$1,000,000) for death or injuries to any person/entity in any one occurrence;
3. Two million dollars (\$2,000,000) for death or injuries to two or more parties in any one occurrence.

B. Governmental agencies, including the state of California and its political subdivisions, shall not be required to provide the insurance required by this section, but shall be required to indemnify, defend, and hold the City harmless as provided in CVMC 12.28.090(D).C. Any permittee for whom insurance requirements have been waived shall be required to hold harmless and defend the City, its elective and appointive boards, officers, agents and employees, from any liability for damage or claims for damage for personal injury, including death, as well as from claims which may arise from the permittee, or any subcontractors or agents or employees thereof, in performing under the permit.

D. To the maximum extent allowed by law, the City shall not incur or assume any direct or indirect liability to any permittee or third party as a result of having issued an encroachment permit pursuant to this Chapter, or otherwise approving any encroachment in the public right-of-way. As a condition to the issuance of any encroachment permit, the permittee and its agents, employees, invitees, contractors, and any other persons or entities under permittee's control, shall be liable for and shall indemnify, protect, defend (at permittee's sole cost and expense), and hold harmless the City, and its officers, officials, employees, representatives, and agents from any and all claims, losses, damages, injuries, liabilities, or losses that arise out of, are connected with, or that are in any way related to the City's issuance of an encroachment permit or permittee's use of or encroachment into the public right-of-way.

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Section XI. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section XII. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section XIII. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section XIV. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

[SIGNATURES ON THE FOLLOWING PAGE]

Presented by

Approved as to form by

DocuSigned by:

 2FC55998BD74C4...
 Eric C. Crockett
 Deputy City Manager/Director of Economic
 Development

DocuSigned by:

 CF40650850444BF...
 Glen R. Googins
 City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 27th day of July 2021, by the following vote:

- AYES: Councilmembers: Cardenas, Galvez, and McCann
- NAYS: Councilmembers: None
- ABSENT: Councilmembers: Padilla
- ABSTAIN: Councilmembers: Casillas Salas

DocuSigned by:

 062BFD7C0386456...
 Mary Casillas Salas, Mayor

ATTEST:

DocuSigned by:

 3074D104EAF342E...
 Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO)
 CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3508 had its first reading at a regular meeting held on the 13th day of July 2021, and its second reading and adoption at a regular meeting of said City Council held on the 27th day of July 2021; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

8/5/2021

 Dated

DocuSigned by:

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 Kerry K. Bigelow, MMC, City Clerk