



City of Biggs

Agenda Item Staff Report For the Regular City Council Meeting: November 13, 2012

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

SUBJECT: Consideration of an Ordinance of the City Council of the City of Biggs amending the Biggs Municipal Code regarding Encroachments

Council is being asked to consider the creation of an Encroachment Ordinance.

Recommendation:

Review and give direction on an Encroachment Ordinance, possibly consisting of the review, edit or approval the attached draft example.

Fiscal Impact:

None. No change to existing city practice is being proposed.

Background:

For as long as anyone currently on staff can remember, the City of Biggs has utilized the attached "Application for Encroachment Permit" application and provisions.

The first sentence of the general provisions state "This permit is issued in accordance with City Ordinance". However, staff has not been able to locate the existence of a City of Biggs Encroachment Ordinance which defines the Encroachment Permit process. After that discovery, we reviewed ordinances in other cities, and formulated the attached example that should serve the needs of the City of Biggs.

Encroachment permits serve as a method by which the City makes a reasonable effort to protect public safety and public property, as well as being an important effort to limit liability to the city.

In pursuit of those goals, an Encroachment Permit process represents the City's reasonable effort to ensure that persons doing work on public property are a) qualified; b) insured; c) allows the city to know who is impacting or working on the public property; d) provides the city with an opportunity to inspect the work to ensure that it meets city standards.

Further, if the work in public property contains latent defects or if an injury or damage to the public is related to that work (now or in the future), then the city has a record of those involved in the work and a record of their insurance coverage.

Mark Sorensen, City Administrator

Chapter 9.40 - ENCROACHMENTS

Sections:

- 9.40.010 Permit—Required.
- 9.40.020 Permit—Application— Contents—Approval authority.
- 9.40.025 Permit—Fee.
- 9.40.030 Restrictions on permits.
- 9.40.040 Unauthorized encroachments— Failure to remove—City action.
- 9.40.050 Appeal procedure.
- 9.40.060 Dedication to city.

9.40.010 Permit—Required

No person shall place, construct, deposit, occupy, excavate earth or other material or remove any temporary or fixed object of any kind which is located in, on or above city property, city rights-of-way, or city easements, or otherwise interfere with the convenient use of the same unless and until an encroachment permit has been obtained pursuant to this chapter.

9.40.020 Permit - Application-Contents - Approval Authority

A. Application for a permit to encroach on city-owned or city-controlled property shall be made by and in the name of the owner or of a person lawfully entitled to make application for the permit.

B. The application shall set forth the name and address of the applicant, the nature, and description of the proposed encroachment, the location and description of the city-owned or city-controlled property proposed to be encroached upon, the nature of the applicant's interest in and the location and legal description of the property in connection with which the permit is sought to be obtained, the reasons for the application, such other information, including traffic and pedestrian control plans, plats, and specifications, as may be required by the Public Works Superintendent or Public Works Director. No right, title or interest in any property owned by the city shall vest or accrue by reason of the issuance of such permit or exercise of the privileges given thereby.

C. The application shall be filed with the Public Works Superintendent or Public Works Director. The Public Works Superintendent or Public Works Director is empowered, in the exercise of his direction, to deny or withhold approval of a permit applied for if, in his sound judgment, exercise of the proposed permit would cause public property to be or become in a dangerous or defective condition or unreasonably endanger or interfere with public health, safety, or convenience. The Public Works Superintendent or Public Works Director may approve the application either as submitted, or subject to such terms and conditions as he shall consider necessary for executing the work covered under this encroachment permit.

D. All contractors and sub-contractors must hold a city business license, and must be properly licensed and insured as a contractor.

9.40.025 Permit—Fee

Every applicant for a permit to encroach on city-owned or controlled property shall pay a fee in an amount which may from time to time be set by the city council by resolution.

9.40.030 Restrictions On Permits

If approved, each permit shall be construed as authorizing merely the temporary privilege to encroach to the extent permitted and subject to the conditions therein stated. No permit shall be deemed to transfer any right, title or interest of the city. The city may cancel a permit at any time and thereby terminate encroachment privileges. All such encroachment permits shall be subject to the general provisions attached to the permit. All work performed under the encroachment permit shall be in accordance with the Biggs Public Works Construction Standards and the terms of the permit. All public rights-of-way shall be restored to their original condition upon completion of the work.

9.40.040 Unauthorized Encroachments— Failure To Remove—City Action

A violation of this chapter is a public nuisance. Any building or structure erected, constructed, altered or maintained within the right-of-way of any street or alley or on city-owned easement or property contrary to the provisions of this chapter shall be and the same is declared to be unlawful and a public nuisance.

Failure, neglect or refusal to remove an unauthorized encroachment within five days after notice by the city shall constitute an infraction punishable by a fine as set forth in California Government Code, Section 36900 and, as a cumulative remedy, the city may remove, or cause to be removed, such encroachment and collect the entire cost and expense thereof from the person responsible therefore, or by appropriate action in court may compel removal or abatement of the encroachment and such reasonable attorney fees as may be fixed by the court.

9.40.050 Appeal Procedure

An applicant may appeal a decision or determination of the Public Works Superintendent or Public Works Director to the city council as provided in this section. An appeal must be made in writing not later than ten days from the date of the refusal of the Public Works Superintendent or Public Works Director to issue an encroachment permit, or to the special conditions which are inserted in the encroachment permit which is issued by the city, and shall be filed with the city clerk. The city clerk shall set a date for hearing at a regular or special meeting of the city council not more than thirty days from the date of the filing of the appeal. The hearing before the city council shall be informal and technical rules of evidence shall not apply. At the conclusion of such hearing the city council shall affirm, modify and affirm, or revise the determination or decision of the Public Works Superintendent or Public Works Director. The decision of the city council shall be final and binding on all parties and shall be adopted by resolution.

9.40.060 Dedication to city

All encroachments in the nature of public improvements, including but not limited to sidewalks, curbs, driveways, gutters, and drains, upon satisfactory completion in accordance with the encroachment permit and in accordance with plans and specifications approved by the Public Works Superintendent or Public Works Director, shall be deemed to be dedicated to the city.

CITY OF BIGGS
DEPARTMENT OF PUBLIC WORKS
P.O. BOX 307
BIGGS, CA 95917
Office 530-868-1396
Fax 530-868-5239

APPLICATION FOR ENCROACHMENT PERMIT

Date _____

TO THE DEPARTMENT OF PUBLIC WORKS:

Gentlemen:

The undersigned hereby applies for permission to excavate, construct and/or otherwise encroach on City street right-of-way or easements by performing the following work: (Describe here fully what the applicant proposes to do using the reverse side or extra sheets if necessary).

(Attach detailed plans if available)

APPLICANT SHALL submit with the application for an encroachment permit and acceptable *certificate of insurance naming the City of Biggs, its officers, employees, agents and volunteers as insured on the applicant's homeowner's or commercial insurance policy, whichever shall apply.* Limits of coverage shall be *determined by the City but shall not be less than \$500,000.00 per occurrence for bodily injury and property damage combined.* The City shall be guaranteed at least thirty (30) days written notice of any cancellation or reduction in insurance coverage. Note: Applicant must obtain prior City approval **BEFORE** using other parties pertaining to the encroachment such as contractors, suppliers, etc. A fee (per current fee schedule) must be paid with this application.

On the following streets, located as follows, _____

and agrees to do the work in accordance with the City rules and regulations and subject to your inspection and approval.

Business License No. _____

Print or Type Applicants Name

Signature of Applicant

GENERAL PROVISIONS

DEFINITION: This permit is issued in accordance with City Ordinance. The term encroachment as used in this permit is defined herein as any structure or object of any kind or character which is placed in, under, or over any City property, easement or street. Except as otherwise provided for public agencies and franchise holders, this permit is revocable on five day notice.

ACCEPTANCE OF PROVISIONS: It is understood and agreed by the Permittee that the doing of any work under this permit shall constitute an acceptance of the provisions.

NO PRECEDENT ESTABLISHED: This permit is granted with the understanding that this action is not to be considered as establishing any precedent on the question of the expediency of permitting any certain kind of encroachment to be erected within right-of-way of City streets.

NOTICE PRIOR TO STARTING WORKSITE: Before starting work the Permittee shall notify the Director of Public Works. Such notice shall be given at least three days in advance of the date work is to begin. Unless otherwise specified, all work shall be performed on weekdays and during normal working hours. In event a street closing is provided for, the Director of Public Works shall be notified 24 hours in advance of any such street closing.

KEEP PERMIT ON THE WORK: This permit shall be kept at the site of the work and must be shown to any representative of the Grantor or any law enforcement officer on demand.

PERMITS FROM OTHER AGENCIES: The party or parties to who this permit is issued shall, whenever the same is required by law, secure the written order or consent to any work hereunder from the Public Utilities Commission of the State of California, or any other public board having jurisdiction, and this permit shall be suspended in operation unless and until such order or consent is obtained.

PROTECTION OF TRAFFIC: Adequate provision shall be made for the protection of the traveling public. Barricades shall be placed with amber lights at night, also flag person employed, all as may be required by the Grantor for the particular work in progress.

CLEAN UP RIGHT-OF-WAY: Upon completion of the work, all brush, timber, scraps and material shall be entirely removed and the right-of-way left in as presentable condition as before work started.

CARE OF DRAINAGE: If the work herein contemplated shall interfere with the established drainage, ample provision shall be made by the Permittee to provide for it as may be directed by the Grantor.

MAINTENANCE: The Permittee agrees by the acceptance of this permit to exercise reasonable care to maintain property any encroachment placed by it in City property and to exercise reasonable care in inspecting for and immediately repairing and making good any injury to any portion of City property which occurs as a result of the maintenance of the encroachment or as a result of the work done under this permit, including any and all injury to City property which would not have occurred had such work not been done or such encroachment not placed therein.

PIPES, CONDUITS, ETC.

CROSSING STREETS: Service and other small diameter pipes shall be jacked or otherwise forced underneath pavement without disturbing same. Pavement or roadway shall not be cut unless specifically permitted on the face hereof. Service pipes will not be permitted inside of metal culvert pipes used as drainage structures.

TUNNELING: No tunneling will be permitted except on major work as may be specifically set forth on the face hereof.

TRENCHING: No trenching will be permitted except as may be specifically set forth on the face hereof.

EXCAVATION: Pavement is to be accurately cut with proper tools to the width of the trench. Bracing and shoring are to conform to the "Trench Construction Safety Orders" of the California Division of Industrial Safety. Backhoe outriggers must be padded when used on pavement. All excavation shall be in accordance with the Standard City detail.

BEDDING: All pipe must be bedded in a sandy material to form a continuous support for the full length of the pipe. Bedding material must occupy the full width of the trench from six inches below the pipe to three inches over the pipe.

DEPTH OF PIPES: There shall be a minimum of 30 inches of cover over all pipes or conduits.

BACKFILLING: All backfilling is to be moistened as necessary and thoroughly compacted to required dry density per cubic feet, all in accordance with the Standard City detail. Whenever required by the Grantor, a trench crossing the roadway shall be backfilled with gravel or crushed rock, if required by the Director of Public Works.

SURFACING: After proper backfilling, base and surfacing shall be replaced in kind, and the site restored to its original condition, all in accordance with the Standard City detail and to the satisfaction of the Grantor.

MAINTAIN SURFACE: The Permittee shall maintain the surface over structures placed hereunder as long as necessary.

STANDARDS OF CONSTRUCTION: All work shall conform to recognized standards of construction and the standard plans and specifications of the City of Biggs Materials and workmanship used on construction shall conform to the applicable portions of the latest edition of the Standard Specifications of the State of California, Business and Transportation Agency, Department of Transportation, and the conditions set forth on the permit as approved by the Director of Public Works. All construction operations shall be performed in accordance with the Construction Safety Orders, State of California, Department of Industrial Relations.

SUPERVISION OF GRANTOR: All the work shall be done subject to the approval of, and to the satisfaction of, the Grantor.

FUTURE MOVING OF INSTALLATION: It is understood by the Permittee that whenever construction, reconstruction or maintenance work on the street may require, the installation provided for herein shall, upon request of the Grantor, be removed or revised at the sole expense of the Permittee within five days of such notice.

EXPENSE OF INSPECTION: On work which requires the presence of an employee of the Grantor as inspector, the salary and other incidental expense of such inspection during the work shall be paid by the Permittee upon presentation of a bill therefore.

LIABILITY FOR DAMAGES: The Permittee is responsible for all liability for personal injury or property damage which may arise out of work herein permitted, or which may arise out of failure on the Permittee's part to perform his obligations under the permit in respect to maintenance. In the event any claim of such liability is made against the City of Biggs, or any department, officer, or employee thereof, Permittee shall defend, indemnify and hold them and each of them harmless from such claim. This permit shall not be effective for any purpose unless and until the above-named Permittee files with the Grantor, a surety bond in the form and amount required by said Grantor, unless specifically exempted on the face thereof. The requirement that a bond be filed does not apply in the event the Permittee is a governmental Board which derives its revenue by taxation.

MAKING REPAIRS: If the Grantor shall so elect, repairs shall be made by employees of the grantor and the expenses thereof shall be born by the Permittee. All payments to laborers, inspector, etc., employed by said Grantor for or on account of the work herein contemplated, shall be made by said Permittee forthwith on receipt of written orders, payrolls or vouchers approved by Grantor. Or the Grantor may elect to require a deposit before starting repairs, in an amount sufficient to cover the estimated cost thereof.

The Grantor will give reasonable notice of its election to make such repairs. If the grantor does not so elect, the Permittee shall make such repairs promptly. In every case the Permittee shall be responsible for restoring any portion of the street or roadway which as been excavated or otherwise disturbed to its former condition as nearly as may be possible except where the Grantor elects to make repairs as above provided in this paragraph and except where provision to the contrary is made in the typewritten portion of the permit. If existing improvements are damaged or their operation impaired by this work, they shall be replaced or restored to the satisfaction of the Grantor.

CITY OF BIGGS

DEPARTMENT OF PUBLIC WORKS

ENCROACHMENT PERMITS

SUPPLEMENTAL PROVISIONS

1. No work shall be done on city streets or right-of-ways except during regular City working days and hours.
2. Prior to any concrete work and before any concrete is ordered or mixed, the Grantee shall request an inspection of forms and grades and shall not proceed until all form work is approved by the City.
3. Copies of the Standard Specifications of the Department of Transportation of the State of California are on file in the office of the City Clerk. Said copies are available for inspection or loan. If requested, the City Clerk will furnish copies of selected articles at copy cost.
4. Permittee, if requested by the City, shall furnish relative compaction test results to the City of Biggs. All cost for the relative compaction test shall be assumed by the permittee with no charge to the City. Relative compaction tests shall be performed at locations as designated by the Director of Public Works.
5. Notify the Department of Public Works when project is complete so a final inspection may be scheduled.
6. The Permittee agrees that as a condition of the encroachment permit he will save the City, its officers, agents and employees harmless from all liability in connection with any of the work done under the terms of the encroachment permit and will indemnify the City from all claims for damage to property and/or damage to person arising out of or in any way connected with the work being done under the terms of the permit. That indemnification shall extend to all actions for personal injury or wrongful death, by whomsoever brought, including persons in the employ of the permittee and any agents of permittee, and shall specifically extend to all claims for damage to property, whether real or personal. Permittee undertakes and guarantees to hold harmless and indemnify the City and its officers, agents, and employees against all costs, expenses, losses, or damages, and agrees to protect the City, its officers, agents and employees, and defend all suits or actions of law, or in equity which any be brought against them or any of them individually or otherwise, to recover damages for any loss, injury or claims of whatsoever kind or character occurring, growing out of or arising from any of the work undertaken under the terms of this application and the permit or permits which may be granted in response hereto.

CITY OF BIGGS
DEPARTMENT OF PUBLIC WORKS
ENCROACHMENT PERMIT

TO

_____, Permittee
(Insert name and address here)

In compliance with your request of _____, 20__ and subject to all the terms, conditions and restrictions written below or printed as General Provisions and Specific Provisions on any part of this form and/or attached here to

PERMISSION IS HEREBY GRANTED TO

This permit is to be strictly construed and no work other than that specifically mentioned above is authorized hereby.

This permit shall be void unless the work herein contemplated shall have been completed before _____ 20__.

DEPARTMENT OF PUBLIC WORKS
CITY OF BIGGS

By _____

_____, Permittee
agrees to terms and conditions of this permit.
(Permit not good until permittee signs and files with City of Biggs.)