City of Biggs

Agenda Item Staff Report
For the Regular City Council Meeting:
August 13, 2013

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.

The primary goal of and reason for Encroachment permits is to 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.

At an earlier meeting, Council expressed a desire for an improved definition of the types of work within City ROW (Right of Way) that would require an Encroachment Permit, to which we added Section 9.40.005 "Definitions" and rewrote Section 9.40.10 "Permit – Required" in an effort to better define applicability.

Council also expressed a desire for additional administrative oversight to which we added section 9.40.050.A to define an abbreviated administrative review process, which can still be appealed to City Council.

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Mark Sorensen, City Administrator

Chapter 9.40 - ENCROACHMENTS

Sections:

9.40.005 Definitions

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.

9.40.005 Definitions.

The following definitions shall govern the construction of the words and phrases used in this chapter:

A. Encroachment. The term "encroachment" shall mean any construction work performed within a public right-of-way or public service easement; any work other than construction work performed within a public right-of-way or public service easement which obstructs the public right-of-way or public service easement or interferes with the use of the public right-of-way or public service easement for its intended purpose; and any structure or object other than a vehicle which is placed or installed within a public right-of-way or within a public service easement in a manner which obstructs the public right-of-way or public service easement, or in a manner which otherwise interferes with the use of the public right-of-way or public service easement for its intended purpose.

B. Excavation. The term "excavation" shall mean the removal of any asphalt, concrete or other surface material covering a public right-of-way or public service easement, and/or the removal of any earth material in or under the public right-of-way or public service easement.

C. Public Right-of-Way. The term "public right-of-way" shall mean any city street, sidewalk, pedestrian path, bike path or any other "public way," as that term is defined in the California Streets and Highways Code.

D. Public Service Easement. The term "public service easement" shall mean any public sewer easement, public storm drain easement, public utility easement or other "public service easement," as the term is defined in the California Streets and Highways Code.

9.40.010 Permit—Required

Except as provided in this chapter, it shall be unlawful for any person to encroach upon a public right-of-way or public service easement or make an excavation within public right-of-way or public service easement unless and until a permit for such encroachment or excavation has been approved and issued in the manner provided by 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

A) An applicant may appeal a decision or determination of the Public Works Superintendent or Public Works Director to the City Administrator. 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 Administrator shall administratively review the request within 15 days. At the conclusion of such review the City Administrator shall affirm, modify and affirm, or revise the determination or decision of the Public Works Superintendent or Public Works Director.

B) An applicant may appeal a decision or determination of the Public Works Superintendent or Public Works Director or City Administrator 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 or City Administrator 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.