

ORDINANCE NO. 3060

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, AMENDING CHAPTER 12.20 AND REPEALING CHAPTER 12.24 OF THE WHITTIER MUNICIPAL CODE

WHEREAS, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic or aesthetic considerations;

WHEREAS, Chapter 12.24 shall be repealed in its entirety due to comply with current standards and to update standards for work and improvements within the public rights-of-way;

WHEREAS, the City Council of the City of Whittier finds that public rights of way should remain clear of encroachments except where a valid permit has been issued;

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

WHEREAS, the City Council finds that the publication of the entire text of this ordinance in a newspaper of general circulation would cost significantly more than the cost of publishing other ordinances;

WHEREAS, pursuant to subdivision (c) of Section 36933 of the California Government Code, the City Council may publish a general natural summary of this ordinance in lieu of the entire text; and

WHEREAS, The City Clerk-Treasurer published a summary of this ordinance in the *Whittier Daily News* and posted a certified copy of the full text of this ordinance in the City Clerk-Treasurer's Office at least five (5) days prior to the date of the City Council meeting at which this ordinance was adopted.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The title of Chapter 12.20 - Construction and Repair of Streets and Sidewalks is hereby deleted in its entirety and is replaced as follows:

Chapter 12.20 – Encroachments and Excavations

SECTION 2. The text of Chapter 12.20.010 of the Whittier Municipal Code is hereby amended to include additional wording and the following additional subsections:

- A. No person shall make any excavation or encroach in, lay, construct, reconstruct, remove or repair, place soil or materials, in any improved or unimproved street, alley or other public place in the city, or in, over or through any property or rights-of-way owned by the city, any curb, sidewalk, gutter, driveway, graded and oiled roadway, macadamized roadway, pavement, sanitary sewer, storm drain or culvert without first obtaining a permit in writing so to do from the City Engineer and without first obtaining the lines and grades therefore from the City Engineer. Within a village design district, as established by ordinance of the city, raised landscape planters may be placed or constructed and maintained within a public right-of-way in accordance with the standards established for planters within such districts after first obtaining a permit from the City Engineer.
- C. The City Engineer may designate the time of day or night when work is to be done if in his judgment it is necessary to prevent undue interference with traffic or danger to the safety of persons using the same.
- D. The holder of any permit and any agent, servant or employee working for the permit holder on any excavation and fill shall inform himself and obtain all necessary information as to the existence and location of all underground pipes, lines, manholes, wires, substructures and appurtenances of any utility and the city shall be protected by the permittee against any damage by reason of any excavation or fill. Any damage caused to the underground installations appurtenances or substructures shall be paid for by the permittee. Such repairs as are required shall be made or be caused to be made by the city and billed to the permittee, who shall pay them upon receipt of a statement of the cost of the repair, replacement or reconstruction of the damaged substructures or appurtenances.

E. Encroachments on City Streets

- 1. Whenever street reconstruction or rehabilitation has occurred within the five (5) years after completion or from the recordation of a notice of completion, immediately preceding a permit request, the permittee shall resurface the street within the limits of the longitudinal excavation to the satisfaction of the City Engineer.
- 2. Whenever a street is slurry sealed within the past two (2) years immediately preceding a permit request, the permittee shall resurface the entire street within the limits of the longitudinal excavation to the satisfaction of the City Engineer.

3. The above-noted provisions may be waived by the City Council in cases in which the City Engineer has determined that there are exceptional circumstances warranting such a waiver.

F. It shall be a public nuisance and a violation of the code for any person, as principal, agent, employee, or otherwise, to violate or fail, neglect, or refuse to comply with any of the provisions of this chapter.

G. Permit Required for Encroachment

1. No person shall construct, maintain or place any encroachment without complying with the terms of this chapter. No building permit, zoning permit, use permit, variance or public right-of-way permit for any construction in the public right-of-way will be issued until the encroachment permit has been obtained.

2. Except as provided in Chapter 12.20.30, no major encroachment shall be allowed except in compliance with the terms of a permit to be granted to the property owner of abutting real property or his authorized agent by resolution of the City Council. This resolution shall be granted in the sole discretion of the City Council.

3. Except as provided in Chapter 12.20.30, no minor encroachment shall be allowed except in compliance with the terms of a permit to be granted to the property owner of abutting real property or his authorized agent by the City Engineer.

4. The City Engineer shall have authority to decide the classification of an encroachment and his decision shall be final.

5. The City Engineer may require that a separate permit be obtained for each separate project for the installation of an encroachment.

H. A fee for encroachment permits may be established by resolution of the city council and shall be paid to the city at the time of application for issuance or renewal of any encroachment permit, including but not limited to permit riders. Public utility companies operating under franchise agreement with the city may pay monthly or periodic permit fees, or provide a deposit in advance for the estimated volume of permit applications subject to an agreement approved by the City Engineer.

I. If in the course of events the owner of a previously approved encroachment finds that emergency repairs are necessary to protect the facility, or to protect the investment of the owner and/or to provide continuing service to the public, and

the owner of the facility finds that the city office that would issue the encroachment permit is not open, the owner may, notify the police department the nature of any encroachment into the public roadway that may affect vehicle traffic or pedestrians, after notifying the Regional Notification Center (Underground Service Alert), conduct such work as is necessary to cause the needed repairs, provided that the owner of the facility requests a permit for the work conducted on the next day that the city office that issues encroachment permits is open. Notwithstanding any other provisions in this chapter, no emergency work may be done if the police department determines that the proposed work would represent an unreasonable threat to the public health, welfare or safety or the City Engineer determines that the work does not constitute an emergency.

SECTION 3. The text and title of Chapter 12.20.020 of the Whittier Municipal Code is hereby amended as follows:

#### **12.20.020 - Definitions**

A. "Encroach" means constructing or placing structures of improvements over, upon, under, or using any public right-of-way in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, bollard, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, wireless/telecommunication facilities such as cellular phone towers, or other structure on, over, or under a public right-of-way;
2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, groundwater monitoring well, gas/soil/groundwater vapor probes, piezometers, any pipe, conduit, wire or cable;
3. Constructing, placing, or installing sidewalks, curbs, gutters, driveways, or hardscape improvements;
4. Constructing an arbor which is a shelter of vines or branches of latticework covered with climbing shrubs, vines, or other forms of landscape;
5. Placing or maintaining any forms of outdoor dining facilities.
6. Placing or storing materials such as pavers, aggregate, pipe, and construction materials.

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, bridges, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade, or façade improvements. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the City of Whittier Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as subsurface tiebacks, soil nails, concrete stairs, disabled access ramps where more than six feet of sidewalk area is preserved, subsurface foundations extending less than two feet from the property line, level landings for garages, landscape features less than two feet in height, conduit for privately owned phone and data lines connecting buildings owned by the permittee, landscape amenities, clocks, bus shelters, telecommunication facilities and equipment, bike racks, fences less than six feet above grade, earth retaining structures less than three feet above grade, benches and curbs around planter areas, outdoor dining, monument signs, driveways, and drainage culverts. Any encroachment which is not a minor encroachment is a major encroachment.

E. "City Engineer" includes the City Engineer and his/her authorized delegate.

F. "Permittee" means any person, persons, firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the City Engineer. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors-in-interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit.

SECTION 4. The title and text of Chapter 12.20.030 of the Whittier Municipal Code is deleted in its entirety and is replaced as follows:

#### **12.20.030 - Permit Procedures**

A. The permit procedure for a major encroachment is as follows:

1. A separate application must be filed by the property owner or his 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 City Engineer. After filing of the application, the City Engineer shall cause an investigation to be 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 shall be required in all cases in addition to a brief written description of the encroachment. Certain major encroachments will require a legal description and plan to accompany the legal description.

2. When such application for a major encroachment permit and the details shown upon the accompanying sketch or plan comply with the terms of this chapter and any further requirements set by the City Engineer, the applicant shall post a notice of intent to encroach adjacent to the encroachment site. Any and all responses to this notice will be forwarded to the City Engineer for evaluation in recommendation of permit approval, conditional approval, or denial. All responses, recommendations and findings will be forwarded to the City Council.

3. The City Council, by license agreement, if it determines to authorize a major encroachment permit, may prescribe special conditions for granting a conditional revocable permit in compliance with the terms of this chapter and such other conditions as it deems necessary for the preservation or maintenance of the public health, safety and welfare to the extent that it will not substantially impair franchise rights previously granted to a public utility. Such license agreement constitutes a conditional revocable permit for encroachment which shall take effect when all other conditions set forth therein and of this chapter 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.

B. The permit procedure for a minor encroachment is as follows:

1. A separate permit application must be filed for each minor encroachment in the office of the City Engineer. 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 the sidewalk area. A plan shall be required in all cases in addition to a brief written description of the encroachment. After filing of the application, the City Engineer shall cause an inspection to be made of the site where the proposed encroachment would be installed.

2. When such application for a minor encroachment permit and the details shown upon the accompanying sketch or plan comply with the terms of this chapter and any further requirements set by the City Engineer for public health, safety and appearance reasons, the Applicant shall post a notice of intent to encroach

adjacent to the encroachment site. The City Engineer shall consider any and all responses to the notice in making his decision to deny, conditionally approve, or approve the encroachment. Such approval constitutes the granting of a conditional revocable permit for a 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.

3. Any person aggrieved by the refusal of a minor encroachment permit required by this chapter may appeal to the City Council. All appeals must be filed with the City Clerk within thirty days of the mailing of the decision of the City Engineer for scheduling on the City Council's calendar.

4. Upon completion of the excavations and/or encroachment permit work as provided in this chapter, the permit holder shall give written or email notice thereof to the City Engineer.

#### C. Security deposit required-Amount

1. A deposit may be required prior to the issuance of a permit. The deposit shall be a cashier's check, certificate of deposit, surety bond or applicable forms of a security issued by a company authorized to do business in the state of California acceptable to the City Engineer. The City Engineer shall set the amount of the deposit based on potential damage or cost of improvements not completed to and within the public property or rights-of-way. All deposits shall remain in force for a period of up to one year from the date of completion of work authorized by the permit. Utility companies doing work under any and all franchise agreements are exempt from making a security deposit.

2. Upon satisfactory completion of all the terms and conditions of a permit, the City Engineer shall issue a certificate to this effect to the City Controller. Upon receipt of such certificate and after the expiration of the time period established by the permit, the city controller shall be authorized and directed to return the cash deposit or bond or other security posted by the permittee to the permittee in accordance with the provisions in this chapter. Unless required by prior agreement or law, the amount returned will not include interest.

SECTION 5. The text of Chapter 12.20.040 of the Whittier Municipal Code is amended to include additional wording as follows as underlined:

#### 12.20.040 - Charge for work commenced before permit issued.

If any portion of the work is commenced before the issuance of a permit, an additional permit charge in the amount in accordance with the latest fee resolution adopted by the City Council shall be charged and collected before a

permit is issued, except as provided in Chapter 12.20.010 (I) for emergency repairs.

SECTION 6. The title and text of Chapter 12.20.080 of the Whittier Municipal Code is deleted in its entirety and is replaced as follows:

### **12.20.080 - Prohibitions and Exemptions**

A. The following encroachments are specifically prohibited, and no applications shall be accepted nor permits issued therefore:

1. Construction or maintenance of a loading dock on or in a public right-of-way;
2. Installation or maintenance of underground tanks, clarifiers, grease interceptors, vaults or elevators, except that underground vaults may be permitted as part of facilities owner by public utilities and public agencies;
3. Construction or placement of any fill, wall, pipe, column, pole, fence, tree, shrub or other thing which would obstruct and reduce the capacity of any flood control channel to carry storm water or reduce the effectiveness of stormwater quality facilities;
4. Erection, installation, or maintenance of posts, poles, bollards, or columns for the purpose of carrying lights intended primarily for lighting of abutting private property;
5. Erection or maintenance of a permanent post, pole, column, or structure for the support of advertising signs;
6. Installation or maintenance of signs bearing flashing or moving lights, except for temporary warning signs, barricades, or flashers required for protection of the public during construction operations;
7. Construction, erection, installation, or extension of a structure intended to be used for a profit-making enterprise.
8. Construction, erection, installation of arbors.

B. The following encroachments may be placed or maintained without a permit:

1. Mailboxes that are placed in accordance with the rules and regulations by the United States Postal Service, provided that no box is placed so as to endanger the life or safety of the traveling public.

2. Lawns of any grass and type not prohibited by other laws, provided that:

(a) The lawn shall not extend into the traveled way of the public street, drainage ditches, gutters, other drainage facilities, or sidewalk.

(b) The general public may not be denied the use of the planted area for pedestrian or other lawful travel. The City may use the planted area for any purpose whatsoever, and may issue a permit to any applicant to go thereon to perform work. If the lawn is damaged or disturbed in the course of such work, it will be removed and replaced by the permittee doing the work unless the permit specifically states otherwise.

SECTION 7. The text of subsections K, L, M, N, and O of Chapter 12.20.100 of the Whittier Municipal Code is hereby amended as follows:

- K. Coloring or staining of the sidewalk, or driveway, is permitted only when authorized by the permit as approved by the City Engineer. All ground surface materials shall take into account Americans with Disabilities Act standards and requirements. When a colored or stained sidewalk, or driveway, is authorized, only subdued muted earth tone colors may be used. The same color shall extend along the full frontage of the lot, including driveways, if any. Partial coloring or checkerboard patterns of two or more colors will not be permitted.
- L. Coloring of full height curb shall not be permitted.
- M. Portland cement concrete is the only material that may be used in the parkway area unless alternative or enhanced paving is preferred by the property owner. Bituminous materials, brick, pavers, flagstone, terrazzo, tile, etc., are prohibited unless an indemnity agreement has been approved by the City Engineer and signed by the property owner. The agreement shall be attached to the encroachment permit. Enhanced paving or stamped concrete sidewalks shall not be permitted unless approved by the City Engineer.
- N. The minimum thickness of sidewalks shall be four inches. The minimum thickness for residential driveways shall be four inches. The minimum thickness for commercial driveways shall be ten inches with six inches of concrete underlain by four inches of aggregate base materials.
- O. In case of undue hardship upon the property owner and providing the property owner delivers an agreement of indemnity as required by the City Engineer, the City Engineer may grant a variance in grade notwithstanding Americans with Disabilities Act standards and requirements; the variance may also include the right to install a different type and kind of sidewalk where an indemnity agreement has been approved by the City Engineer and signed by the property owner.

SECTION 8. The title and text of Chapter 12.20.160 of the Whittier Municipal Code is hereby amended as follows:

12.20.160 - Warning devices-Traffic control.

In any permit granted under the provisions of this chapter, the City Engineer may specify traffic control devices such as lights, barriers, barricades, warning signs or other measures designated to protect the traveling public which shall be erected, maintained or provided by the permit holder as long as these requirements are not in conflict with the California Vehicle Code and/or Manual of Uniform Traffic Control Devices; provided, however, that any omission on the part of the City Engineer to specify in a permit what traffic control devices shall be erected and maintained by the permit holder shall not excuse the permit holder from taking all reasonable and proper steps to place traffic control devices reasonably required to warn the public of any excavations or work of improvement then in progress.

SECTION 9. The text of Chapter 12.20.170 of the Whittier Municipal Code is hereby amended as follows:

A. This chapter shall not be construed to apply to the performance of any of the classes of work mentioned in this chapter under contracts made by the city in accordance with the provisions of the general laws of the state providing for the improvement of streets and other public places in municipalities.

B. The provisions of this chapter shall not apply to excavations and/or encroachments made by any department board or officer of the city in the pursuit of its or their official duty.

SECTION 10. Chapter 12.24 shall be repealed in its entirety to comply with current standards and to update standards for work and improvements within the public rights-of-way.

SECTION 11. Any provision of the Whittier Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 12. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Whittier hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 13. The Mayor shall sign and the City Clerk-Treasurer shall attest to the passage of this Ordinance. The City Clerk-Treasurer shall cause a display advertisement of at least one-quarter of a page to be published once in the official newspaper within 15 days after the adoption of the Ordinance, which advertisement indicates the general nature of the Ordinance and information about the Ordinance, including how to obtain copies of the complete text of the Ordinance. This ordinance shall become effective thirty (30) days after its adoption.

APPROVED AND ADOPTED this 13<sup>th</sup> day of December 2016.

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JOSEPH A. VINATIERI, Mayor

ATTEST:

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KATHRYN A. MARSHALL  
City Clerk-Treasurer