

# Folsom City Council Staff Report

<b>MEETING DATE:</b>	10/13/2020
<b>AGENDA SECTION:</b>	New Business
<b>SUBJECT:</b>	Ordinance No. 1309 - An Ordinance of the City of Folsom Amending Sections 12.20.020 and 12.20.030 of the Folsom Municipal Code Governing Encroachments on Public Property (Introduction and First Reading)
<b>FROM:</b>	Community Development Department

## **RECOMMENDATION / CITY COUNCIL ACTION**

Staff recommends that the City Council conduct the first reading and introduction of Ordinance No. 1309 - An Ordinance of the City of Folsom Amending Sections 12.20.020 and 12.20.030 of the Folsom Municipal Code Governing Encroachments on Public Property

## **BACKGROUND / ISSUE**

Chapter 12.20 of the Folsom Municipal Code – “Use of City Property” – was adopted in 1999 (Ordinance 905) to address private encroachments into the public right-of-way in order to protect public safety and provide for the preservation of public properties including City maintained roads, landscaping, curbs, gutters, and sidewalks. The purpose and intent behind Chapter 12.20 was to address unattended encroachments by non-City actors that may damage public property or jeopardize public safety, and to require private permittees to indemnify and defend the City for injuries and lawsuits arising out of the permittee’s work on City property. In practice, this chapter defines construction standards, prescribes application procedures for encroachment permit issuance, establishes bonding and liability requirements, and prescribes penalties for violations of its provisions.

From time to time, certain individuals and contractors have claimed that the City is also required to apply for, and obtain, an encroachment permit for the City’s own work in the

City's right-of-way, notwithstanding the inapplicability and duplicative nature of such requirement to City projects as explained below.

### **POLICY / RULE**

Under Section 2.12 of the City Charter, amendments to the FMC require review and approval by the City Council.

### **ANALYSIS**

The City cannot encroach upon its own property and does not need to indemnify itself for its own work, and hence Chapter 12.20 was never intended to apply to the City's own operations. Additionally, the City already follows applicable requirements for public safety and traffic control in City projects that occur in the public rights-of-way such as, for example, the City's Standard Construction Specifications and applicable Caltrans and/or FHWA manual for traffic safety. When working on City projects, the City implements much more detailed and robust protection measures than those required of private non-City actors in Chapter 12.20 of the Folsom Municipal Code.

Accordingly, the purpose of this Ordinance amendment is to clarify and codify the City Council's legislative intent that Chapter 12.20 of the Folsom Municipal Code is only applicable to address unattended encroachments by non-City actors that may damage public property or jeopardize public safety. As amended, Chapter 12.20 would make it clear that the encroachment permit requirement does not apply to the City except when the City requires its contractor to comply with such a requirement. All other aspects of the chapter relating to permitting, public safety, and code enforcement are not modified by Ordinance No. 1309.

### **FINANCIAL IMPACT**

There are no financial impacts to the City.

### **ENVIRONMENTAL REVIEW**

The project is categorically exempt under Section 15061(b)(3) Review for Exemption of the California Environmental Quality Act (CEQA).

### **ATTACHMENTS**

1. Redline of Proposed Ordinance Amendment
2. Ordinance No. 1309 - An Ordinance of the City of Folsom Amending Sections 12.20.020 and 12.20.030 of the Folsom Municipal Code Governing Encroachments on Public Property

3. City Council Staff Report, dated 03/23/1999 for second reading and adoption of Ordinance No. 905 - An Ordinance Repealing and Reenacting Chapter 12.20 of the Folsom Municipal Code governing encroachments on public property.

Submitted,

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PAM JOHNS  
Community Development Director

## Attachment 1

## **REDLINE**

### **12.20.020 Definitions.**

“Person” means any person, firm, partnership, association, corporation, company or organization of any kind. Person does not include City of Folsom or anyone under contract with the City working on City projects unless specifically provided for in a written contract.

### **12.20.030 Purpose and Intent.**

The purpose of this chapter is to establish regulations to control encroachments into public property by requiring encroachment permits and to establish measures for the protection of life and property, including traffic and pedestrian safeguards. Additionally, this chapter defines construction standards, prescribes application procedures for encroachment permit issuance, establishes bonding and liability requirements and prescribes penalties for violations of its provisions. This chapter does not apply to work undertaken by the City of Folsom or through its contractors unless specifically provided for in a written contract.

## Attachment 2

**ORDINANCE NO. 1309**

**AN ORDINANCE OF THE CITY OF FOLSOM  
AMENDING SECTIONS 12.20.020 and 12.20.030 OF THE  
FOLSOM MUNICIPAL CODE GOVERNING  
ENCROACHMENTS ON PUBLIC PROPERTY**

The City Council of the City of Folsom hereby does ordain as follows:

**SECTION 1 PURPOSE**

The purpose of this Ordinance is to codify the legislative intent behind Ordinance 905, which established the Encroachment Permit ordinance in Chapter 12.20 of the Folsom Municipal Code, that the Encroachment Permit requirement in Chapter 12.20 of the Folsom Municipal Code does not apply to City operations. The Encroachment Permits requirement was implemented to address unattended encroachments by non-City actors that have damaged City-maintained curbs, gutters, and sidewalks, and interfered with the orderly operations of City utility programs such as solid waste pickup. Examples include basketball stands left in the street or across sidewalks, landscaping materials left in the street, utility power cords crossing sidewalks to recreational vehicles, and private contractors crossing the public right-of-way while accessing private property.

**SECTION 2 AMENDMENT TO CODE**

The definition of “Person” in Section 12.20.020, “Definitions” of the Folsom Municipal Code is hereby amended to read as follows:

**12.20.020 Definitions.**

“Person” means any person, firm, partnership, association, corporation, company or organization of any kind. Person does not include City of Folsom or anyone under contract with the City working on City projects unless specifically provided for in a written contract.

**SECTION 3 AMENDMENT TO CODE**

Section 12.20.030, “Purpose and Intent” of the Folsom Municipal Code is hereby amended to read as follows:

**12.20.030 Purpose and Intent.**

The purpose of this chapter is to establish regulations to control encroachments into public property by requiring encroachment permits and to establish measures for the protection of life and property, including traffic and pedestrian safeguards. Additionally, this chapter defines construction standards, prescribes application procedures for encroachment permit issuance, establishes bonding and liability requirements and prescribes penalties for violations of its provisions. This chapter does not apply to work

undertaken by the City of Folsom or through its contractors unless specifically provided for in a written contract.

**SECTION 4 SCOPE**

Except as set forth in this ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

**SECTION 5 NO MANDATORY DUTY OF CARE**

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**SECTION 6 SEVERABILITY**

If any section, subsection, 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 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, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 7 EFFECTIVE DATE**

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on October 13, 2020, and the second reading occurred at the regular meeting of the City Council on October 27, 2020.

On a motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 27<sup>th</sup> day of October, 2020 by the following vote, to wit:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)



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Sarah Aquino, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

## Attachment 3

DATE: March 18, 1999

TO: Mayor and City Council Members

FROM: Public Works and Planning, Inspections, and Permitting Departments

SUBJECT: **ORDINANCE NO. 905 - AN ORDINANCE REPEALING AND REENACTING CHAPTER 12.20 OF THE FOLSOM MUNICIPAL CODE GOVERNING ENCROACHMENTS ON PUBLIC PROPERTY (SECOND READING)**

### **BACKGROUND**

Currently, the Folsom Municipal Code, Chapter 12.20, does not address encroachments into the public right-of-way except sub-surface encroachments associated with excavations. Concerns regarding various facilities left unattended on public streets and sidewalks, and other surface encroachments that have damaged City-maintained curbs, gutters, and sidewalks have been the driving factors in preparing this revised ordinance.

Code Enforcement and Public Works staff have recognized the need for controlling encroachments into the public right-of-way for some time and recommended that the Traffic Safety Committee (TSC) examine these situations for comment. At its March 26, 1998 meeting, the TSC unanimously voted to adopt the recommendations reflected in the proposed ordinance by the City of Folsom.

On March 9, 1999, City Council approved the First Reading of Ordinance No. 905 repealing and reenacting Chapter 12.20 of the Folsom Municipal Code governing encroachments on public property. City Council comments made at the First Reading have been incorporated into the proposed ordinance.

### **ANALYSIS**

Code Enforcement Officers have received complaints regarding myriad surface encroachments, such as landscaping bark and gravel dumped in the street and left for months, umbilicals crossing sidewalks connecting recreational vehicles to homes, portable toilets placed on the sidewalks in front of occupied homes during build-out of adjacent developments, shrubs taking over the sidewalks, and basketball stands left unattended, blocking the street and/or sidewalk, etc. In other instances, contractor's equipment, in accessing private property from the public right-of-way, has damaged City owned and maintained curbs, gutters, and sidewalks.

In the past, Code Enforcement has sent a letter advising those responsible that they are violating Section 647c of the California Penal Code, "Obstruction of street, sidewalk or other place open to public." However, because there are not specific prohibitions contained in the Folsom Municipal Code, the City has not been able to impose administrative sanctions in lieu of filing a civil nuisance action or seeking criminal prosecution. Adoption of the proposed ordinance will enhance the City's ability to eliminate dangerous and/or unsightly encroachments on public property. The revised ordinance will also assist staff in protecting public infrastructure.

Materials left unattended in the street cause a potential traffic hazard, and interfere with the pickup of refuse containers and street sweeping. Leaving any materials on sidewalks also represents a traffic hazard since people are forced to walk into the street to get around the obstacles. Damaging the infrastructure also places undue financial and maintenance burdens on the City and its resources.

Accidents resulting from such damage that involve motorists and/or pedestrians could also increase the City's exposure to liability.

At an earlier presentation of this revised ordinance before the City Council in October 1998, there was concern with the impact the proposed revision might have on existing encroachments, particularly those in the Historic District. Subsequently, the City Council directed staff to reexamine the proposed revised ordinance to address existing encroachments in the Historic District. Staff, working with the Assistant City Attorney, has developed proposed wording (Section 12.20.040) that under certain conditions "grandfathers" existing encroachments in the Historic District as well as elsewhere in the City. These type of encroachments are permitted until such time as the City determines that the encroachment presents a hazard, public nuisance, or restricts access to or use of public property.

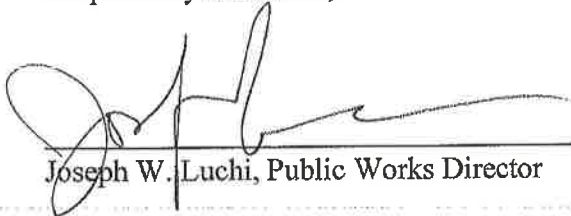
#### **ATTACHMENT**

Ordinance No. 905 - An Ordinance Repealing and Reenacting Chapter 12.20 of the Folsom Municipal Code Governing Encroachments on Public Property (Second Reading)

#### **RECOMMENDATIONS - CITY COUNCIL ACTION**

The Public Works and the Planning, Inspections, and Permitting Departments recommend that the City Council pass and adopt Ordinance No. 905 – An Ordinance Repealing and Reenacting Chapter 12.20 of the Folsom Municipal Code Governing Encroachments on Public Property (Second Reading).

Respectfully submitted,



Joseph W. Luchi, Public Works Director



David A. Storer, Planning, Inspections, and Permitting Director

ORDINANCE NO. 905

AN ORDINANCE REPEALING AND REENACTING CHAPTER 12.20  
OF THE FOLSOM MUNICIPAL CODE GOVERNING  
ENCROACHMENTS ON PUBLIC PROPERTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLSOM AS  
FOLLOWS:

**SECTION 1 PURPOSE**

The purpose of this ordinance is to repeal and reenact Chapter 12.20 of the Folsom Municipal Code pertaining to encroachments on public property.

**SECTION 2** Chapter 12.20 is hereby repealed in its entirety and reenacted as follows:

12.20

**Use of City Property**

**Sections:**

- 12.20.010 Short Title.
- 12.20.020 Definitions.
- 12.20.030 Purpose and Intent.
- 12.20.040 Encroachment Permit Required.
- 12.20.050 Encroachment Permit Required Related to Swimming Pool Construction.
- 12.20.060 Encroachment Permit Required Related to Building Construction.
- 12.20.070 Utility Permits.
- 12.20.080 Relocation or Removal of Encroachment.
- 12.20.090 Application.
- 12.20.100 Permit Fees.
- 12.20.110 Work Requirements.
- 12.20.120 Liability.
- 12.20.130 Performance Deposits.
- 12.20.140 Protection Measures and Routing of Traffic.
- 12.20.150 Clearance of Vital Structures.
- 12.20.160 Relocation and Protection of Utilities.
- 12.20.170 Abandonment of Facilities.
- 12.20.180 Care of Excavated Material.
- 12.20.190 Clean-up.
- 12.20.200 Protection of Water Courses.
- 12.20.210 Prompt Completion of Work.
- 12.20.220 Urgent Work.
- 12.20.230 Emergency Action.
- 12.20.240 Preservation of Monuments.
- 12.20.250 Inspections, Rules, Regulations.
- 12.20.260 Revoking of Permit.
- 12.20.270 Appeal.
- 12.20.280 Action After Expiration of Permit Unlawful.

- 12.20.290 Removal Required When—Notice.
- 12.20.300 Enforcement.
- 12.20.310 Penalties.
- 12.20.320 Enforcement Procedures; Notice to Correct.

12.20.010 Short Title. This Ordinance shall be known and may be cited as the "Encroachment Ordinance as Pertaining to Public Property of the City of Folsom."

12.20.020 Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein.

A. "Administrative Authority" shall mean the City Manager of the City of Folsom or his duly delegated representative.

B. "Construction Standards" shall mean the most current edition of the Standard Construction Specifications of the City of Folsom.

C. "Encroachment" shall mean going upon, over, or under public property, or placing any facility upon, along, across, over, or under public property, or using any public property in such a manner as to prevent, obstruct or interfere with the use of that public property. Encroachments include, but are not limited to buildings, fences, sports equipment not in use, signs, trees, plants, underground facilities, and construction and landscape material or any excavations on public property

D. "Excavation" shall mean any opening under, in, or across the surface of public property made in any manner whatsoever, except an opening into a lawful structure below the surface of public property, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public property.

E. "Facility" shall mean any pipe, pipeline, tube, hose, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure, public improvement, or object of any kind or character, including a building, portion of a building, or any other structure, whether enumerated herein or not, which is or may be lawfully constructed, used, operated, left, placed, or maintained in, upon, along, across, under, or over any public property.

F. "Permit" shall mean encroachment/excavation permit as referred to in this Chapter.

G. "Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

H. "Plans" shall mean those drawings prepared by an appropriately licensed professional engineer.

I. "Public Property" shall mean any public street, roadway, place, alley, sidewalk, parkway, square, plaza, easement, right-of-way, or any other similar public property dedicated to public use.

J. "Sketch" shall mean a drawing that shows a concept or location of facilities.

K. "Substructure" shall mean any pipe, conduit, duct, tunnel, buried cable or wire, or any other similar structure located below the surface of any public property.

L. "Utility" shall mean a private company and/or corporation operating under regulation of the Public Utilities Commission, or municipal/county department or other governmental agency engaged in providing a particular service to the general public.

12.20.030 Purpose and Intent. The purpose of this Ordinance is to establish regulations to control encroachments into public property by requiring Encroachment Permits and to establish measures for the protection of life and property, including traffic and pedestrian safeguards. Additionally, this Ordinance defines construction standards, prescribes application procedures for Encroachment Permit issuance, establishes bonding and liability requirements and prescribes penalties for violations of its provisions.

12.20.040 Encroachment Permit Required. It is unlawful for any person to place, erect or maintain, or to permit the placement, erection, maintenance or existence of any encroachment upon, over or under any public property without an Encroachment Permit with the following exceptions:

- A. Existing cornices, eaves, porticos and overhangs within the Historic District, as defined in Chapter 17.52 of the Folsom Municipal Code.
- B. Any existing encroachments in the City on the effective date of this ordinance, until such time as repairs/refurbishments effecting 50 percent or more of the encroaching structure's value and/or size are accomplished. At that time an encroachment permit shall be obtained.

Encroachments maintained in the public right of way prior to the effective date of this ordinance may remain in the public right of way until such time as the Administrative Authority determines that the encroachment presents a hazard, public nuisance or restriction to access or use of Administrative Authority owned property. At such time the City shall direct removal of such encroachment at the sole expense of the current owner of said encroachment.

12.20.050 Encroachment Permit Required Related to Swimming Pool Construction. Prior to the commencement of any excavation associated with construction of a swimming pool, where excavation or other equipment, including but not limited to high lifts, front end loaders, dump trucks, forklifts, bobcats, skip loaders, and tractors, will traverse existing sidewalks or other public improvements, an Encroachment Permit shall be obtained.

12.20.060 Encroachment Permit Required Related to Building Construction. Prior to the commencement of construction of a new building or for additions to existing buildings, where construction or other equipment, including but not limited to high lifts, front end loaders, dump trucks, forklifts, bobcats, skip loaders, and tractors, will traverse existing sidewalks or other public improvements, an Encroachment Permit shall be obtained.

12.20.070 Utility Permits. The Administrative Authority may issue Utility Permits to a utility to make excavations for the location of trouble in conduits or pipes, for making repairs thereto, or for emergency purposes. Utility Permits shall be issued on a yearly basis only, and will authorize excavation only as stated above. Utility Permits shall not be issued for installation of new facilities.

12.20.080      Relocation or Removal of Encroachment. When any encroachment authorized hereunder is found to be in conflict with the use of public property or existing or proposed facilities owned, maintained, or operated by the City, such encroachment shall, upon written notice by the City, be relocated in such a way as to eliminate the conflict, said relocation to be at the sole expense of the Permittee. If the Permittee fails to comply with said written notice within a reasonable period of time, the City may cause such relocation of the encroachment at the expense of the Permittee.

12.20.090      Application. A. An application form, provided by the Administrative Authority, shall be submitted before any Encroachment Permit is issued. The application shall contain the following information:

- (1) the name, address, and telephone number of the applicant
- (2) the purpose of the proposed encroachment
- (3) the location and dimensions of the proposed encroachment
- (4) the approximate date on which construction is proposed to begin, if applicable
- (5) the approximate duration of the construction
- (6) the name and contractor's license number of the person performing the construction
- (7) plans or sketches necessary to describe the construction
- (8) the disposal site for material to be removed from the site
- (9) the signature of the applicant
- (10) acknowledgment by the applicant that insurance, indemnification and performance security requirements must be satisfied prior to a Permit being issued

B. Upon review of the application, the Administrative Authority may impose conditions on the Permit, in order to insure the safety of the public and to protect and preserve the public property. If the Administrative Authority denies the application, written notice shall be provided to the applicant.

C. The permit, if issued, will be prepared and issued when fees have been paid, insurance documents and performance security have been reviewed and accepted, and the applicant has signed the Permit.

D. Each permit shall state a time when all the work to be done thereunder shall be completed. The Administrative Authority may grant extensions of time, provided satisfactory reasons therefor are presented by the applicant.

12.20.100      Permit Fees. The Administrative Authority shall collect a permit fee to cover the cost incurred by the City. Recoverable costs include administrative expenses involved in the issuance of an Encroachment Permit, checking plans for compliance with this and other ordinances, and field inspections conducted to insure compliance with the terms and conditions under which the Encroachment Permit was issued. Fee schedules shall be established by Resolution of the City Council.

12.20.110      Work Requirements. All encroachment work shall be performed in accordance with conditions specified in the Encroachment Permit, the Standard Construction Specifications of the City of Folsom, and according to the plans and specifications referred to in the Permit.



12.20.120      Liability. Permittee shall defend, indemnify and save harmless City (including their officers, agents, employees, and representatives) and each of them, of and from any and all claims, demands, suits, causes of action, damages, costs, expenses, losses or liability, in law or in equity, of every kind and nature whatsoever ("claims") arising out of or in connection with Permittee's work to be performed under the Encroachment Permit.

The above paragraph shall be stated on all Encroachment Permits.

The Administrative Authority may require in all circumstances where he/she deems it appropriate that the permittee procure and maintain in force insurance covering the City. The amounts and terms of such insurance coverage shall be consistent with the provisions set forth in the Standard Construction Specifications.

12.20.130      Performance Deposits. Permittee shall provide a cash deposit, surety bond, or other security acceptable to the City in the amount determined by the Administrative Authority as sufficient to reimburse the City for the costs of restoring the public property to its original condition in the event Permittee fails to do so.

12.20.140      Protection Measures and Routing of Traffic. It shall be the duty of every person undertaking any encroachment, to place and maintain barriers and warning devices necessary for safety of the general public.

For excavations over five (5) feet in depth, blasting operations, and tunneling work, the Permittee shall, when required by law, obtain a Permit from the California Division of Industrial Safety and/or any other Permit required by State or Federal safety regulations.

Barriers, signs, lights, etc., shall conform to the requirements of the "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work Upon Highways," issued by the State of California, Department of Transportation, and to any additional requirements specified by the Administrative Authority.

Permittee shall take appropriate measures to assure that during the performance of construction work on streets, traffic conditions as near normal as practicable shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public. Permittee shall conform to the requirements of the Standard Construction Specifications.

When traffic conditions permit, the Administrative Authority may by written approval, permit the closing of streets and alleys to all traffic for a period of time prescribed by him or her. The written approval of the Administrative Authority may require that the Permittee provide approved detours and give notification to various public agencies and to the general public. In such cases, the written approval shall not be valid until notice is given.

12.20.150      Clearance For Vital Structures. The encroachment shall be performed and conducted so as to not unreasonably interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, and all other vital equipment designated by the Administrative Authority.

12.20.160      Relocation and Protection of Utilities. Permittee shall inform themselves as to the existence and location of all facilities likely to be encountered by their operations.

Unless the law otherwise provides, relocation of an existing facility shall be performed in accordance with a plan approved by the owner. No facility owned by the City shall be moved to accommodate the Permittee unless the cost of such work be borne by the Permittee and is approved by the City.

All facilities affected by any excavation or other construction work shall be supported and protected by the Permittee with methods approved by the owner of the facility. Should an existing facility be damaged by the Permittee's operations, and for this purpose pipe coating or other encasement or devices are to be considered as part of a facility, the Permittee shall promptly notify the owner of the damaged facility. All facilities damaged by Permittee's operations shall be repaired as directed by the owner and the expense of such repairs shall be charged to the Permittee.

12.20.170 Abandonment of Facilities. Whenever a facility is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein, shall file with the Administrative Authority a drawing or written statement indicating, in detail, the location of the facility so abandoned. At the time of such abandonment, the Administrative Authority may determine what portion, if any, of the abandoned facility shall be removed or otherwise treated.

Whenever a driveway approach is abandoned, or can no longer be justified by the use made of the abutting property, the Administrative Authority may require removal of any associated driveway, apron, or curb depression, and restoration of any existing curb, gutter, or sidewalk across the driveway width.

12.20.180 Care of Excavated Material. A. The Administrative Authority may require the Permittee to haul away any excavated material and the Permittee shall be responsible for securing any necessary disposal sites. In addition, the Permittee shall anticipate, and make provisions for abatement of, dust and dirt nuisances resulting from its operations. All excavated material shall be stockpiled, disposed of, and all clean-up performed in a way that conforms to Local, State, and National pollution control regulations.

B. Whenever Permittee is hauling away material from the encroachment site, proof of proper disposal shall be required by the Administrative Authority prior to final inspection or return of security.

12.20.190 Clean-up. As the permitted work progresses, all public properties shall be thoroughly cleaned of all rubbish, earth, rock, and other debris resulting from the work. All clean-up operations at the location of the encroachment shall be accomplished at the expense of the Permittee to the satisfaction of the Administrative Authority.

12.20.200 Protection of Water Courses. The Permittee shall provide and maintain adequate waterways for all surplus water, including stormwater, run-off pumped from excavations, flushings, or other water resulting from Permittee's operations. All water leaving the site shall conform to National Pollution Discharge Elimination System and Local, State and Federal laws and regulations regarding pollution prevention.

12.20.210 Prompt Completion of Work. After a project is commenced, the Permittee shall diligently pursue all work covered by the Encroachment Permit, promptly complete all work, and restore the public property, as near as practicable, to its original condition to avoid obstructing the public property more than is reasonably necessary.

12.20.220 Urgent Work. When, in the judgement of the Administrative Authority, the safety or convenience of the public or the public interest requires that encroachment work be performed as emergency work, the Administrative Authority shall have full power to order, at the time the Permit is granted, that an adequate size crew and adequate facilities be employed by the Permittee twenty-four (24) hours a day to the end that such work may be completed as soon as practicable.

12.20.230 Emergency Action. Nothing in this Ordinance shall be construed to prevent the making of excavations or the performance of work necessary for the preservation of life or property, or for the location of trouble in conduit or pipe, or for making repairs, provided that the person undertaking such work shall apply to the Administrative Authority for a Permit on the first working day after the work is commenced.

12.20.240 Preservation of Monuments. No monument set for the purpose of locating or preserving the lines of any street, property or subdivision, including precise survey reference points or permanent survey bench marks within the City, shall be removed or disturbed by any person who has not first obtained written permission from the Administrative Authority. Permission to remove, disturb, or replace monuments shall only be granted upon the condition that the removal, disturbance or replacement of any monument be done under the supervision of a registered engineer or licensed land surveyor. Any expenses incurred by the Administrative Authority for the proper replacement of monuments shall be paid by the Permittee.

12.20.250 Inspections, Rules, Regulations. The Administrative Authority shall make inspections and shall establish rules and regulations reasonably necessary to enforce and carry out the intent of this Ordinance.

12.20.260 Revoking of Permit. This Ordinance empowers the Administrative Authority with the right to cancel any Permit for good and sufficient cause, including violation of any provision of the Folsom Municipal Code or non-compliance with any Encroachment Permit condition.

12.20.270 Appeal. A. In the event the application for the permit is denied in whole or in part or the conditions imposed by the Administrative Authority are unacceptable to the applicant, the applicant may appeal his decision to the City Council within 10 days of receiving notice of the decision.

B. Appeals shall be in writing, shall state the specific reasons therefor and grounds asserted for relief, and shall be filed with the City Clerk within 10 calendar days after the date of the action being appealed. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which the complaint is made shall be deemed to have been waived.

12.20.280 Action after expiration of permit unlawful. It is unlawful for a person to place, erect or maintain or to permit the placement, erection, maintenance or existence of any encroachment after his or her permit has expired or after his or her permit has been revoked and the time specified in the notice from the city clerk for removal of the same has expired.

12.20.290 Removal required when--Notice. Any person whose property encroaches in any manner upon, over or under any public property who has not obtained a permit for the placing,

erection and/or maintenance of such encroachment, shall remove the same after written notice by the City demanding removal. Notice of removal shall be by certified mail addressed to the post office address of the owner or occupant of the premises where the encroachment exists, by personal service of such notice upon the owner or occupant, or by posting the notice on the premises. The time required for the removal of the encroachment shall be specified in the Notice, and shall be a reasonable time considering danger, risk and size of job.

12.20.300    Enforcement. A. This Chapter shall be enforced pursuant to the provisions of Chapters 1.08-1.10, inclusive, of Title 1 of the Folsom Municipal Code.

B.     The Administrative Authority shall enforce the provisions of this Chapter.

12.20.310    Penalties. A. A violation of this Chapter shall be an administrative violation as defined in Section 1.08.020 of Chapter 1.08, Title 1 of the Folsom Municipal Code.

B.     Each of the sanctions for administrative violations identified in Section 1.09.013 of Chapter 1.09, Title 1 of the Folsom Municipal Code shall be available for enforcement of the provisions of this Chapter.

C.     Based upon the criteria for the imposition of administrative sanctions set forth in Section 1.09.014 of Chapter 1.09, Title 1 of the Folsom Municipal Code, a violation of this Chapter shall be deemed a Level D violation, as that term is described in Section 1.09.012 of Chapter 1.09, Title 1 of the Folsom Municipal Code. The range of monetary sanctions available for a violation of this Chapter shall be as set forth in Section 1.09.012(A)4.

12.20.320    Enforcement Procedures; Notice to Abate/Correct. A. Prior to the suspension, revocation, or denial of any license or permit, or the assessment of any fee, penalty, or charge, or the commencement of any other enforcement action pursuant to this Chapter, Administrative Authority shall follow the procedures set forth in Sections 1.09.020-1.09.048, inclusive, of Chapter 1.09 of Title 1 of the Folsom Municipal Code. The rights to judicial review set forth in Sections 1.09.050-1.09.059, inclusive, of Chapter 1.09 of Title 1 of the Folsom Municipal Code shall apply.

B.     A Notice to Abate/Correct shall be served in accordance with the provisions of Section 1.09.023 of Chapter 1.09, Title 1 of the Folsom Municipal Code. The time to correct any violation of a provision of this Chapter shall be a reasonable time as specified by the Administrative Authority, depending upon the type of encroachment, risk to the public property, and risk to the general public. Pursuant to Section 1.09.024(A) of Chapter 1.09, Title 1 of the Folsom Municipal Code, a Notice of Administrative Violation shall be served in accordance with the provisions of Section 1.09.027 of Chapter 1.09, Title 1 of the Folsom Municipal Code.

### **SECTION 3   SCOPE**

Except as set forth in this ordinance, all other provisions of Title 12 shall remain in full force and effect.

### **SECTION 4   SEVERABILITY**

If any section, subsection, 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 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, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 5 EFFECTIVE DATE**

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full within twenty (20) days after its adoption in a newspaper of general circulation in the City of Folsom.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on \_\_\_\_\_, and by unanimous vote of the Council Members present, further reading was waived.

On a motion by Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by the following roll call vote:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

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