



CITY OF  
**FOLSOM**  
DISTINCTIVE BY NATURE

# Folsom City Council Staff Report



<b>MEETING DATE:</b>	10/27/2020
<b>AGENDA SECTION:</b>	Consent Calendar
<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 (Second Reading and Adoption)
<b>FROM:</b>	Community Development Department

## RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council conduct the second reading and adopt 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, establish 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.

Ordinance No. 1309 was introduced at the October 13, 2020 City Council meeting. No changes have been made to the ordinance since first reading.

### **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 projects already follow 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 Federal Highway Administration 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 requirements do not apply to the City except when the City requires its contractors 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. 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
2. Redline of Proposed Ordinance Amendment

Submitted,

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PAM JOHNS  
Community Development Director

# ATTACHMENT 1

## 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)

\_\_\_\_\_  
Sarah Aquino, MAYOR

ATTEST:

\_\_\_\_\_  
Christa Freemantle, CITY CLERK

## **ATTACHMENT 2**

## 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.*