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(O-2001-20)

18923

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON **FEB 27 2001**

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW DIVISION 9 TITLED "PUBLIC RIGHT-OF-WAY USE PERMIT PROCEDURES" AND BY ADDING NEW SECTIONS 126.0901, 126.0902, 126.0903, 126.0904, 126.0905, 126.0906, AND 126.0907, ALL RELATING TO DEVELOPMENT PERMITS.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 12, Article 6, of the San Diego Municipal Code is amended by adding a new Division 9, and new Sections 126.0901, 126.0902, 126.0903, 126.0904, 126.0905, 126.0906, 126.0907 and 126.0908, to read as follows:

DIVISION 9

Public Right-of-Way Use Permit Procedures

SEC. 126.0901 Purpose of Public Right-of-Way Use Permit Procedures

The purpose of these procedures is to establish the process for approval of *encroachments* in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located. The intent of this division is to protect the *public right-of-way* for use and enjoyment by the public, to protect the public health, safety and welfare, and to maintain the aesthetic character of the community.

SEC. 126.0902 When Public Right-of-Way Use Permit Procedures Apply

A Public Right-of-Way Use Permit is required for any *encroachment* or object which is erected, placed, constructed, established, or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located, except when one or more of the following conditions is met:

- (a) The *encroachment* is permitted under Chapter VI, Article 2, Division 11.
- (b) The *encroachment* is permitted under Section 141.0619(b).
- (c) The *encroachment* is permitted under Chapter VI, Article 2, Division 10.
- (d) The *encroachment* is permitted under Section 141.0621.

SEC. 126.0903 How to Apply for a Public Right-of-Way Use Permit

An *applicant* shall submit an application for a Public Right-of-Way Use Permit in accordance with Section 112.0102.

SEC. 126.0904 Decision Process for a Public Right-of-Way Use Permit

A decision on an application for a Public Right-of-Way Use Permit shall be made in accordance with Process Four. A Process Four decision may be appealed to the City Council in accordance with Section 112.0508.

SEC. 126.0905 Findings for a Public Right-of-Way Use Permit

An application for a Public Right-of-Way Use Permit may be approved or conditionally approved if the decision maker makes all of the following findings:

- (a) the proposed *encroachment* is reasonably related to public travel, or benefits a public purpose, or all *record owners* have given the *applicant* permission to maintain the *encroachment* on their property;
- (b) the proposed *encroachment* does not interfere with the free and unobstructed use of the *public right-of-way* for public travel;
- (c) the proposed *encroachment* is not detrimental to the public health, safety or welfare;
- (d) the proposed *encroachment* does not interfere with the *record owners'* use or enjoyment of their property;
- (e) the proposed *encroachment* does not adversely affect the land use plan;
- (f) the proposed *encroachment* is not harmful to the aesthetic character of the community; and
- (g) the proposed *encroachment* does not violate any other Municipal Code provisions or other local, state or federal law.

SEC. 126.0906 Public Right-of-Way Use Permit Conditions

The Public Right-of-Way Use Permit shall contain the following provisions and any other provisions which, in the opinion of the decision maker, are necessary to afford protection to the *record owner*, the City, and *public utilities*.

- (a) The *applicant* shall install and maintain the *encroachment* in a safe and sanitary condition at the sole cost, risk and responsibility of the *applicant*.
- (b) The *applicant* shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.
- (c) The *applicant* shall remove or relocate, at *applicant's* own expense, any *encroachment* within 30 days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security at the sole discretion of the City without further notice to the *applicant*. The *applicant* shall remove or relocate, at its own expense, any *encroachment* on shorter notice by the City in the case of an emergency or if determined necessary by the City. If the *applicant* fails to remove or relocate the *encroachment* in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security, at the sole discretion of the City, without further notice to the *applicant*.
- (d) The City's rights with respect to the *public right-of-way* shall remain and continue in full force and effect and shall in no way be

affected by the City's grant of permission to construct and maintain the *encroachment*.

- (e) The *applicant* shall maintain liability insurance in the nature and amount satisfactory to the City Manager in order to protect the City from any potential claims which may arise from the *encroachment*. The policy shall name the City as an additional insured.
- (f) The *applicant* shall furnish a surety bond, cash deposit or other security in an amount acceptable to the City Manager if required by the decision maker.


SEC. 126.0907 Violations of Public Right-of-Way Use Permit

It is unlawful for any person to erect, place, construct, establish, or maintain any *encroachment* in the *public right-of-way* without a permit if such permit is required. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the date that it is effectively certified by the California Coastal Commission as a Local Coastal Program Amendment. If this ordinance is not certified or is certified subject to modifications, it shall be null and void.

APPROVED: CASEY GWINN, City Attorney

By 

Kristin Schenone
Deputy City Attorney

KS:amp:cdk
11/06/2000
Or.Dept:Plan. & Dev. Rev.
O-2001-20

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Underlined

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