

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADDING CHAPTER 12.65 TO “THE CODE
OF THE CITY OF SANTA CLARA, CALIFORNIA” TO
ESTABLISH PROCEDURES FOR THE ADMINISTRATIVE
APPROVAL OF PRIVATE ENCROACHMENTS WITHIN
THE PUBLIC RIGHT-OF-WAY**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Resolution No. 3899, entitled “*Policy Regarding the installation of Private Improvements within Public Rights of Way for Street Purposes*” establishes requirements for Council authorization of certain private encroachments within the public right-of-way;

WHEREAS, since the adoption of Resolution No. 3899 in 1977, the City has experienced substantial growth and development, resulting in an increased number of private encroachments;

WHEREAS, the City wishes to reduce the administrative burden and staff time associated with City Council approval of said encroachments as well as streamline the City’s approval process;

WHEREAS, the City wishes to continue to provide property owners the ability to request limited use of the public right-of-way adjacent or contiguous to their property where such use does not interfere with the public’s use;

WHEREAS, in light of the increased number of encroachments, the City seeks to streamline the review and approval process for certain defined private encroachments, both new and existing, to allow for the administrative approval of such encroachments, which better aligns with the practices commonly used by other local public agencies;

WHEREAS, accordingly, this ordinance authorizes the City Engineer to approve eligible

private encroachments upon making specific findings that the proposed encroachment is compatible with its surroundings and does not adversely affect public safety or the public right-of-way; and,

WHEREAS, this ordinance further requires that, upon the approval of a proposed encroachment, the encroaching property owner will execute an encroachment agreement, in a form approved by the City Attorney, providing for the maintenance and removal of the encroachment and including appropriate insurance and indemnification provisions to protect the City.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: Resolution No. 3899 is hereby repealed in its entirety.

SECTION 2: That a new Chapter 12.65 (entitled “Encroachments of Private Improvements into Public Rights-of-Way”) is added to Title 12 (entitled “Streets, Sidewalks and Public Places) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

**“Chapter 12.65
Encroachments of Private Improvements into Public Rights-of-Way**

Sections:

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| 12.65.020 | Definitions. |
| 12.65.030 | Applicability. |
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| 12.65.050 | Exceptions. |
| 12.65.060 | Encroachment application process. |
| 12.65.070 | Notice of decision. |
| 12.65.080 | Terms and conditions of encroachment agreements. |
| 12.65.090 | No vested rights. |
| 12.65.100 | Unauthorized encroachment - removal. |
| 12.65.110 | Penalties. |

12.65.120 Liability.

12.65.010 Purpose and Intent.

It is the intent of the City to authorize limited use of, or encroachment into, the public rights-of-way for private purposes by property owners where, in the City's discretion, such use or encroachment does not interfere with the public's use and enjoyment of said rights-of-way. Accordingly, this Chapter is adopted to provide procedures and regulations for the review and approval of encroachment requests so that property owners may make appropriate use of the dedicated public rights-of-way adjacent or contiguous to their private property while preserving public access to and unobstructed use of public property.

12.65.020 Definitions.

As used in this chapter:

- (a) "City" means the City of Santa Clara, California.
- (b) "City Council" or "Council" means the governing body of the City of Santa Clara, California.
- (c) "City Engineer" means the City Engineer or designee.
- (d) "City Manager" means the City Manager or designee.
- (e) "Department" means the City of Santa Clara Public Works Department.
- (f) "Director of Public Works" means the Director of Public Works or designee.
- (g) "Encroachment" means any structure, improvement, or object of any kind or character installed adjacent to or on private property including fences, walls, trellis work, mailboxes, monitoring wells, private landscaping and associated irrigation systems, flatwork associated with private driveway approaches, or buildings, temporarily or permanently on, under, over or across any public property.
- (h) "Property Owner" means the owner of record or contract of any parcel of land fronting public property.
- (i) "Public Property" means any right-of-way that has been offered for dedication to the public, whether express or implied, or has been dedicated to the public, whether express or implied, public property law, including below-grade and air space areas.

12.65.030 Applicability.

This Chapter shall not apply to encroachments addressed under other provisions of the City Code, including, without limitation:

- (a) Permits for paint advertisements on sidewalks pursuant to Chapter 12.10 (Signs on Streets and Sidewalks).

(b) Permits for cuts, openings, or excavations pursuant to Chapter 12.25 (Excavation and Use of City Rights-of-Way).

(c) Permits for planting of landscaping in the park strip pursuant to Chapter 12.35 (Trees and Shrubs).

(d) Permits for signs pursuant to Chapter 18.42 (Sign Standards)

(e) Permits for installation of wireless telecommunication facilities pursuant to Chapter 18.66 (Wireless Telecommunications Facilities).

12.65.040 Unauthorized encroachments prohibited.

Except as otherwise provided, an encroachment placed, installed, constructed, or maintained upon public property without an encroachment agreement authorizing such encroachment is prohibited and must be removed by the property owner.

12.65.050 Exceptions.

(a) Notwithstanding Section 12.65.040, no encroachment agreement will be required for any of the following:

(1) Improvements placed on public property by or on behalf of the City.

(2) Installation of mailboxes by the United States Post Office.

(3) Installation of landscaping and irrigation, including hardscape improvements and boring irrigation lines under the sidewalk.

(4) Installation of standard, private, United States Post Office-compliant mailboxes on a simple post.

(b) Private improvements described in 12.65.050(a)(3) and (a)(4) shall remain the sole responsibility of the adjacent property owner and are installed at the owner's risk and expense. In addition, the Department of Public Works may require the owner of such improvements to obtain an encroachment permit.

(c) The City retains the right to access, modify, relocate, or remove exempt private improvements as necessary to repair streets, sidewalk, utilities, curb and gutter, perform maintenance, emergency response, install utilities, or construction of public improvements. The City shall not be responsible for repair, replacement, or compensation associated with the City's removal or modification of exempt improvements.

12.65.060 Encroachment application process.

(a) All persons seeking to construct, keep, and maintain an encroachment adjacent or contiguous to their property must submit an application for the approval of such encroachment. The application shall contain information and details as the Department deems necessary to

establish the exact location, nature, dimensions, duration, and purpose of the proposed encroachment.

(b) Prior to and as a condition of approval of a proposed encroachment, an applicant shall submit copies of any and all licenses, permits, or approvals required by the City, any other governmental agency, or other private party. Applicant shall be responsible for obtaining approval of other City departments or governmental agencies, if applicable.

(c) At the time an applicant submits an encroachment agreement application for review, an applicant shall pay any applicable fees established by Council by resolution.

12.65.070 Notice of decision.

(a) City Engineer will review encroachment applications, and in the exercise of reasonable discretion, the encroachment may be approved if the following findings can be made:

(1) The proposed encroachment is compatible with the surrounding area and will not significantly diminish visual or physical public enjoyment of the public right-of-way upon which the encroachment is proposed.

(2) The encroachment will not adversely affect the usability or enjoyment of adjoining parcels nor create or extend an undesirable land use precedent.

(3) The proposed encroachment will not adversely affect the public circulation nor create or constitute a hazard to public safety.

(b) If the proposed encroachment is approved, the applicant shall enter into an encroachment agreement with the City on terms approved by the city attorney. The City Manager or their designee shall be authorized to execute encroachment agreements prepared under this chapter.

(c) If the proposed encroachment is denied, the applicant may appeal the decision made under this Chapter to the City Manager by submitting a written appeal within ten (10) days of the date of notice of such decision. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The City Manager will decide on the written appeal within thirty (30) days. The determination of the City Manager shall be a final decision of the City.

12.65.080 Terms and conditions of encroachment agreements.

(a) Encroachment agreements issued under this chapter shall be subject, at minimum, to the following terms and conditions, the final form of which will be approved by the city attorney:

(1) Property owner shall install and maintain encroachments in a safe and sanitary condition at the sole cost, risk, and responsibility of the property owner, who shall agree to indemnify, defend, and hold the City harmless with respect thereto.

(2) The agreement is made for the direct benefit of the property owner's land described in the agreement, and the covenants therein shall run with the property, shall constitute

an obligation and burden upon the property, and shall be binding upon the assigns and successors of the owners.

(3) The property owner shall remove or relocate the encroachment upon demand in writing by the City Engineer. Upon such demand, the property owner must remove or relocate the encroachment within a timeframe approved by the City Engineer, after such notice or within such longer period as may be provided specifically with the demand or agreement. If property owner fails to remove or relocate the encroachment within the period allotted, the City Engineer may cause such work to be done and the cost thereof shall be borne by the property owner as a lien upon the property.

(4) Property owner shall secure and maintain general liability, property insurance, or other appropriate insurance as reasonably determined by the city attorney or risk manager.

(b) The encroachment agreement shall be recorded in the Santa Clara County Clerk-Recorder's Office.

12.65.090 No vested rights.

The issuance of an encroachment agreement pursuant to this Chapter is not a franchise, and does not grant any vested rights in any locations in the public rights-of-way, or in any way, or any particular manner of placement within the rights-of-way. Without limitation, an encroachment agreement to authorize an encroachment may be revoked at any time deemed necessary by the Director of Public Works.

12.65.100 Unauthorized encroachment - removal.

(a) If a property owner maintains an encroachment without an approved encroachment agreement or other City-issued authorization, the City may require the property owner to submit an encroachment agreement application. The application will be evaluated consistent with the procedures established under this Chapter.

(b) If the City denies the application, or the property owner fails to submit an application within sixty (60) days after the City's request, the City may require the property owner to remove the unauthorized encroachment at the property owner's sole expense. If the property owner fails to remove an unauthorized encroachment as required, City may remove, or cause such to be removed, the encroachment at the property owner's expense.

12.65.110 Penalties.

(a) Pursuant to SCCC 1.05.070, the City, in its prosecutorial discretion, may enforce violation(s) of the provisions of this chapter as a criminal, civil, and/or administrative action. Administrative citations issued under this chapter shall follow the process set forth in Chapter 1.10 SCCC.

(b) Any activities operated, conducted or maintained contrary to the provisions of this chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or

actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by law.

12.65.120 Liability.

Nothing in this chapter shall be interpreted to impose any liability upon the City, its officers, employees, or agents, nor to relieve the owner of any private property from the duty to keep an authorized private improvement located on City property, City easements, or rights-of-way from becoming a hazard or public nuisance.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this XX day of XXXXXX, 2026, by the following vote:

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| AYES: | COUNCILORS: |
| NOES: | COUNCILORS: |
| ABSENT: | COUNCILORS: |

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None