

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTIONS 16.18.010 AND 16.18.080 TO CLARIFY THE DEFINITION OF MAJOR AND MINOR ENCROACHMENTS AND TO DEFINE TIEBACKS AND SOIL NAILS AS ENCROACHMENTS, AND AMENDING SECTIONS 16.18.025 TO AUTHORIZE THE CITY MANAGER TO IMPOSE TIEBACK FEES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code (BMC) Section 16.18.010 is amended to read as follows:

Section 16.18.010 Definitions.

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse 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, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, 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, any pipe, conduit, wire or cable;

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, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade Improvements identified in **chapters 16.04, 16.24 and 17.16**, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. 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 Berkeley 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 2 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, as flower pot, permanent planter boxes, clocks, bus shelters, phone booths, bike racks, fences less than six feet above grade, earth retaining structures less than three feet above grade, benches, and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and his/her authorized delegate.

F. "Permittee" means any person(s) 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 Assistant City Manager for Public Works. 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. (Ord. 5514-NS § 1, 1983)

Section 2. That Berkeley Municipal Code (BMC) Section 16.18.025 is amended to read as follows:

Section 16.18.025 Fees.

A. Fees for the processing or issuance of any permits issued pursuant to this section shall be as set forth in the public works master fee schedule, as adopted by resolution of the City Council. (Ord. 5935-NS § 1, 1989; Ord. 5529-NS § 1, 1983)

B. Mitigation Fees for tiebacks and soil nails shall be as adopted by resolution of the City Council.

Section 3. That Berkeley Municipal Code (BMC) Section 16.18.080 is amended to read as follows:

Section 16.18.080 Approval criteria.

No encroachment permit shall be approved unless it is determined that the subject encroachment conforms with the following standards:

A. The applicant will be substantially damaged by the refusal to grant the permit as requested.

B. No other reasonable method of obtaining the desired results is available except as proposed by the applicant.

C. The granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to the other property.

D. The applicant has complied with the City of Berkeley's public works specifications.

E. No major or minor encroachment into a sidewalk may be granted unless a minimum clear space of six feet remains open for public use in the sidewalk area. For the purpose of determining the clear space, poles, parking meters, fire hydrants, regulatory signs and other such objects (street hardware) may not be considered as part of the minimum horizontal clear space reserved for public use. Except for subsurface encroachments of tiebacks and soil nails, in no event may a minor encroachment extend farther than two feet from the property line into the public right-of-way.

F. All encroachments, except for structures below the walkway such as basement vaults and sidewalk elevators, shall have a minimum height of twelve inches and no portion shall project beyond the base projection of the encroachment unless at a height of eight feet or more above the sidewalk.

G. There should be clear color differentiation between the sidewalk paving and objects placed or installed in the sidewalk area. (Ord. 5514–NS § 1, 1983)

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 11, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

