



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Mark Brodeur, Director, Community and Economic Development
MEETING DATE: January 9, 2018
SUBJECT: An Ordinance Governing Encroachment Permits in City Owned Public Rights-of-Way
CEQA STATUS: Does Not Constitute a “Project” per California Environmental Quality Act (CEQA) Guidelines Section 15378

RECOMMENDATION

Introduce and hold first reading of an ordinance to amend the Pacific Grove Municipal Code (PGMC) to add a Chapter 15.30, Utility Encroachments in Public Rights-of-Way and direct a summary of the proposed ordinance be published as approved by the City Attorney.

DISCUSSION

The City of Pacific Grove (City) currently regulates encroachment into the public rights-of-way through Pacific Grove Municipal Code Section 15.16.030. This section provides that no person, other than City employees or its contractor, may install or repair any curb, gutter, corner ramp, or sidewalk within or along any street in the city without having applied for and received an encroachment permit from the City. Previously, the City has utilized this section to regulate utilities, such as wireless facilities, encroaching into the right of way.

The proposed ordinance would require utility encroachments be subject to a new Chapter 15.30, Utility Encroachments in the Public Rights-of-Way. This ordinance would require the right-of-way occupancy to be subject to the control of the City as to matters affecting the health, convenience, and safety of the general public, including but not limited to matters such as the use and repair of public streets, or the location of the poles, wires, mains, or conduits. Applicants for wireless facilities in the public rights-of-way, would be required to apply for an obtain an encroachment permit, in addition to the permit for a wireless telecommunications facility.

The proposed ordinance also grants the City Public Works Director, Building Official or designee to adopt forms and regulations to ensure a utility occupying the public rights-of-way bear the risks and expense associated with their use of the rights-of-way, and does not incommode the public use of the rights-of-way. Contemplated regulations promulgated under the Chapter can address City inspections, indemnification provisions, and requirements for insurance and a performance bond. The regulations are also intended to cover adverse impacts of the utility on adjacent properties, visual burdens, as well as maintenance and abandonment of facilities.

The ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly.

OPTIONS

1. Take no action.
2. Provide alternate direction.

FISCAL IMPACT

None

GOAL ALIGNMENT

Infrastructure

ATTACHMENT

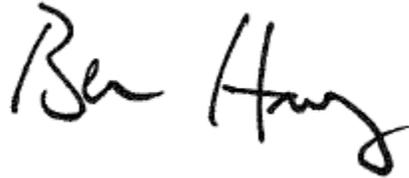
1. Proposed Ordinance

RESPECTFULLY SUBMITTED,



Mark Brodeur
Community and Economic Development Director

REVIEWED BY,



Ben Harvey
City Manager

ORDINANCE NO. 19-_____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
ADDING CHAPTER 15.30 OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING UTILITY ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY**

FACTS

1. The Pacific Grove Municipal Code (PGMC) §15.16 requires that no person other than city employees, or persons under contract with the city, shall install or repair any curb, gutter, corner ramp, or sidewalk within or along any street in the city without having applied for and received an encroachment permit from the city.
2. The City deems it necessary and appropriate to provide standards and regulations relating to encroachment permits within the City’s public rights-of-way and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.
3. The City by and through its Council and other officials has the authority to adopt such ordinances as it deems necessary and appropriate to assure the health, welfare and safety of its inhabitants, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order.
4. This ordinance amends the Municipal Code to create a new Chapter 15.30, entitled “Utility Encroachments” to provide for certain standards and regulations relating to the location of utilities within the City’s public rights-of-way.
5. This ordinance also amends the Municipal Code Section 15.16.030 to clarify that utility encroachments are subject to regulations promulgated under Chapter 15.30.
6. Notice of the public hearing was published or posted in _____ on _____ and _____.
7. In the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. The ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. A new Chapter 15.30, entitled “Utility Encroachments In Public Rights-Of-Way,” shall be created, as follows:

**CHAPTER 15.30
UTILITY ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY**

15.30.010 Scope.

Any permanent structure or object of any kind or character placed in, over or under any street, alley, sidewalk, or right-of-way (collectively, the “right-of-way”) by a public utility or entity holding a state or local franchise authorizing right-of-way occupancy shall be subject to the control of the City as to matters affecting the health, convenience, and safety of the general public, including but not limited to matters such as the use and repair of public streets, or the location of the poles, wires, mains, or conduits on, under, or above any rights of way within the limits of the City.

15.30.020 Administration.

The City Public Works Director, Building Official or designee may adopt forms, manuals and regulations or implement practices to ensure that a public utility or entity holding a state or local franchise authorizing occupancy of the rights-of-way bear the risks and expense associated with their use of the rights-of-way; to protect the public, health, safety and welfare; to ensure that the construction, installation, maintenance and operation of any facility does not incommode the public use of the rights-of-way; and to control the time, place, and manner in which rights-of-way are accessed.

SECTION 3. The text set forth in existing Section 15.16.030 of the Pacific Grove Municipal Code entitled, “Repair Procedure” shall be amended by the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***) as follows:

15.16.030 Repair procedure.

Owners of property abutting sidewalks, or possessors of sidewalks, shall have the duty of maintaining the same and shall be subject to all of the liabilities and procedures prescribed by Chapter 22, Division 7, Part 3, commencing at Section 5600, of the Streets and Highways Code of the state of California. The Streets and Highways Code, Chapter 22, Maintenance of Sidewalks, provides that the owners of lots or portions of lots fronting any portion of the public street are responsible for maintaining sidewalks in a condition which will not interfere with the public convenience in their use. The city shall have all of the rights therein provided, including the right to lien and collection. No person except city employees, or persons under contract with the city, shall install or repair any curb, gutter, corner ramp, or sidewalk within or along any street in the city without having applied for and received an encroachment permit from the city; ***however, utility encroachments shall be subject to Chapter 15.30.*** Application for any such permit will be made in writing on a form or forms supplied for that purpose by the city.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall take effect on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney