

## ORDINANCE NO. 22-2020

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 12.08 (CONSTRUCTION IN STREETS) TO UPDATE AND CLARIFY THE CITY'S REQUIREMENTS FOR PERSONS PERFORMING CONSTRUCTION WITHIN THE PUBLIC RIGHT-OF-WAY

**WHEREAS**, Elk Grove Municipal Code Chapter 12.08 establishes rules and regulations for the performance of construction within City of Elk Grove streets, roads, highways, and other public rights-of-way, including the requirements for obtaining an encroachment permit; and

**WHEREAS**, an encroachment permit requires permittees to make certain warranties and deposits to guarantee the proper performance and restoration of construction within the City's rights-of-way; and

**WHEREAS**, adoption of this does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is also exempt from CEQA under the common sense exemption. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15378(a).)

**WHEREAS**, the Public Works Director of the City of Elk Grove has identified appropriate changes to update and clarify the City's warranty and deposit requirements for construction performed in the City's rights-of-way, as well as other minor changes and clarifications.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this Ordinance is to amend Elk Grove Municipal Code Chapter 12.08 Construction in Streets to update and clarify the City's warranty and deposit requirements for construction performed in the City's rights-of-way, as well as other minor changes and clarifications.

#### Section 2: Findings

In January 2020, staff began self-auditing the City's policies and procedures on the issuance of encroachment permits and the corresponding requirements and inspections of construction performed within the City's rights-of-way. The audit process involved an in-depth review of the City's encroachment permit processes, assessing their effectiveness and necessity, and comparing them to the similar practices of four neighboring cities, including Roseville, Folsom, Lincoln, and Rancho Cordova. Overall, the City's practices were similar to those of the neighboring jurisdictions. Nevertheless, the results of the audit revealed the need to update and clarify several of the City's practices and requirements. These generally included:

- a. Updating the City's encroachment permit application forms and general conditions to remove redundant and confusing information, clarify requirements, and streamline application forms.
- b. Develop written procedures for receiving, reviewing, and issuing encroachment permits.

- c. Clarify warranty and deposit requirements and update Chapter 12.08 of the City's Municipal Code as needed.

Section 3: Action - Amend Elk Grove Municipal Code Chapter 12.08 Construction in Streets

Chapter 12.08 of the Elk Grove Municipal Code shall be amended to read as follows:

*Additions are shown in **bold**; deletions are shown in ~~strikethrough~~*

Chapter 12.08  
CONSTRUCTION IN STREETS

Sections:

...

12.08.070 ~~Deposit~~**Performance guarantee.**

12.08.080 ~~Waiver of~~**Performance** deposit.

**12.08.090 Waiver of deposit.**

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12.08.010 Definitions.

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For purposes of this chapter, "obstruction" shall be defined as any activity or structure, temporary or permanent, encroaching into the ~~road~~**public** right-of-way excepting utility poles or pole lines **that were legally** placed upon the unimproved portion of the highway.

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12.08.020 Permit required.

It is unlawful for any person to lay, construct or maintain any pipes, drain, or conduit across, along or on any street, road, ~~or~~highway, **or other public right-of-way** in the City, or to make any excavation or cut or obstruction therein for such purposes without first obtaining an **encroachment** permit from the Director to do so in the manner herein provided. Every applicant shall state in detail the following information:

...

12.08.030 Permit fees.

A minimum processing fee **and/or deposit** as established by resolution of the City Council shall be paid for permits prior to permit issuance, except where a continuous billing account has been established. Additional costs incurred by the City of Elk Grove Public Works Department for processing and inspection shall be billed to the permittee on a time and material basis, based upon the ~~prevailing Public Works Department~~**City's direct billing and overhead** rates in effect at the time of permit processing.

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#### 12.08.060 Refilling upon completion.

Immediately upon completion of the work necessitating the excavation or obstruction permitted by the permit issued hereunder, the permittee shall at his or her own cost and expense, promptly and in a workmanlike manner refill the excavation or remove the obstruction. All excavations shall be refilled in a manner consistent with then applicable City standard specifications and the specific terms and conditions contained in the permit. Upon completion of the refilling of the excavation the Director shall require the permittee to resurface that portion of the street or highway damaged by the permittee's excavation or obstruction. The resurfacing shall be done in accordance with the ~~standard specifications prescribed by the City Council for the repair and resurfacing of City streets~~ **then applicable City standards and the specific terms and conditions contained in the permit.**

#### 12.08.070 ~~Deposit~~**Performance guarantee.**

~~Except as hereinafter provided, the Director shall require the applicant to deposit a sum of money sufficient in the opinion of the Director to cover the total cost of refilling any excavation and proper restoration of the highway as required hereunder. The deposit shall be a corporate surety bond, or other corporate bond acceptable to the Director, cash, certified check or cashier's check payable to the City of Elk Grove. If the work of refilling the excavation is in accordance with the requirements of EGMC Section 12.08.060 and the restoration of the highway is completed in accordance with the standards herein prescribed, the deposit shall be returned to the permittee at the expiration of one hundred eighty (180) days from the completion of work. If during such time the refilled excavation settles, or if the resurfacing or restoration of the highway disintegrates or develops ruts or holes, the Director shall require the permittee to repair or resurface the highway to eliminate all ruts and holes therein. If the permittee fails or refuses to do such work, the Director shall do the work required, and pay the cost thereof out of the deposit. If the deposit is insufficient for this purpose the deficiency shall be charged to the permittee. If the permittee fails or refuses to pay such a deficiency upon demand, the City may recover the same by an action in any court of competent jurisdiction. Until the deficiency is paid in full no new permits shall be issued to such permittee.~~

**All work performed in the public right-of-way shall be guaranteed for a period of one (1) year after the permit is accepted and closed by the City. If the pavement or the surface of the public right-of-way over any excavation should become depressed or broken at any time within one year after acceptance, the permittee shall repair and/or resurface the work to eliminate all such failures and be to the satisfaction of the Director at the permittee's own cost and expense.**

#### 12.08.080 ~~Deposit~~**Performance deposit.**

~~The Director may waive a special deposit whenever in his or her opinion the proposed excavation or obstruction is of a minor nature or other suitable security is provided.~~

**Except as hereinafter provided, the Director shall require the applicant to deposit a sum of money sufficient in the opinion of the Director to cover the total cost of refilling any excavation and proper restoration of the highway as required hereunder. The deposit shall be a corporate surety bond, or other corporate bond**

acceptable to the Director, cash, certified check or cashier's check payable to the City of Elk Grove. Following completion of the work by permittee and inspection and acceptance of the work by the Director, the deposit shall remain in effect to the extent of ten percent (10%) of the value of the work to guarantee and assure faithful performance of permittee's obligations for a period of one (1) year from the Director's acceptance of the work. If the permittee fails or refuses to make repairs in accordance with the requirements of EGMC Sections 12.08.060 and 12.08.070, the Director shall do the work required, and pay the cost thereof out of the deposit. If the deposit is insufficient for this purpose the deficiency shall be charged to the permittee. If the permittee fails or refuses to pay such a deficiency upon demand, the City may recover the same by an action in any court of competent jurisdiction. Until the deficiency is paid in full no new permits shall be issued to such permittee.

#### 12.08.090 Waiver of performance deposit.

The Director may waive a performance deposit whenever in his or her opinion the proposed excavation or obstruction is of a minor nature or other suitable security is provided.

#### 12.08.100 Refusal to refill excavation.

If the permittee fails or refuses to refill any excavation as required by EGMC Section 12.08.060 or remove any obstruction which he or she has placed upon the highway or fails and refuses to restore or resurface that portion of the surface of the highway damaged by him or her in accordance with the standards herein prescribed, the Director may do such refilling and resurfacing and pay the cost thereof out of the deposit made by the permittee. The deposit shall also be used to maintain the work for a period of ~~one hundred eighty (180) days~~ **one (1) year** after completion thereof. If the amount of the deposit is not sufficient to cover the cost of the work and the maintenance thereof, the deficiency shall be charged to the permittee. If the permittee fails or refuses to pay the deficiency upon demand, the City may recover the same by an action in any court of competent jurisdiction. Until the deficiency is paid in full no new permits shall be issued to such permittee. In lieu of such deductions the Director may bill such person for the amount owed by him or her to the City. If such amount is not paid within fifteen (15) days of the rendition of the bill, the Director may deduct the amount from the general deposit as herein provided.

#### 12.08.110 Exemptions.

**Except as otherwise provided in Section 1468 of the California Streets and Highway Code, No performance** deposit shall be required of any public district, public utility, or political subdivision (~~as provided in Section 1468 of the California Streets and Highway Code~~) which is authorized by law to establish or maintain works or facilities in, under or over any public highway, nor shall the application of any such governmental unit be denied except as hereinafter provided. Every such applicant shall be entitled as a matter of right to a permit but shall otherwise be subject to the provisions of this chapter. The Director shall have the right to deny a permit to such applicant, **or require such applicant to provide a bond in a sum not to exceed twenty thousand dollars (\$20,000)**, where the applicant has failed to comply with the provisions of this chapter relating to the refilling

of excavations, removing or relocating obstructions or the resurfacing or restoration of any highway, and the maintenance thereof, under any previous permit.

#### 12.08.120 Permit nontransferable; **permit expiration.**

All permits issued hereunder shall be nontransferable and the work authorized by the permit must commence within thirty (30) days of issuance thereof, ~~and must be completed within the time estimated in the application~~ **Except as set forth herein, permits shall expire ninety (90) days from permit issuance. Failure to commence work within thirty (30) days of permit issuance shall result in an automatic expiration of the permit, for which the applicant may apply for a new permit. Except as set forth herein, any work required after ninety (90) days of permit issuance shall require application for a new permit.** The Director **at his or her sole discretion** may grant a reasonable extension when the work has been unavoidably delayed without fault of the permittee.

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#### Section 4: 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 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

#### Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication

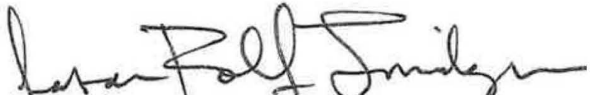
This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:**           **22-2020**  
**INTRODUCED:**       November 18, 2020  
**ADOPTED:**           December 9, 2020  
**EFFECTIVE:**         January 8, 2021




BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Signed: December 11, 2020

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL ORDINANCE NO. 22-2020**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on November 18, 2020 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 9, 2020 by the following vote:*

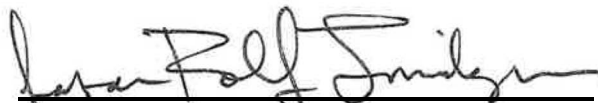
**AYES:**           **COUNCILMEMBERS:** *Singh-Allen, Nguyen, Hume, Spease, and Suen*

**NOES:**           **COUNCILMEMBERS:** *None*

**ABSTAIN:**       **COUNCILMEMBERS:** *None*

**ABSENT:**       **COUNCILMEMBERS:** *None*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*



**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**