

ORDINANCE NO. 2014-07

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
AMENDING ARTICLE 1, CHAPTER 23 OF  
THE ESCONDIDO MUNICIPAL CODE TO  
ADD ANNUAL ENCROACHMENT PERMITS

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. Article 1, Chapter 23 of the Escondido Municipal Code is hereby amended to read as follows:

**Sec. 23-1. Notice to remove obstructions required; manner of notification.**

If any street, alley or public ground in the City is or shall be encroached upon or obstructed by any fence, building or other obstruction placed therein, the City Engineer shall require the encroachment or obstruction to be removed therefrom within ten (10) days by giving oral or written notice to the person causing or owning the encroachment or obstruction if such person resides in the City; or by posting notices in three (3) public places in the City if the person does not reside in the City.

**Sec. 23-2. Removal of obstructions by city; recovery of costs, expenses.**

If the encroachment or obstruction referred to in section 23-1 is not removed or commenced to be removed, and the removal diligently prosecuted prior to the expiration of the ten (10) days from the service or posting of the notice, the City Engineer may remove the same at the expense of the owner or person causing or controlling it, and recover his costs and expenses incurred in an action for that purpose.

**Sec. 23-3. Implements, machines on sidewalks.**

(a) It shall be unlawful to place, keep or expose on a sidewalk in the City, for advertising or exhibition, any sharp or dangerous tool, implement or machine, or to have on any portion of the sidewalk for longer than six (6) hours any tool, implement or machine that may endanger the limbs or safety of any person using or passing along such sidewalk.

(b) The provisions of this section shall not apply to encroachments or obstructions duly authorized by competent authority.

**Sec. 23-4. Merchandise on sidewalks.**

It shall be unlawful to place or leave, or permit to be placed or left, any goods, wares, merchandise, or other obstructions on the sidewalk in the City beyond the line of the building except as permitted by Ordinance 92-43 (Display and Sale of Retail Merchandise), or the Downtown Revitalization Area Specific Plan (91-02-SP).

**Sec. 23-5. Placing merchandise, tools on outer side of sidewalk.**

It shall be unlawful to place on the outer or street side of a sidewalk any goods, wares, tools or merchandise.

**Sec. 23-6. Failure to remove obstruction an infraction.**

Any person violating sections 23-3, 23-4 and 23-5, who does not, within one hour after notice, remove such obstruction, shall be guilty of an infraction.

**Sec. 23-7. Freeway and expressway agreements or contracts.**

Unless and until approved by a majority of the city's electors voting at a general or special election, the city shall not enter into an agreement or contract with the State of California or any other government or department, subdivision, agency or commission thereof (1) allowing construction of a freeway or expressway which would be in whole or in part within the boundaries of the city or (2) to close any city streets at or near the point of its intersection with any freeway or expressway or to make provision for carrying such city streets over or under or to a connection with the freeway or expressway or to do any work on such city street as is necessary therefore. The terms of this section shall not apply to existing Highway 395 or to currently proposed Interstate Freeway I-15.

**Sec. 23-8. Encroachment Permits.**

(a) Required. No person shall excavate, construct improvements, grade, or encroach within any public right-of-way of the City of Escondido without an Encroachment Permit issued pursuant to the terms of this Article.

(b) Annual Encroachment Permit. As an alternative procedure to the issuance of an individual Encroachment Permit as provided by Paragraph (a) of this Section, any person proposing to do continuous and significant work within the public right-of-way may request an Annual Encroachment Permit subject to approval by the City ("Annual Permittee").

**Sec. 23-9. Classifications of Work.**

For purposes of this Article, the word "work" shall mean an action to excavate, bore, construct, erect, install, operate, maintain, use, repair, locate, relocate, or replace any

pipng, poles, wires, conduits and appurtenances thereto in, upon, along, across, under or over the public rights-of-way.

(a) Minor Work means any work performed in the public right-of-way or in any City of Escondido easement that is completed without damage to the existing improvements. Minor Work is generally confined to work performed on existing facilities without damage to existing improvements. Any work performed on a street classified as a Prime Arterial, Major Road or Collector shall not be considered Minor Work. All vehicles on site must be able to park legally or on private property to complete any work under this classification.

(b) Emergency Work means any work which is urgent in nature, and is initiated to fulfill the City's and any Annual Permittee's desire to maintain or restore service to the residents and businesses within the City. This work will begin immediately and be completed within the shortest possible time frame.

(c) Ordinary Work means work performed in the public right-of-way or City of Escondido easement that will take one (1) to ten (10) working days to complete. This category of work includes the excavation, removal, and replacement of existing City of Escondido improvements, including sidewalks, street surfacing, curb and gutter, landscaping, and irrigation. Minor Work with Traffic Control performed on Prime Arterials, Major Roads, or Collectors will be included in this category.

(d) Non-Standard Work means any work in the public right-of-way or city easement within the City of Escondido that will require more than ten (10) working days to complete or requires City staff to be available during non-standard hours.

### **Sec 23-10. Annual Permit Requirements.**

(a) Notification under Annual Permit. An Annual Permittee shall provide to the City a fax, E-mail or hand-delivered notice of its intent to commence work within the timeframes set forth below. A copy of the notice shall be kept on the construction site. This copy shall be presented and shown upon demand to any City Official for verification of authority to work. A lack of notice to the City for intended work pursuant to an Annual Permit may be subject to a stop work notice.

(1) **Minor Work** notices must be received at least two (2) business days prior to commencement of the work.

(2) **Emergency Work** notices must be received by the Engineering Department Permit Technician no later than three (3) working days after start of the work.

(3) **Ordinary Work** must be approved by the City prior to commencement. Notices must include submittal of a job sketch and Traffic Control Plan (TCP) on a form approved by the City. Plans for Ordinary Work will be reviewed within fifteen (15) working days from receipt of the notice. After receiving approval, the Annual Permittee must call to schedule a preconstruction meeting with the City Inspector.

(4) **Non-Standard Work** must be approved by the City prior to commencement. In addition to the requirements above for Ordinary Work, notification must include the circumstances and magnitude of the work, any proposed coordination with the City, and the amount of interface necessary. An Annual Permittee must also submit construction and traffic control drawings prior to receiving a specific authorization to work.

(b) Special Conditions. All Annual Permittees shall work with the City to address circumstances and conditions unique to any particular work and will comply with all reasonable requests which are intended to mitigate or lessen any impact caused by authorized work which may arise during the course of the Annual Permit.

(1) All **Work** must be done under the direct supervision of the Annual Permittee's Field Supervisor/Representative. Crews working under this Annual Permit shall have a supervisor/representative on the site during all work activities. Any subcontractor(s) acting on behalf of the Annual Permittee, shall have a qualified and skilled foreman on site during all work activities, and be under direct supervision of the Annual Permittee's field construction representative, who shall monitor and direct as needed, their subcontractors to include directing unskilled persons in their craft, site safety and health issues, construction methods involving all construction activities, traffic control, site maintenance, and any construction which impacts existing facilities.

(2) All Annual Permittees shall adhere to all right-of-way and/or Encroachment Permit conditions, standards, requirements, codes expected of a normally issued Encroachment Permit, except as preempted by State or Federal rules and laws.

(3) The City shall reserve the right to inspect the job site for public safety at any phase of construction. If at any time a City Inspector determines an unsafe condition exists, the condition will be mitigated on site or terminated until such condition can be resolved.

#### **Sec. 23-11. Traffic Control.**

All permittees shall abide by appropriate traffic control standards for the safe movement of traffic or pedestrians upon highways and streets in accordance with the State Vehicle Code and pursuant to the City Design Standards. The following time restrictions apply to all Minor and Ordinary Work. Residential street time restrictions are from 7:30 AM to 3:30 PM Monday through Friday. Time Restrictions for Collectors or Arterials are from 8:00 AM to 3:00 PM Monday through Friday. Any work activities which require work beyond these time restrictions require prior City Engineer approval.

#### **Sec. 23-12. Street Repair.**

Any damage to a right-of-way will be restored in accordance with City standards to an equal or better condition within five (5) days after completion of the work unless otherwise approved by the City Engineer. The extent of said repairs shall be determined by the City

in accordance with City standards. For those sections of the public right-of-way damaged, the permit holder will repair or replace the right-of-way to an equal or better condition, and will also guarantee the repair for an indefinite period.

#### **Sec. 23-13. Capital Improvement Schedule.**

The City prepares a list of streets anticipated to be resurfaced during the year as part of the City's Capital Improvement Plan ("Resurfaced Streets"). All permittees will not perform any work involving excavation, removal, or replacement in Resurfaced Streets, or curb and gutters abutting Resurfaced Streets within a three year period of the resurfacing. Exemptions may be granted to ensure that the health and safety of its employees and general public as well as system reliability are not negatively impacted by the moratorium. Such exemptions include, but are not limited to, performance of Emergency Work, work initiated by municipal improvement projects, the installation of new customer service, and work mandated by City, State or federal requirements. Full street resurfacing will be required for trenching during the moratorium period, the extent of said repairs shall be subject to approval of the City Engineer.

#### **Sec. 23-14. Bonds and insurance.**

For any Encroachment Permit issued within the public right-of-way, proof of a bond and liability insurance shall be posted in an amount and form satisfactory to the city engineer to insure timely completion of work and to cover damages caused by the work.

#### **Sec. 23-15. Application.**

To obtain an Encroachment Permit, an applicant shall file a written or electronic application with the City Engineer on a form or in a manner provided by the City. The Encroachment Permit is subject to all requirements of this Article, all individualized conditions contained within the application, the City of Escondido Standard Specifications, Standard Drawings, Special Provisions, and Design Standards, and such other conditions as may be imposed by the City Engineer at the time of application.

#### **Sec. 23-16. Issuance by City Engineer.**

(a) The City Engineer shall issue an Encroachment Permit upon the public right-of-way of the City of Escondido only if an applicant for such a permit can demonstrate that:

(1) There is a need to use the City right-of-way for the applicant's proposed use;

(2) The issuance of a permit will not be detrimental to the public health, safety and welfare;

(3) Applicant will comply with, or be capable of complying with, all the terms, conditions, and restrictions that are incorporated in the permit; and

(4) Applicant has complied with all applicable state and federal laws, and has obtained all applicable permits or certifications required under state or federal law.

(b) The City Engineer shall have the discretion to require the applicant, as a condition of permit issuance, to disclose information regarding:

(1) The applicant's proposed use of any lines, wires, cables, conduits or other equipment in the right-of-way;

(2) The quantity of applicant's proposed installation of lines, wires, cables, conduits or other equipment in the right-of-way;

(3) The quantity of applicant's proposed installation of lines, wires, cables, conduits or other equipment which will be solely used for provision of telephone service which are currently certificated by the Public Utilities Commission of the State of California;

(4) The specific dates applicant intends to begin using any lines, wires, cables, conduits or other equipment in the right-of-way;

(5) The location of all of applicant's existing lines, wires, cables, conduits or other equipment in any City of Escondido right-of-way; and

(6) The specific safety measures applicant proposes to use while applicant is excavating or obstructing any right-of-way.

**Sec. 23-17. Penalty for violation of terms.**

(a) The City Engineer shall revoke any Encroachment Permit upon determining that the permittee has failed to comply with one or more of the terms, conditions or restrictions incorporated in the permit, or upon discovery that the permittee has provided false or misleading information. Upon the revocation of an Encroachment Permit, the permittee must immediately cease and desist from encroaching on or in the public right-of-way of the City of Escondido. Any work done after revocation of a permit is a public nuisance and subject to immediate abatement.

(b) Any person conducting work in the right-of-way without a valid Encroachment Permit is guilty of a misdemeanor and subject to punishment as provided in Section 1-13 of this Code.

(c) No permittee who has been determined by the City Engineer to be in violation of any of the terms, conditions or restrictions of an Encroachment Permit issued to such permittee shall be eligible to receive an Encroachment Permit from the City of Escondido for a period of one (1) year following the date of such determination, unless this restriction is waived by the City Engineer.

## **Sec. 23-18. Fees.**

Unless otherwise exempted by existing law or contractual agreement, every person shall pay a fee to the City of Escondido prior to issuance of an Encroachment Permit. The fee shall be determined as follows:

(a) From time to time the city council will approve by resolution a fee schedule for certain types of Encroachment Permit applications.

(b) For permit applications which are not defined in the list of fees approved from time to time by the city council, the amount of the permit fee will be determined by the city engineer subject to the approval of the city council, and may take into account any of the following factors:

(1) The nature of any new lines, wires, cables, conduits or other equipment to be installed in the right-of-way;

(2) The quantity of applicant's proposed installation of lines, wires, cables or conduits in the right-of-way;

(3) The quantity of applicant's proposed installation of lines, wires, cables, conduits or other equipment which are not currently certificated by the Public Utilities Commission of the State of California;

(4) The specific dates applicant intends to begin using any lines, wires, cables, conduits or other equipment in the right-of-way;

(5) The anticipated future cost to the city of any predictable accelerated degradation of the street surface caused by the proposed excavation or encroachment;

(6) The anticipated cost to the city of any staff time required to ensure the safety of the roadway, the coordination of the application with other applications, or the proper restoration of the street surface;

(7) Whether the timing of the application may be coordinated with an existing excavation or encroachment in the same location by the city or another applicant; and

(8) Any other expense which is reasonably related to the additional cost the city may incur as the direct result of the application, or which is allowed under existing state and federal law.

## **Sec. 23-19. Nonexclusive use of right-of-way.**

Any permit issued by the city under this chapter which permits the applicant to excavate, construct improvements, grade or encroach within any public right-of-way shall also permit the city to utilize the right-of-way for its own purposes during the same time period

as the applicant's use. The city may extend the proposed time period of the applicant's proposed use of the right-of-way to suit its own purposes

**Sec. 23-20. Appeal.**

(a) Any person aggrieved by the City Engineer's decision to deny an encroachment permit application or to impose a fee on an application granted under this chapter must first appeal to the transportation commission within ten (10) days after receiving notification of the city engineer's decision. A request for appeal must be filed with the city clerk, and a hearing before the transportation commission will be scheduled within a reasonable time after the filing of the appeal.

(b) Any person aggrieved by the transportation commission's decision with respect to the issuance, denial or revocation of an encroachment permit or permit application or with respect to the imposition of a fee on an application granted under this chapter may appeal to the city council within ten (10) days after receiving notification of the transportation commission's decision. A request for appeal must be filed with the city clerk, and a hearing before the city council will be scheduled within a reasonable time after the filing of the appeal.

SECTION 2. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 3. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.



PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 26<sup>th</sup> day of March, 2014 by the following vote to wit:

AYES : Councilmembers: GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

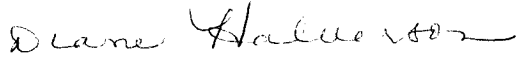
ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the  
City of Escondido, California

ATTEST:

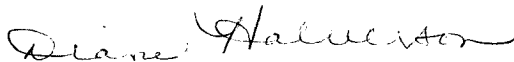


DIANE HALVERSON, City Clerk of the  
City of Escondido, California

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STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO : ss.  
CITY OF ESCONDIDO )

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing  
ORDINANCE NO. 2014-07 passed at a regular meeting of the City Council of the City of Escondido  
held on the 26<sup>th</sup> day of March 2014, after having been read at the regular meeting of said City Council  
held on the 19th day of March, 2014.



DIANE HALVERSON, City Clerk of the  
City of Escondido, California

ORDINANCE NO. 2014-07