

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FORT WORTH BUILDING CODE OF THE CITY OF FORT WORTH, BY AMENDING CHAPTER 7 “AMENDMENTS,” CHAPTER 32 “ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY” DIVISION III, “PERMANENT ENCROACHMENTS” TO INCLUDE NEW LANGUAGE TO CATEGORIZE ENCROACHMENTS INTO TIERS AND TO PROVIDE CORRESPONDING REQUIREMENTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, on September 25, 2012 the City Council of Fort Worth adopted Ordinance No. 20425-09-2012 to amend section 3210 of the Fort Worth Building Code to allow staff administrative authority to approve certain encroachment agreements thereby reducing the processing time and the documentation sent to the City Council for consideration, provide for application fees and to establish an annual fee for permanent encroachments into public property; and

WHEREAS, on July 22, 2014 the City Council of Fort Worth adopted Ordinance No. 21343-07-2014 to further amend section 3210 of the Fort Worth Building Code to provide that the annual fee is limited to City property and rights-of-way and is not applicable to City-owned easements; and

WHEREAS, the City Council of Fort Worth has determined that it is appropriate to establish a tiered system for encroachments onto City property, including easements and rights-of-way and to revise requirements for newly established tiers, include insurance requirements and applicability of fees for such encroachments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS, AS FOLLOWS:

SECTION 1.

Section 7-47, “Amendments” of the Building Code of the Code of the City of Fort Worth (2015) is hereby amended to revise Division III, Permanent Encroachments, Sections 3209, 3210 and 3211 to establish a tiered categorization of encroachments into public property, to revise insurance and fee requirements, and reorder and renumber the remaining subsections, to read as follows:

DIVISION III: ENCROACHMENT OF PUBLIC PROPERTY

PERMANENT ENCROACHMENTS

3209 General. No part of any building or structure, or any appendage thereto, shall permanently project into, over, or under any public property, easement, or right-of-way except as authorized by this chapter. ~~that is not in compliance with the provisions of this chapter shall project into public property.~~

Exceptions:

~~1. Gratings over openings in public property which have openings not exceeding 7/16 inch and are designed to withstand loads in excess of 150 pounds psf may permanently occupy public property.~~

1. 2. Environmental monitoring wells when approved by City Council or the authority authorized delegated to the Environmental Management Department of Code Compliance.

2. 3. Backflow protection devices when approved by the authority authorized delegated to the Water Department.

3. Private irrigation lines located along local and collector streets.

4. Any encroachment that the Director of the Development Services Department determines (1) existed before the City's ownership interest of the public property and (2) does not interfere with the public purpose and use of the public property.

3210 - Encroachment Agreements Required

3210.1 General. All permanent encroachments into public property, including inclusive of public right-of-way and easements, shall require a duly executed Encroachment Agreement approved by the City Council.

~~**Exceptions:** The Planning and Development Director is hereby authorized to execute Encroachment Agreements on behalf of the City, except when the encroachment into public property is a major encroachment. A major encroachment means any building structure proposed on, above and/or below a street, alley right of way or easement area; to include, but not be limited to, sky bridges, and tunnels between buildings, and parking structures built above or below grade. All major encroachments must be presented to the City Council for approval.~~

3210.2 Authority. The Director of the Development Services Department is hereby authorized to execute Encroachment Agreements on behalf of the City, except when the encroachment into public property is a Tier III Major Encroachment, as described in Section 3210.3.3 below. Tier III Major Encroachments must be approved by City Council.

3210.3 Encroachment Tiers. All permanent encroachments into public property, inclusive of public right-of-way and easements, shall be categorized and divided into the following tiers:

3210.3.1. Tier I Minor Encroachments. Minor Encroachments are those that, by their size or construction method, are simple in nature, that may be removed from the public property in a

short period of time, and that have only a minor impact on public property. An aerial encroachment shall not be considered a Tier I Minor Encroachment if it projects more than twelve inches over, into, or above the public property. However, an aerial encroachment located at least eight feet above grade level shall be considered a Tier I Minor Encroachment if it projects no more than four feet over the public property and is fully supported by a building or other structure not located on public property. Tier I Minor Encroachments include, but are not limited to, those shown in the accompanying table.

<u>Tier I Minor Encroachments</u>	
<u>Arcades</u> <u>Awnings</u> <u>Bay windows and oriels</u> <u>Benches</u> <u>Bicycle racks</u> <u>Blade signs</u> <u>Canopies</u> <u>Cornices and sills</u> <u>Door swings</u> <u>Eaves</u> <u>Handicap ramps</u>	<u>Marquee signs</u> <u>Planters</u> <u>Private irrigation lines located along thoroughfares or arterial roadways unless included under a separate agreement with the City</u> <u>Public art installations</u> <u>Stoops and stairs</u> <u>Security cameras and appurtenances</u> <u>Sustainable landscaping such as xeriscaping, rain gardens and bio-swales</u> <u>Trash receptacles</u>

Tier I Minor Encroachments shall not require an annual fee. In accordance with Risk Management policy, each Tier I Minor Encroachment Agreement shall require proof that the applicant has secured and paid for a policy of public liability insurance covering all public property on which the encroachment is located during construction and continuing through the entire term of the Encroachment Agreement. The amount of insurance coverage shall be at least the maximum amounts of liability that can be imposed upon the City under State law. Each insurance policy shall provide that it cannot be canceled or amended without at least thirty (30) days advanced written notice to the City. Insurance shall be maintained for the length of the Encroachment Agreement.

3210.3.2. Tier II Standard Encroachments. Standard Encroachments are those that are larger or more complex in nature than Tier I Minor Encroachments, but not as substantial or complex as Tier III Major Encroachments. Tier II Minor Encroachments include, but are not limited to, those shown in the accompanying table.

<u>Tier II Standard Encroachments</u>	
<u>Balconies</u> <u>Dumpsters</u> <u>Fences</u> <u>Gates</u>	<u>Retaining Walls</u> <u>Storm Drains</u> <u>Private water lines</u>

Tier II Standard Encroachments shall require a non-refundable application fee and, for as long as the approved encroaching improvement exists, an annual encroachment fee as specified in Table 1-F in section 119 of the Building Administrative Code. However, for Tier II Standard Encroachments, the annual fee shall not be applied to encroachment improvements on City-owned easements. In accordance with Risk Management policy, each Tier II Standard Encroachment Agreement shall require proof that the applicant has secured and paid for a policy of public liability insurance covering all public property on which the encroachment is located during construction and continuing through the entire term of the Encroachment Agreement. The amount of insurance coverage shall be at least the maximum amounts of liability that can be imposed upon the City under State law. Each insurance policy shall provide that it cannot be canceled or amended without at least thirty (30) days advanced written notice to the City. Insurance shall be maintained for the length of the Encroachment Agreement.

3210.3.3. Tier III Major Encroachments. Major Encroachments are those encroachments that, due to their size, complexity, or construction method, have a substantial impact on public property or those that utilize a significant portion of the public property, easement, or right-of-way and are not included in a separate agreement with the City. Tier III Minor Encroachments include, but are not limited to, those shown in the accompanying table.

<u>Tier III Major Encroachments</u>	
<u>Basements</u> <u>Parking structures</u> <u>Sky bridges</u>	<u>Tunnels</u> <u>Underground walkways</u>

Tier III Major Encroachments shall require a non-refundable application fee and, for as long as the approved encroaching improvement exists, an annual encroachment fee as specified in Table 1-F in section 119 of the Building Administrative Code. However, for Tier III Major Encroachments, the annual fee shall not be applied to encroachment improvements on City-owned easements. In accordance with Risk Management policy, each Tier III Major Encroachment Agreement shall require proof that the applicant has secured and paid for a policy of public liability insurance covering all public property on which the encroachment is located during construction and continuing through the entire term of the Encroachment Agreement. The amount of insurance coverage shall be at least the maximum amounts of liability that can be imposed upon the City under State law. Each insurance policy shall provide that it cannot be canceled or amended without at least thirty (30) days advanced written notice to the City. Insurance shall be maintained for the length of the Encroachment Agreement and evidence of such insurance coverage must be provided to the City on an annual basis during the term of the Encroachment Agreement.

3210.3.4. The Director or Building Official shall, upon request of an interested party, make a determination of the degree of encroachment into or on to public property to determine the appropriate tier category and requirements.

3210.42 Application. The applicant shall execute ~~three (3) copies~~ of an Encroachment Agreement with the City upon forms furnished by the Building Official or his designee. The forms for such an agreement shall be approved from time to time by the City Attorney's Office. Executed forms shall be filed in the real property records of the applicable county, and kept and maintained in the offices of the the City Secretary.

3210.53 Insurance. ~~The~~ In accordance with Risk Management policy, each Encroachment Agreements shall ~~be accompanied by~~ require proof that the applicant has secured and paid for a policy of public liability insurance covering all ~~city-controlled~~ public property on which the encroachment is located during construction and continuing through the entire term of the Encroachment Agreement, as described in the Agreement. The amount of insurance coverage shall be at least the maximum amounts of liability ~~that which~~ can be imposed upon the City under State law. Each insurance policy shall provide that it cannot be canceled or amended without at least thirty (30) days advanced written notice to the City. Insurance shall be maintained for the length of the Encroachment Agreement. For Tier III Major Encroachments, evidence of such insurance coverage must be provided to the City on an annual basis during the term of the Encroachment Agreement.

3210.64 Plans. Each Encroachment Agreement shall be accompanied by a plan showing the nature and location of the encroachment and amount of public property to be occupied with details of the structure of encroachment and shall include any additional information requested by the department affected by the encroachment.

3210.75 Application Fee. ~~Along with the~~ Each application for an Encroachment Agreement shall ~~pay~~ require a non-refundable application fee as specified in Table 1-F in section 119 of the Building Administrative Code.

3210.86 Annual Fee. For Tier II Standard Encroachments and Tier III Major Encroachments, ~~For~~ as long as the approved encroaching improvement(s) exists, the property owner shall be responsible for payment of an annual encroachment fee as specified in Table 1-F in section 119 of the Building Administrative Code. For Tier II Standard Encroachments and Tier III Major Encroachments, the annual fee shall not be applied to encroachment improvements on City-owned easements, specified in Chapter 2, Section 2-231 of the City Code. ~~The annual fee shall not be applied to encroachment improvements on city-owned easements.~~ Tier I Minor Encroachments shall not require an annual fee.

3211 - Permits. Approval of the Encroachment Agreement does not eliminate the need for proper permits to do work as required by any other provision of the City code or other law or regulation. ~~Code of the City.~~ No work may commence without all necessary permits as required by applicable City Code ~~codes.~~ or other law or regulation.

3212 - Signs. Advertising signs projecting into public property are to be considered a permanent occupancy of public property, provided however, upon the termination of the Encroachment Agreement such signage shall be removed from public property.

Exception: An identification sign displayed as part of the marquee, provided the sign contains no off-premise advertising, is displayed to identify or locate the building or place of business and the height of the message does not exceed three (3) feet.

Signs that are covered by existing Encroachment Agreements shall have those Encroachment Agreements become null and void when a sign is altered in size, removed or requires structural repair.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are in direct conflict with the provision of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure in the City or cause the same to be done contrary to or in violation of any of the provisions of this Code. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00) for all violations involving fire safety, or public health and sanitation and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this ordinance. Each day or any portion thereof which any violation of this ordinance occurs or continues shall be deemed a separate offense and upon conviction thereof shall be punishable as herein provided.

SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared void, ineffective, or unconstitutional by the valid judgment or final decree of any court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 5.

This ordinance constitutes a digest and revision of the Building Code of the City of Fort Worth, as provided in Section 2, Chapter XXV and Section 9, Chapter XXVII, of the Charter of the City of Fort Worth. The Development Services Department of the City of Fort Worth, Texas, is hereby authorized to publish this ordinance in pamphlet form for general distribution among the public, and the operative provisions of this ordinance, as so published, shall be admissible in evidence in all courts without further proof than the production thereof, as provided in Chapter XXV, Section 3, of the Charter of the City of Fort Worth, Texas.

SECTION 6.

The City Secretary of the City of Fort Worth, is hereby directed to publish the caption, penalty clause, and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas as authorized by Section 2, Chapter XXV of the Charter of the City of Fort Worth, Texas and by Section 52.013(a) of the Texas Local Government Code.

SECTION 7.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

Matthew Murray
Assistant City Attorney

Mary Kayser, City Secretary

Adopted: _____

Effective: _____