

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 CHANGES IN THE CATEGORIZATION OF ENCROACHMENT TIERS AND THEIR RESPECTIVE INSURANCE REQUIREMENTS, AND AMENDING THE DEPARTMENT DIRECTOR'S DELEGATION AUTHORITY; 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, on November 10, 2020 the City Council of Fort Worth adopted Ordinance No. 24514-11-2020 to amend and 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;

WHEREAS, the City Council of Fort Worth has determined that it is appropriate to establish changes in the categorization of encroachment tiers and their respective insurance requirements, and to allow the Department Director to delegate their signature and determination authority herein.

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, Section 3210 to establish changes to the tiered categorization of encroachments on public property, revise insurance requirements, and clarify the Department Directors determination authority, to read as follows:

3210 - Encroachment Agreement Required

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

3210.2 Authority. The Director of the Development Services Department, or in the Director’s absence, the Director’s designated Assistant Director, 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 could include, but are not limited to, those examples shown in the accompanying table.

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

Tier I Minor Encroachments shall require a non-refundable application fee however shall not require an annual fee. Tier I Minor Encroachment 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 in an amount that is at least the maximum amount of liability that can be imposed upon the City under State law unless a lower amount or different insurance coverage is approved by Risk Management. Each insurance policy shall provide that it cannot be cancelled 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. Tier II Standard Encroachments are those that are more complex in nature than Tier I Minor Encroachments, but not as substantial or complex as Tier III Major Encroachments. Tier II Standard Encroachments could include, but are not limited to, the examples shown in the following table.

Tier II Standard Encroachments	
Balconies Dumpster Enclosure Masonry Fence or Walls (Concrete Block, Brick or Stone)	Retaining Walls Storm Drains Private water lines Fences

Tier II Standard Encroachments shall require a non-refundable application fee and, for as long as the approved encroachment 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 if such encroachment is on City-owned easements. A Tier II Standard Encroachment 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 in an amount that is at least the maximum amount of liability that can be imposed upon the City under State law unless a lower amount or different insurance coverage is approved by Risk Management. Each insurance policy shall provide that it cannot be cancelled 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. Tier III 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 Major Encroachments include, but are not limited to, those shown in in the accompanying table.

Tier III Major Encroachments	
Basements Parking structures Sky bridges	Tunnels Underground walkways

Tier III Major Encroachments shall require a non-refundable application fee and, for as long as the approved encroachment 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. 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. Determination Authority. The Director of the Development Services Department or their respective designee shall, upon request of an interested party, make a determination of the degree of encroachment into or on to the public property to determine the appropriate tier category.

3210.4 Application. The applicant shall execute an Encroachment Agreement with the City upon forms furnished by the Building Official or 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 Department of Development Services and the records of the City Secretary.

3210.5 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.

3210.6 Application Fee. Each application for an Encroachment Agreement shall require a non-refundable application fee as specified in Table 1-F in section 119 of the Building Administrative code.

3210.7 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 established by City

Council. The annual fee shall not be applied to encroachments on easements. Tier I Minor Encroachments shall not require an annual encroachment 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. No work may commence without all necessary permits as required by applicable City 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:

Thomas Royce Hansen, Assistant City Attorney

Adopted: _____