



STAFF REPORT

November 25, 2003

Proposed Amendments to Chapter 22, Belmont Municipal Code, Article I, Encroachments, Sections 22-1--22-40

Mayor and City Council of the City of Belmont
Belmont CA

Honorable Mayor and Council members:

Summary

Pursuant to City Council instruction, the staff is now in the process of proposing amendments to each chapter of the Belmont Municipal Code. The purpose of this comprehensive review is to update the code book by deletion of outdated material and insertion of language changes to reflect current City policy, practice and changes in the law since the adoption or last amendment to the code book.

Earlier this year, the Public Works Director held a study session with the City Council to discuss the encroachment permit process. Based on City Council direction given at that time, the Public Works Director, Community Development Director and City Attorney have prepared proposed revisions to Chapter 22, Article I. The proposed ordinance is, by this staff report, presented to the City Council for introduction.

Background and Discussion

The City's current encroachment ordinance was adopted in 1961. The last comprehensive amendment of the ordinance was undertaken in 1989, but a number of its provisions date from 1961. A copy of the current ordinance is attached. (See Attachment 1.)

The proposed revisions to the ordinance serve several purposes. First, the ordinance has been updated by deletion of outdated job titles. Second, the ordinance has been reorganized to be more "user friendly." This was accomplished by placing all requirements for major and minor

encroachment permits in separate sections of the ordinance. Third, the types of potential encroachments have been more fully defined. Fourth, the required application information, insurance and bonds have been included in the ordinance. Fifth, the penalty provisions of the ordinance have been revised to reference the Municipal Code Section 1-8, General Penalties. Sixth, per the City Council's direction, language has now been included at Section 22-6(C) to address those situations where the encroachment permit is proposed as part of a larger development. Per the proposed revisions, those applications would require Planning Commission review prior to City Council consideration.

The proposed ordinance reads as follows. All deleted text is shown in ~~strikeout~~ and new proposed text is shown in **bold** for the City Council's consideration.

CHAPTER 22
STREETS AND SIDEWALKS

ARTICLE I. ENCROACHMENTS

Sec. 22-1. Definitions.

The following definitions shall apply to this article:

- (a) *Encroachment* includes going over, upon, under or using any public right-of-way or public watercourse in such a manner as to prevent, obstruct or interfere with its normal use, including the performance thereon of any of the following acts:
 - (1) Depositing or leaving any rubbish, brush, earth, building material or other material of any nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to be littered, unsightly or obstructed.
 - (2) Excavating, filling or disturbing the public right-of-way or public watercourse.
 - (3) Displaying or storing merchandise or other property **upon a public right-of-way or public watercourse**.
 - (4) **Blocking** the traveled way or ~~impede~~ **impeding** traffic.
 - (5) **Blocking** or **covering** traffic-control devices duly installed by the City.
 - (6) Erecting or maintaining any structure ~~such as,~~ **including**

but not limited to, a flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, mailbox, pipe, conduit, wire, vault or other structure on, over or under a public right-of-way or public watercourse.

(7) *Reserved.*

(8) Planting or allowing to extend, any tree, shrub, grass or other growing thing within a public right-of-way or public watercourse.

(9) Constructing, placing or maintaining on, over, under or within the public right-of-way **or public watercourse** any pathway, sidewalk, driveway, curb, gutter, paving, or other surface or subsurface drainage structure or facility.

(10) Constructing, placing, planting or maintaining any structure, embankment, excavation, tree, or other object adjacent to a public right-of-way or public watercourse which causes or will cause an encroachment.

(b) *Engineer* shall mean the ~~city engineer~~ **Public Works Director** or his designated representative.

(c) *Permittee* is any person, firm or corporation that proposes to do work or encroach upon a public right-of-way or public watercourse as herein defined and has been issued a permit for such encroachment in accordance with this article. "Permittee" is also the heirs and assigns and successors in interest of a permittee per Section 22-11. For existing encroachments, as defined in Section 22-13, or for encroachments not requiring a permit per Section 22-3, "permittee" shall mean the current property owner adjacent to the encroachment.

(d) *Public right-of-way* includes land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for and dedicated to the general public for street, highway, alley, public utility or pedestrian walkway purposes.

(e) *Public utility* shall mean any person, **firm or corporation** holding a franchise from the City or under the jurisdiction of the public utilities commission ~~and~~ **or** special districts functioning to provide public utility services.

(f) *Public watercourse* is a channel for the carrying of stormwater, including both natural and artificial public watercourses.

(g) *Standard street improvements* shall mean improvements to the public right-of-way or public watercourse in accordance with the Belmont Standard Specifications and intended for acceptance by the City for maintenance. Typical standard street improvements include sidewalk, curb, gutter, paving, street lighting, **medians**, sanitary sewers and storm drainage facilities.

Sec. 22-2. Encroachments–Prohibited.

(a) It shall be unlawful and no permits shall be issued for any person **or entity** to:

(1) Deposit or leave any rubbish, brush, earth, building material or other material of any nature whatsoever upon a public right-of-way or public watercourse so as to cause such public right-of-way or public watercourse to become littered, unsightly or obstructed. See Section 22-5(8) for temporary storage of construction material in a public right-of-way.

(2) Display or store any merchandise or other property on a public right-of-way or public watercourse at any time. This section does not apply to items noted in Section 22-3 as exempt from a permit or in Section 22-5 for which a permit has been issued.

(3) ~~Constructing, placing~~ **place** ~~or maintaining~~ posts, poles, columns or structures for the support of advertising signs or for the ~~purpose~~ **support** of ~~carrying~~ lights intended primarily for lighting abutting property, excepting political signs installed in accordance with ~~section 23.7.3a~~ **applicable provisions** of the ~~Zoning Ordinance~~ **Municipal Code**. ~~Walkway lights intended for lighting the encroached area and abutting property without producing undue glare are permitted encroachments.~~

(4) Block the traveled way or impede traffic.

(5) Block or cover traffic-control devices duly installed by the City **and/or other public utility devices**.

Sec. 22-3. ~~Same~~ No Permit Required.

- (a) No permit shall be required to:
- (1) Install and maintain a lawn, hedge, shrubs or other landscaping within a public right-of-way, so long as ~~they are~~ **it is** maintained out of the **vehicle and pedestrian** traveled way for ~~vehicles and pedestrians, they~~ does not block ~~established existing~~ off-street parking spaces, and does not create a sight distance or safety problems.
 - (2) Install and maintain a mailbox for a single-family home.
 - (3) Install or maintain **City** improvements **whether the work is accomplished** by City employees or by a contractor working under contract for the City.
 - (4) ~~Perform maintenance~~ **Maintain** or repair of any pipe or conduit lawfully on or under any public right-of-way ~~or from making including~~ excavation, as may be necessary for the preservation of life or property when an urgent necessity therefor arises, except that the person making an emergency use or encroachment shall apply for a permit the next business day.
 - (5) **Install and maintain walkway lights intended for lighting encroached areas and abutting property.**

Sec. 22-4. ~~Same~~ Permit required.

~~No person shall encroach or cause to be made any encroachment of any nature whatsoever within, upon over or under the limits of any public right-of-way or watercourse without first obtaining a permit as required by this article.~~

Sec. ~~22-5~~ 22-4. Authority to Issue Permits for Minor and Routine Encroachments; ~~City Engineer~~ **Public Works Director**.

- (a) The ~~city engineer~~ **Public Works Director** may issue written permits, in accordance with this article, authorizing the permittee to do any of the following acts:
- (1) ~~Excavating, filling or disturbing~~ **Excavate, fill or disturb**, per chapter 9 of the Code, **Grading**, ~~the~~ any public right-of-way or public watercourse.

- (2) ~~Constructing, placing or maintaining~~ **Construct, place or maintain** any structure within any public right-of-way or **public watercourse** below ground, such as any pipe, conduit, wire, utility vault or similar structure.
- (3) ~~Constructing, placing or maintaining~~ **Construct, place or maintain** any structure within any public right-of-way or public watercourse roughly flush with the ground such as any pathway, **sidewalk**, driveway, **parking pad** or other standard street improvement.
- (4) ~~Constructing, placing or maintaining~~ **Construct, place or maintain** any structure above ground within any public right-of-way or public watercourse **if** installed by a public utility, including but not limited to poles, wires, guy anchors, hydrants, aboveground cabinets for housing splices, transformers or switches.
- (5) ~~Constructing, placing or maintaining~~ **Construct, place or maintain within any public right-of-way** a bus bench or shelter of a design acceptable to the City Council.
- (6) ~~Installing, placing or maintaining~~ **Install, place or maintain within any public right-of-way** mail collection boxes owned and maintained by the United States Postal Service.
- (7) ~~Constructing, placing or maintaining~~ **Construct, place or maintain within any public right-of-way** street trees in a location, ~~and~~ type and manner approved by the ~~parks superintendent~~ **Director of Parks and Recreation**.
- (8) ~~Only under unusual circumstances, the temporary storing of~~ **Temporarily store within any public right-of-way** construction material or ~~the temporary installing~~ **temporarily install** of a bin for the collection of construction debris.

Procedure for Applications Reviewed by the City Engineer.

- (b) ~~Applications may be approved, approved with conditions, or denied. If the city engineer finds~~ **The Public Works Director shall have the sole authority to issue written permits for encroachments covered by Section 22-4 if:**
- (1) ~~that~~ ~~The application is in accordance with~~ **meets** the requirements of this article, including the City standards as noted

~~in Section 22-23, a permit shall be issued for the encroachment, attaching such conditions as may be deemed necessary for health, safety and welfare of the public and protection of the city.~~

(2) **There is some public benefit to the encroachment.**

(3) **The encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.**

(4) **The City will be duly protected from liability for injury to persons and property.**

(5) **Faithful performance of all conditions and requirements specified in the permit will be guaranteed by bonds.**

(c) ~~Any permit denial shall be in writing. Denied permits may be appealed to the city council. In addition to other appropriate conditions~~ **In issuing the permit, the Public Works Director shall delineate** ~~following may be established:~~

(1) ~~The time and dates on~~ **during** which the encroachment may be constructed ~~or established~~ **and maintained.**

(2) ~~The~~ **Supervision and safety precautions to be employed, including the erection of barricades, warning lights, signals and signs, and/or the employment of personnel to direct traffic.**

~~The city engineer may choose to approve or conditionally approve the application if the city engineer finds as follows:~~

(1) ~~That there is some public benefit to the encroachment.~~

(2) ~~That the encroachment will not unduly restrict the public right of way or public watercourse for other typical uses.~~

(3) ~~That the city will be duly protected from liability for injury to persons and property.~~

(4) ~~That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.~~

(d) **If the Public Works Director determines that the**

findings enumerated in this Section 22-4(B)(1-5) cannot be made, the permit shall be denied. Permit denial shall be in writing and may be appealed to the City Council.

Sec. 22-5. Reserved.

Sec. 22-6. Authority to Issue Permits for Major and Unusual Encroachments; City Council.

(a) ~~The City Council may issue and~~ shall have the sole authority to issue written permits in accordance with this article authorizing the permittee to do any of the following acts:

(1) ~~Constructing, placing or maintaining~~ **Construct, place or maintain all improvements in the public right-of-way or public watercourse which are not enumerated in Section 22-4, including but not limited to, fences, decorative walls, retaining walls, and awnings. , etc. within a public right-of-way**

(2) ~~Any act~~ **Construct, place or maintain any improvement** listed in Section 22-54, ~~or this section~~ **a permit** for which a ~~written permit~~ was denied by the ~~city engineer~~ **Public Works Director** and appealed to the City Council.

(3) ~~Any other act not specifically prohibited or listed in this article shall be forwarded to the city council for review.~~

(b) ~~Applications may be approved, approved with conditions or denied.~~ All applications **for major and unusual encroachments** shall be submitted to the ~~director of p~~**Public services Works Director.** ~~The director of public services~~ **who shall review the application and shall make a recommendation to the City Council.** ~~If the director of public services finds~~ **determine whether** the application is in accordance with the requirements of this article. **If the application meets the requirements of this article including City standards as noted in Section 22-23, the Public Works** ~~d~~**Director shall recommend approval, attaching such conditions as the director may deem necessary for the health, safety and welfare of the public and for the protection of the City.**

(c) **When an application is proposed in conjunction with the development of adjacent private property, the Public Works Director's recommendation shall be reviewed by the Planning Commission simultaneously with any required**

zoning entitlements. The Planning Commission's recommendation shall be forwarded to the City Council for final review and action. All other applications for major and/or unusual encroachments shall be forwarded directly to the City Council for review based on the Public Works Director's recommendation.

(d) ~~When an encroachment is proposed by an adjacent property owner,~~ The owners of the adjoining properties fronting the street where the encroachment is proposed, plus any property directly affected by the encroachment, shall be notified of the proposed encroachment, of the scheduled time and place when the item will be heard **by the Planning Commission and/or City Council**, and of their right to express any concerns at the scheduled ~~council~~ meeting prior to **Planning Commission and/or City Council** taking action on the encroachment.

(e) The City Council may ~~choose to approve or conditionally approve~~ **the application with conditions deemed necessary for health, safety and welfare of the public and protection of the City if the application** if it finds as follows:

(1) ~~That there is~~ Some public benefit to the encroachment. Examples of public benefit include but are not limited to a retaining wall that allows an added off-street parking space, sidewalk or safer sight distance. Other examples include retaining walls that reduce grading onsite (without themselves becoming unsightly), fences that provide a safety handrail for pedestrians, or encroachments that replace or improve an existing undesirable physical condition or provide other neighborhood betterment.

(2) That the encroachment will not unduly restrict the public right-of-way or public watercourse for other typical uses.

(3) That the City will be duly protected from liability for injury to persons and property.

(4) That faithful performance of all conditions and requirements specified in the permit will be guaranteed by the required bonds.

(f) In issuing the permit, the City Council shall delineate:

(1) The time and dates during which the encroachment

may be constructed and maintained.

(2) **Supervision and safety precautions to be employed, including the erection of barricades, warning lights, signals and signs, and/or the employment of personnel to direct traffic.**

(g) **If the City Council determines that the findings enumerated in this Section 22-6(E)(1-4) cannot be made, the permit shall be denied.**

Sec. 22-7. Application for Permit.

(a) *Application Form and Content.* All applications for encroachment permits shall be submitted on a form provided by the ~~director of p~~Public services **Works Director**. ~~The applicant shall submit all required information.~~ At a minimum, the ~~application~~ **applicant** shall provide the following information:

- (1) Full name, ~~and~~ residence or business address of the applicant.
- (2) ~~Signature of the owner of the property adjacent to the encroachment when that property owner is the applicant. The~~ **Notarized** signature ~~must be acknowledged by a notary public if the application is to be reviewed by the city council and ultimately recorded in a form acceptable for recording with the San Mateo eCounty r~~**Recorder's Office.**
- (3) A scaled plot plan showing the location, dimensions and details of the proposed encroachment.
- (4) An accurate and complete description of the encroachment and an explanation of the need **for the encroachment.**
- (5) ~~On larger projects:~~
 - a. ~~A certificate of public liability insurance in an amount established by the council.~~
 - b. ~~A certificate of property damage insurance in an amount established by the city council.~~
- (~~6~~) **(5)** An agreement duly executed by the applicant indemnifying the City against liability resulting from the ~~property~~ encroachment

and establishing responsibilities of the applicant.

~~(7)~~ **(6)** An application fee as established by the City Council in the most current Master Fee Schedule, Bonds and liability insurance naming the City as an additional insured in a form acceptable to the Finance Director per Section 22-12.

~~(8)~~ **(7)** In addition to the information listed above, the ~~Public services Works~~ **Director** may require additional information, including a survey, photographs, sketches, diagrams or similar exhibits necessary to illustrate location, dimension and purpose of the proposed encroachment and its relation to existing and proposed facilities in the public right-of-way or public watercourse.

Sec. 22-8. Continual Maintenance.

The permittee shall maintain, repair, service and clean the encroachment at the sole expense of the permittee. Standard street improvements accepted for maintenance by the City, excepting sidewalks, shall be ~~excepted~~ **exempted** from this section. In accordance with ~~section 5610~~ **applicable sections** of the **California** Streets and Highways Code, the adjacent property owner is responsible for maintaining sidewalk, **curb and gutter** adjacent to his property in such condition that ~~the sidewalk~~ **it** will not endanger persons or property.

Sec. 22-9. Removal for Public Improvements.

The permittee shall remove or relocate encroachment that would interfere in any way with the construction, maintenance or repairs of any public utility, public works or public improvement of any descriptions if so required by the ~~city engineer~~ **Public Works Director** in writing. Ten (10) days notice shall be all that is required. The cost and expense of such removal or relocation shall be borne by the permittee. Standard street improvements accepted for maintenance by the City and sidewalks shall be ~~excepted~~ **exempt** from this section.

Sec. 22-10. Removal for Disuse.

The permittee shall, **upon written request of the Public Works Director**, remove ~~the~~ encroachment and restore the ~~adjacent~~ area if the encroachment falls ~~to~~ **into** disuse for a period of six (6)

months ~~if requested by the city engineer in writing~~. Standard street improvements accepted for maintenance by the City and sidewalks shall be ~~excepted~~ **exempt** from this section.

Sec. 22-11. Recording of Encroachment Agreement.

~~Upon approval by the council of an~~ **All** encroachment permits ~~and signature by the mayor of the approved resolution and encroachment agreement,~~ the City Clerk shall ~~have the approved resolution and agreement filed~~ **be recorded** with the county recorder. Said ~~filing~~ **recording** shall constitute notice to all heirs, ~~and assigns and successors in interest of the permittee of the responsibility of the permittee,~~ **their responsibility** with respect to maintenance, liability and potential relocation of the encroachment.

Sec. 22-12. Permit Fees, ~~and~~ Bonds and Insurance.

(a) *Fee:* The fees to accompany the permit application shall be ~~as approved~~ **established** by resolution by the council **in the City's current Master Fee Schedule**. No permit application will be accepted without the required fee.

(b) *Cash Deposit and Surety Bond:* After City approval of the encroachment and prior to receiving the permit, the applicant shall deposit with the ~~city engineer~~ **Public Works Director** ~~five hundred dollars (\$500.00) in cash, and a letter of credit or a~~ surety bond in an amount, ~~including the cash deposit,~~ equal to one hundred (100) percent of the cost of constructing the encroachment **(the "Bonds")**. ~~The cash deposit, letter of credit or and surety bond are referred to as the~~ **bBonds**. The **bBonds** are intended to guarantee that all conditions and requirements of the encroachment permit will be faithfully ~~upheld~~ **performed** and ~~will be~~ completed within the time period specified in the permit. The **bBonds** also will be used by the City, if necessary, to repair to the satisfaction of the ~~city engineer~~ **Public Works Director** any damage caused to the City streets or property by the permittee in the course of the work. The ~~surety~~ **bBonds** shall be executed by sureties approved by the ~~city engineer~~ **Finance Director** and shall be in such form as approved by the ~~eCity a~~ **City Attorney**. The form of the **bBonds** shall be such that the City may proceed against the ~~permit holder~~ **permittee** and his sureties on the **bBonds** immediately upon any default, without waiting for the completion of work done. The **bBonds** shall guarantee the work and shall remain in effect for a period of

six (6) months following completion of said work.

(c) After City approval of the encroachment and prior to receiving the permit, the applicant shall deposit:

(1) A certificate of liability insurance in an amount and form acceptable to the Finance Director naming the City as an additional insured.

(2) A certificate of property damage insurance in an amount and form acceptable to the Finance Director naming the City as an additional insured.

Sec. 22-13. Existing Encroachments.

(a) Any existing encroachment in the public right-of-way or **public watercourse** which, in the opinion of the ~~director of~~ **Public services Works Director**, interferes with the safe sight distance of drivers or pedestrians or blocks the free passage of pedestrians or vehicles or otherwise constitutes a threat to health and safety shall be removed forthwith by the **permittee or adjacent property owner** upon written notification from the ~~Public services Works Director~~ **Public services Works Director**. If the ~~property owner fails to remove the~~ encroachment **is not removed**, then City forces may remove the encroachment, at the direction of the ~~director of~~ **Public Works Director services**; and the **permittee or adjacent property owner** shall be ~~billed for~~ **responsible to reimburse the City for the cost of this work.**

~~**(b)** Any existing encroachment prohibited in section 22-2 shall not be exempt from this section.~~

(b) No existing encroachments shall be exempt from Section 22-8, "Continual Maintenance," 22-9, "Removal for Public Improvements," or 22-10, "Removal for Disuse," ~~regarding responsibility of property owner for maintenance or possible relocation or reconstruction of encroachments.~~ When no permit has been issued, the responsibilities of the permittee listed in these three (3) sections shall be the responsibilities of the current ~~homeowner~~ **adjacent property owner.**

(c) This section shall not be construed to prohibit the City from requiring upgrading or removal of existing encroachments as a condition of development **on the adjacent property.**

Secs. 22-14–22-21. Reserved.

Sec. 22-22. Permit ~~time limit~~ **Issuance.**

~~Any~~ **No permit shall be** issued under this article ~~shall become effective upon~~ **until the permittee has deposited** of the required **fee, bonds and insurance.** ~~Unless noted otherwise on the permit,~~ said permit shall be effective for a period of ninety (90) days. ~~A permit may be renewed for an additional ninety (90) days with the approval of the city engineer.~~

Sec. 22-23. Conformance to City Standards and State Laws.

All work done under the provisions of this article shall conform to City standards and state laws **and be subject to inspection by the City.** ~~All encroachments shall be constructed under the supervision of a City inspector.~~ Should any dispute arise regarding conformance to specifications, such dispute shall be decided by the ~~engineer~~ **Public Works Director**; and the decision of the latter shall be final and conclusive.

Sec. 22-24. Inspection, Certificate of Approval.

At the completion of the work described in the permit required by this article, the ~~inspector shall examine~~ **City shall inspect** the work; ~~and, if the work has been done and satisfactorily completed to his satisfaction and approval,~~ and all rubbish and debris **have been** removed, the inspector shall ~~give such person~~ **issue** a certificate ~~to that effect of completion.~~ When standard street improvements are installed **and completed in accordance with applicable specifications and conditions,** the certificate of ~~approval~~ **completion** shall be signed by the ~~city engineer~~ **Public Works Director** and shall indicate if the improvement has been accepted by the City for maintenance. Sidewalks ~~will~~ **shall** not be accepted by the City for maintenance.

Sec. 22-25. Disapproval; Correction by Permittee; Correction by City.

In the event that the work referred to in this article is not ~~done and satisfactorily~~ completed ~~to the satisfaction and approval of the inspector,~~ the ~~inspector~~ **City** shall give a ~~five (5)~~ **ten (10)** days' **written correction** notice to the permittee. **The ten (10) days shall be computed** excluding Saturdays, Sundays and holidays, ~~of~~

~~said dissatisfaction and disapproval to the permittee. If~~
deficiencies are not corrected within the ~~five (5)~~ **ten (10)** days,
then the ~~inspector shall not issue a certificate of approval but City~~
shall at once proceed to have said work put into such condition as
shall meet the City specifications, **correct the deficiencies and**
deduct the cost from the Bonds or to restore the site to **its**
original condition ~~at the discretion of the city engineer~~. If the
disapproval is based solely on the need for clean-up of the work
area or the street, only twenty-four (24) hours' **written** notice is
required before the City may take action ~~to correct the problem~~ and
deduct the ~~funds~~ **cost of cleanup** from the ~~Bonds~~. The ~~city~~
engineer Public Works Director shall ~~certify~~ **report** such facts
action in writing ~~for to~~ the City Council and ~~shall certify the~~
~~expense thereof to the City Attorney~~.

Sec. 22-26. Forfeiture of Cash Deposit or Surety Bond; Suit for
Costs Incurred by City.

If the work performed by any person under this article is not ~~done~~
~~and~~ completed to the satisfaction and approval of the ~~city engineer~~
Public Works Director, the ~~deposit or bond made by such person~~
~~prior to receiving the permit~~ **Bonds** shall be for the use of the City
and as part payment for the damage thereby sustained by the City.
The City Attorney shall, upon direction of the City Council,
commence suit in the name of the City against ~~such person for any~~
~~additional damage which the City may have~~ **the permittee if the**
proceeds from the Bonds are insufficient to compensate the
City for damages sustained by reasons of the ~~incomplete doing of~~
~~such work~~, including cost of engineering properly attributable **to**
the project, attorney fees and court costs.

Sec. 22-27. Refund of Deposit.

~~Each person having received a certificate of approval pursuant to~~
~~this article shall be paid the amount of cash deposit to which that~~
~~person is entitled, or be allowed to~~ **A permittee may** withdraw the
~~surety~~ **Bonds** on deposit with the City ~~covering the work of the~~
~~permit~~ at the completion of the **six (6) month** warranty period.

Sec. 22-28. Exemptions.

Any excavation of a public area by or on behalf of the City shall be
exempt from the provisions of this article. No fee or ~~B~~bonds shall
be required of the ~~Belmont County~~ **Midpeninsula** Water District.

A minimum of one (1) working day's notice to the City shall be required, except in emergencies **excavations**. Conformance to all other provisions of this article and all other pertinent City requirements is mandatory.

Sec. 22-29. Map Showing Utility Fixtures Required.

Every public utility maintaining pipes, conduits, cables or other equipment in the streets of the City shall file with the ~~city engineer~~ **Public Works Director** during the month of January of each year a map indicating the size and location of each pipe, conduit, cable or other equipment owned or maintained by such public utility in the streets of the City; provided, however, that after the public utility has in the first instance filed such map, it may thereafter in lieu of filing a new map **January of each subsequent** year, revise the map on file so as to show changes ~~and~~ **or** extensions.

Sec. 22-30. Nuisance Declared.

Any encroachment of a public right-of-way or public watercourse contrary to the provisions of this article shall be and the same is hereby declared to be unlawful and a public nuisance.

Sec. 22-31. Deleted.

Sec. 22-32. Penalty.

~~(a) — Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished with a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.~~

~~(b) — Each person shall be guilty of a separate offense for every day during any portion of which any violation of any provision of this article is committed, continue or permitted by such person and shall be punishable therefor as provided in this article. Any person violating the provisions of this article shall be subject to the~~ **General Penalty Provisions of the Municipal Code Section 1-8.**

Secs. 22-33–22-40. Reserved.

Fiscal Impact

The proposed ordinance allows the City Council to address and set fees on a yearly basis as part of the Master Fee Schedule process.

Recommendation

Staff recommends that the City Council introduce the ordinance and schedule the matter for second reading at the December 9, 2003 City Council meeting.

Alternatives

1. Instruct that no changes be made to Chapter 22, Article I.
2. Provide alternate language to be included in Chapter 22, Article I.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Attachments

1. Belmont Municipal Code Chapter 22, Article I

Respectfully submitted,

JEAN B. SAVAREE
City Attorney