

# TIGARD MUNICIPAL CODE

## Chapter 15.16 ENCROACHMENT PERMITS

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### **15.16.010 Encroachments Within Rights-of-Way and Public Property**

A. Encroachment Permits Required. It is unlawful for any person to erect, or cause to be erected, any encroachment in, over, or upon any right-of-way or public property without having first obtained an encroachment permit from the city engineer authorizing such action.

#### B. Application and Fee Required.

1. Any person proposing to locate or maintain an encroachment within any right-of-way or public property must submit an application to the city engineer. The application will include a description of the proposed encroachment, a scale drawing illustrating the nature and extent of the proposed encroachment, and its relationship to adjoining properties. If the applicant is not the owner of the property benefitted by the encroachment, the owner of that property must also sign the application as a co-applicant. The city engineer may require a survey to determine the exact location of the proposed encroachment.

2. The applicant must pay a fee in the amount established by resolution of the city council.

C. Review of Application. The city engineer will review the application to determine if it complies with standards in this chapter and may request comments from affected city departments and utilities regarding the impact of the proposed encroachment. (Ord. 18-19 §1)

### **15.16.015 Definitions**

A. “City engineer” means the city engineer for the City of Tigard or his or her designee.

B. “City hearings officer” means the municipal judge or the individual appointed by the municipal judge with the delegated authority to preside over code enforcement hearings and to perform the related functions.

C. “Encroachment” means any privately owned structure, furnishing, hardscape, or underground system other than those authorized by Tigard Municipal Code Chapter 15.06, located in the right-of-way or on public property.

D. “Furnishing” means an object that is designed to be readily moveable and that is not permanently affixed to the ground, such as a café table or tent.

E. “Public property” means any premises owned or maintained by the city.

F. “Right-of-way” means an area that allows for the passage of people, goods, or utilities. Right-of-way may include freeways, pedestrian connections, and streets. A right-of-way may be dedicated or deeded to the public for the public use or owned by the city or other public body. (Ord. 18-19 §1)

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## 15.16.020 Exemptions

A. Certain encroachments are exempt from the permit requirement of Section 15.16.010. Exempt encroachments are those which would have a minor impact on the present or planned use of the right-of-way or public property and those which are expressly permitted by this code. Exempt encroachments are:

1. Mailboxes;
2. Temporary signs or A-frame signs allowed by the Sign Code;
3. Transportation improvements required by Tigard Community Development Code Chapter 18.910 and authorized by a right-of-way permit issued pursuant to Tigard Municipal Code Chapter 15.04; or
4. Any encroachments authorized by a license or franchise granted pursuant to Tigard Municipal Code Chapter 15.06.

B. Encroachments existing before November 1, 2018 may remain in place without requiring an encroachment permit, provided they are not:

1. A public safety hazard;
2. Modified in any way, including repaired, relocated, or reconstructed, but not including routine maintenance; and
3. Located on or near a benefitting property that is the subject of a land use application or building permit. (Ord. 18-19 §1)

## 15.16.030 Permit Issuance

The city engineer may approve, modify and approve, or deny the application for an

encroachment permit based on the standards in Section 15.16.050. (Ord. 18-19 §1)

## 15.16.040 Appeals

A. An applicant or affected property owner or occupant may appeal the decision of the city engineer to the city hearings officer.

B. An appeal must be filed with the city engineer within 15 days of the date of the decision. The appeal must include the basis for the appeal and be accompanied by a fee in an amount established by resolution of the city council.

C. The city hearings officer will provide the appellant and any other affected party a reasonable opportunity to be heard on the question of why the decision of the city engineer should be reversed or modified. The decision of the city hearings officer is a final decision. (Ord. 18-19 §1)

## 15.16.050 Standards and Conditions

The city engineer may approve the issuance of a permit for encroachment within the right-of-way or public property where compliance with the following standards is demonstrated or found to be not applicable. The city engineer may attach any conditions to the issuance of the permit that are reasonably related to ensuring compliance with this section, other applicable city codes and ordinances, and protection of the public interest.

### A. Standards for Approval.

1. The proposed encroachment is expressly authorized by the Tigard Community Development Code or is otherwise in the public interest and consistent with the City's Public Improvement Design Standards.

2. The proposed encroachment does not interfere with the existing or future

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transportation system or the provision of public utilities.

3. The proposed encroachment does not impede vision clearance or sight distance, pursuant to Tigard Community Development Code Chapter 18.920 or the current AASHTO publication, "A Geometric Design of Highways and Streets," whichever is more restrictive.

4. The proposed encroachment does not prevent access to, cover, or block the flow of water to or into catch basins, ditches, or swales, and does not otherwise alter the natural drainage patterns in a manner that adversely affects other property.

5. The proposed encroachment maintains minimum applicable vertical clearance for encroachments within the right-of-way, as provided in the Tigard Community Development Code or Manual on Uniform Traffic Control Devices.

6. The proposed encroachment must meet minimum horizontal clearance from public facilities, such as manholes and fire hydrants, as set by the relevant service provider.

B. Standards of Approval for Furnishings. In addition to the standards provided in Section 15.16.050.A, approval of furnishings as encroachments must meet the following additional standards:

1. Furnishings may not be chained, bolted, or otherwise attached to any fixture, tree, or item located in the right-of-way, nor attached to the surface of any right-of-way.

2. Furnishings must identify the name and address of the owner on the exterior of the object, as well as an emergency contact number.

3. Furnishings must maintain a weather proof or weather resistant quality.

4. Furnishings must be designed to be stable and self-supporting under a wind load of at least 20 pounds without attachment to the pavement or other object.

## C. Conditions.

1. As a condition of permit issuance, when the city determines that the proposed encroachment may subject the city to potential liability, the city may require the applicant to obtain general liability insurance and file a certificate of insurance with the city from an insurance company acceptable to the city. The policy will name the city, its officers, agents, and employees as additional insureds. The amount of the insurance policy will be determined by the city, but in no case will it be less than the limits of public body liability under the Oregon Tort Claims Act. The policy must also contain a provision that the city will be notified at least 10 days prior to any cancellation of such insurance. The permittee must maintain the insurance for the term of the permit issued. Failure to maintain the insurance results in automatic revocation of the permit.

2. The city engineer may place a limit on the time the proposed encroachment may be located in or on the right-of-way or public property.

3. To ensure that right-of-way or public property encroachments do not contribute to visual blight or create a safety hazard, the permittee must ensure the encroachment is maintained and kept in a safe condition. This includes, but is not limited to, maintaining a condition which is reasonably free of dirt, rust, and grease, as well as chipped, faded, peeling, or cracked paint. All structural or moving parts must be in working order and pose no safety hazard to

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the public. Any glass or plastic (such as display windows) must be unbroken and reasonably free of cracks, dents, blemishes, and discoloration.

4. The city may impose a charge for the use of the public right-of-way or public property.

5. The city may require the removal of the encroachment at any time, including when the property benefitted by the encroachment develops. (Ord. 18-19 §1)

## **15.16.060 Recording of Permits**

The city may require the permittee to record an approved encroachment permit against the title of the benefitting property. The permittee will pay the costs of recording. (Ord. 18-19 §1)

## **15.16.070 Revocation of Permits**

A. All right-of-way or public property encroachment permits are revocable by the city at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time gives the permittee any right to the continued existence of an encroachment or to any damages or claims against the city arising from a revocation.

B. Any permit issued under this chapter will be automatically revoked if the permittee fails to comply with any conditions of the permit or fails to begin installation of the allowed encroachment within 60 days after issuance of the permit, unless the applicant requests an extension prior to the expiration of the 60-day period. (Ord. 18-19 §1)

## **15.16.080 Removal of Encroachment**

A. Upon revocation pursuant to Section 15.16.070, the permittee or any successor permittee, will, at the permittee's own cost,

remove the encroachment within 30 days after written notice has been provided by the city unless a shorter period is specified in the notice of revocation. The permittee must ensure that the property is restored to a good and safe condition.

B. If the permittee does not remove the encroachment and return the right-of-way or public property to a condition satisfactory to the city engineer, the city may do so and the costs of returning the right-of-way or public property to a satisfactory condition, including the removal of structures, the encroachment and reconstruction of streets or sidewalks, may be imposed as a lien upon the property. (Ord. 18-19 §1)

## **15.16.090 Liability**

The permittee, and owner of the benefitted property if different than the permittee, are responsible and liable for all accidents, environmental clean-up, damages or injuries to any person or property resulting from the construction, maintenance, repair, operation or use of an encroachment. The permittee will indemnify, defend, and hold harmless the city, its elected officials, and all officers, employees or agents against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which they or any of them may sustain by reasons of the acts, conduct or operation of the permittee, the permittee's agents, or employees in connection with the construction, maintenance, repair, operation or use of said encroachment and by reason of the existence of an approved right-of-way or public property encroachment. (Ord. 18-19 §1)

## **15.16.100 Enforcement**

A. Installation or maintenance of an encroachment in violation of Section 15.16.010, or failure to obtain an encroachment permit as required by Section 15.16.010, or to comply with

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the terms and conditions of an encroachment permit issued thereunder is hereby declared a civil infraction subject to enforcement pursuant to Chapter 1.16.

B. Installation or maintenance of an encroachment in violation of Section 15.16.010, or an encroachment permit issued pursuant to Section 15.16.010 is hereby declared to be a public nuisance pursuant to Title 6 of the Tigard Municipal Code, which may be abated pursuant to Chapter 1.16. (Ord. 18-19 §1; Ord. 12-02 §3; Ord. 99-31) ■