

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY OF BENICIA AMENDING VARIOUS SECTIONS OF THE BENICIA MUNICIPAL CODE MAKING ALL FEES SUBJECT TO COUNCIL RESOLUTION, AND UPDATING CHAPTER 9.44 (ALARM SYSTEMS) , SECTION 12.12.020 (REQUIRED PERMIT AND PERMIT AGREEMENT) OF CHAPTER 12.12 (ENCROACHMENTS), SECTION 12.16.230 (GENERAL SPECIFICATIONS) OF CHAPTER 12.16 (REPAIR AND CONSTRUCTION OF SIDEWALKS AND ALLEYS), AND SECTION 15.28.130 (EXCAVATING, GRADING AND FILLING REQUIREMENTS) OF CHAPTER 15.28 (GRADING AND EXCAVATION) TO CONFORM WITH EXISTING LAW AND CURRENT CITY STANDARDS

WHEREAS, the City Council intends to adopt a new Master Fee Schedule incorporating updates from the Citywide User Fee Study and miscellaneous Municipal Code provisions containing fixed fees that would be better established by Council resolution and made part of the Master Fee Schedule; and

WHEREAS, various other chapters and sections of the Code needed updating either to comply with the law, best practices, agency name changes, or current city practices; and

WHEREAS, the City Council considered this ordinance at a regular meeting of the City council held on August 15, 2017.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Section 1.44.080 (Appeal Fees) of Chapter 1.44 (Appeals) of Title 1 (General Provisions) of the Benicia Municipal Code shall be amended to read as follows:

Each application for appeal or rehearing shall be accompanied by a processing fee in an amount determined by resolution of the city council.

Section 2.

Section 5.12.040 (Permit – Fee) of Chapter 5.12 (Bingo Games) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

The permit fee shall be established by resolution of the City Council. If an application fee is denied, one-half of any fee paid shall be refunded.

Section 3.

Section 9.44.020 (Definitions) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

Section 9.44.020 Definitions. “Alarm Administrator” means a person or persons designated by the City to administer the provisions of this chapter.

A. “Alarm company” means a business entity, whether an individual, partnership, company, firm, or corporation subject to the Alarm Company Act under Business & Professions Code Chapter 11.6, which is engaged in selling, leasing, installing, maintaining, moving, altering, repairing, replacing, responding or monitoring an alarm system. This entity shall be licensed in compliance with city, county and state laws.

C. “Alarm permit” means a permit issued to an alarm user by the City allowing the operation of an alarm system within the City of Benicia.

D. “Alarm signal” means a detectable signal; audible or visual, generated by an alarm system, to which law enforcement is requested to respond.

E. “Alarm system” means any single device or assembly of equipment designed to signal the occurrence of an illegal or unauthorized entry or other activity to which law enforcement is requested to respond, but does not include motor vehicle or boat alarms, fire alarms, domestic violence alarms, or alarms designed to elicit a medical response.

F. “Alarm user” means any person, corporation, partnership, proprietorship, governmental or educational entity or any other entity owning, leasing, or operating an alarm system, or the current residents or leasers whose premises an alarm system is maintained for the protection of such premises.

G. “Alarm User Awareness Class” means a class conducted for the purpose of educating alarm users about the responsible use, operation, and maintenance of alarm systems and the problems created by false alarms.

H. “Cancellation” means termination of response by the Police Department when the alarm company notifies the Police Department that there is not an existing situation at the alarm site requiring police response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil penalty, and no penalty will be assessed.

I. “City” means the City of Benicia or its agent.

J. “False alarm” means the activation of an alarm system when, upon inspection by the Police Department, there is no evidence of unauthorized entry, robbery, or other such crime attempted in or on the premises which would have activated a properly functioning alarm system. Notwithstanding the foregoing, a false alarm does not include an alarm which can reasonably be determined to have been caused or activated by unusually violent conditions of nature.

K. “Local alarm” means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure and is not monitored by a remote monitoring facility, whether installed by an alarm company or user.

L. “Permit year” means a 12-month period beginning on the day and month on which an alarm permit is issued.

M. “Runaway alarm” means an alarm system that produces repeated alarm signals that do not appear to be caused by separate human action. The Police Department may in its discretion discontinue police responses to alarm signals from what appears to be a runaway alarm.

N. “Compliance Standards” means equipment and installation methods shall comply with all appropriate nationally recognized testing laboratories and American National Standards Institute (ANSI) requirements.

O. "Confirmation" means an attempt by the alarm system monitoring company to contact the alarm site and/or alarm user by telephone and/or other means, whether or not actual contact with a person is made, to determine whether an alarm signal is valid before requesting law enforcement response. A second call shall be made to an alternate number provided by the alarm user if the first attempt fails. EXCEPT in case of a fire, panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified as defined in ANSI/CSAA CS-V-01-2016(or current version).

Section 4.

Section 9.44.030 (Exemptions) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

9.44.030 Exemptions. This chapter does not apply to alarms on vehicles, boats, boat trailers, house trailers or recreational vehicles or fire alarms.

Section 5.

Section 9.44.040 (Requirement and duties) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

A. A user of an alarm system must provide to the alarm company or alarm company's answering service the name and telephone number of one person who can respond with keys to the premises and alarm system to provide to the City when needed.

B. Audible Alarm Requirements. Every person owning or maintaining an audible alarm shall post a notice containing the name and telephone number of the persons to be notified to render repairs or services during any hour of the day or night the burglar alarm rings. Such notice shall be posted near the alarm in such a position as to be legible from the ground level adjacent to the building. In addition to the posting requirements referred to in this subsection, the occupant of the premises upon which any audible alarm is installed shall notify the police department of his name and the telephone number at which he may be reached at any time of the day or night; registration of the alarm system will satisfy this requirement. The alarm business or owner of any audible alarm shall be responsible for deactivating any alarm within 30 minutes after notification or after reasonable efforts have been made to notify the owner or alarm business that such alarm has been activated and is ringing. The ringing of any alarm for a period in excess of 30 minutes after such notification or effort of notification have been made is declared to be a public nuisance and subject to misdemeanor prosecution, or summary abatement as a nuisance pursuant to the Benicia Municipal Code.

C. A user or his authorized representative shall respond to all activated alarms as required above.

D. Each burglar alarm installed after the date the ordinance codified in this chapter becomes effective shall be equipped with a minimum 30-second delay device with an audible sound or visual indication to notify any person on the premises of a potential false alarm; provided, that

this requirement shall not apply to burglar alarm systems that are required to have Underwriters' Laboratories certification for insurance purposes.

E. Permit required. No person shall use an alarm system without first obtaining a permit for such alarm system from the city. A fee will be required for the initial registration and annual renewals established by council resolution. Each alarm permit shall be assigned a unique permit number, and the user shall provide the permit number to the alarm company to facilitate law enforcement dispatch.

(1) Application. The permit shall be requested on an application form provided by the City. An alarm user has the duty to obtain an application from the city.

(2) Transfer of possession. When the possession of the premises at which an alarm system is maintained is transferred, the person (user) obtaining possession of the property shall file an application for an alarm permit within 30 days of obtaining possession of the property. Alarm permits are not transferable.

(3) Reporting updated information. Whenever the information provided on the alarm permit application changes, the alarm user shall provide correct information to the city within 30 days of the change. In addition, each year after the issuance of the permit, permit holders will receive from the city a form requesting updated information. The permit holder shall complete and return this form to the city whether or not any of the requested information has changed; failure to comply will constitute a violation and may result in a civil penalty.

(4) Multiple alarm systems. If an alarm user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.

F. Duties of the Alarm User

(1) Maintain the premises and the alarm system in a method that will reduce or eliminate false alarms.

(2) Provide the alarm company the permit number, (the number must be provided to the communications center by the alarm company to facilitate dispatch).

(3) Respond or cause a representative to respond to the alarm system's location within a reasonable amount of time when notified by the Police Department.

(4) Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.

(5) An alarm user must obtain a new permit and pay any associated fees if there is a change in address or ownership of the location of the alarm-system.

G. Duties of the Alarm Company

(1) Any person engaged in the alarm business in the city shall comply with the following:

(a) Obtain and maintain the required state alarm license(s), and city business license.

(b) Provide name, address, and telephone numbers of the alarm company license holder or a designee who can be called in an emergency, 24 hours a day; and be able to respond to an alarm call, when notified, within a reasonable amount of time.

(c) Be able to provide the most current contact information for the alarm user and to contact a key holder for a response, if requested.

(2) Prior to activation of the alarm system, the alarm company must provide instructions explaining the proper operation of the alarm system to the alarm user.

(3) Provide written information (to the city) of how to obtain service from the alarm company for the alarm system.

(4) Verified Response. An alarm company performing monitoring services shall:

(a) Attempt to confirm, by calling the alarm site and/or alarm user by telephone, to determine whether an alarm signal is valid before requesting dispatch. Telephone confirmation shall require, as a minimum that a second call also known as Enhanced Call Confirmation (ECC), be made to a different number, if the first attempt fails to reach an alarm user who can properly identify themselves to attempt to determine whether an alarm signal is valid, EXCEPT in case of a fire, panic or robbery-in-progress alarm or in cases where a crime-in-progress has been verified as defined in ANSI/CSAA CS-V-01-2016 (or current version).

(b) Provide alarm user registration number to the city's communications center to facilitate dispatch and/or cancellations.

(c) Communicate any available information about the location of the alarm.

(d) Communicate a cancellation to the city's communications center as soon as possible following a determination that response is unnecessary.

Section 6.

Section 9.44.050 (Prohibitions) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended by adding the following Subsections at the end of the section:

C. It shall be unlawful to activate an alarm system for the purpose of summoning law enforcement when no burglary, robbery, or other crime dangerous to life or property is being committed or attempted on the premises, or otherwise to cause a false alarm.

D. It shall be unlawful to install, maintain, or use an audible alarm system which can sound continually for more than 15 minutes.

Section 7.

Subsection B of Section 9.44.060 (Enforcement) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

B. A fine for failing to register an alarm system shall be paid to the city by an alarm user. A fine for each false alarm in excess of one false alarm during any 12-month period shall be paid to the city by an alarm user for each such false alarm signaled by the user's equipment to which the Benicia police department responds. Such fines shall be established by City Council resolution.

Section 8.

Subsection A of Section 9.44.080 (Registration of alarm agents) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

A. Under Business and Professions Code Section 7590 et seq., each alarm agent of an alarm company operator is required to register with the Bureau of Consumer Affairs.

Section 9.

Section 9.44.090 (Additional rules and regulations) of Chapter 9.44 (Alarm Systems) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code shall be amended to read as follows:

A. The chief of police may adopt rules and regulations he considers necessary to endorse conformance to this chapter.

B. Appeals process. Assessments of civil penalties and other enforcement decisions made under this ordinance may be appealed by filing a written notice of appeal with the Police Department within 10 business days after the date of notification of the assessment of civil penalties or other enforcement decision. The failure to give notice of appeal within this time period shall constitute a waiver of the right to contest the assessment of penalties or other enforcement decision. Appeals shall be heard through an administrative process established by the city. The hearing officer's decision is subject to review in the district court by proceedings in the nature of certiorari.

C. Appeal standard. The hearing officer shall review an appeal from the assessment of civil penalties or other enforcement decisions using a preponderance of the evidence standard. Notwithstanding a determination that the preponderance of the evidence supports the assessment of civil penalties or other enforcement decision, the hearing officer shall have the discretion to dismiss or reduce civil penalties or reverse any other enforcement decision where warranted.

D. Confidentiality. In the interest of public safety, all information contained in and gathered through the alarm registration applications, no response records, applications for appeals and any other alarm records shall be held in confidence by all employees and/or representatives of the city.

Section 10.

Section 12.12.020 (Permit required) of Chapter 12.12 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code shall be amended to read as follows:

Section 12.12.020 Required Permit and Permit Agreement

A. No person shall encroach or cause to be made any encroachment of any nature whatsoever within, upon, over or under the limits of any right-of-way or watercourse; or make or cause to be made any alteration of any nature within, upon, over, or under the limits of any right-of-way or watercourse; or make or cause to be made any alteration of any nature within, upon, over, or under such right-of-way or watercourse; or construct, put upon, maintain or leave thereon, or cause to be constructed, put on, maintained, or left thereon, any obstruction or impediment of any nature whatsoever; or remove, cut or trim trees thereon; or set a fire thereon; or to place on, over or under such right-of-way any pipe line, conduit or other fixtures; or move over or cause to

be moved over the surface of any right-of-way or over any bridge, viaduct, or other structure maintained by the city, any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging the right-of-way; or place any structure, wall, culvert, or similar encroachment, or make any excavation or embankment, in such a way as to endanger the normal usage of the right-of-way or watercourse without having first obtained a permit as required by this chapter. An encroachment permit will normally be used only for a single parcel development.

B. Any long term encroachment of any type of private structure in the public right-of-way (ie. awnings, poles, access ramps, etc.) will require a permit agreement as well as a permit.

Section 11.

Subsection N (Encroachment Permit Fee Schedule) of Section 12.12.060 (Permits and fees) of Chapter 12.12 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code shall be amended to read as follows:

N. Permit Fees. All fees required for encroachment permits, field inspections and new street cuts shall be established by city council resolution.

Section 12.

Subsection O (New Street Cuts) of Section 12.12.060 (Permits and Fees) of Chapter 12.12 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code shall be amended to read as follows:

O. New Street Cuts. Trench cuts into new streets which have been surfaced with asphalt concrete within 5 years for overlay or reconstruction or streets surfaced with seal coating within 2 years prior to the excavation shall require a street restoration fee established by city council.

Section 13.

Subsection I of Section 12.16.240 (Driveway specifications) of Chapter 12.16 (Repair and Construction of Sidewalks and Alleys) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code shall be amended to read as follows:

I. Before any permit shall be issued to remove curbs or install driveways, an inspection fee established by city council resolution shall be paid to the city.

Section 14.

Subsections A, D, E and F of Section 12.16.230 (General Specifications) of Chapter 12.16 (Repair and Construction of Sidewalks and Alleys) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code shall be amended to read as follows:

A. All sidewalks, curbs, gutters, driveways, stairs, walls or other structures in the street area shall be constructed, as hereinafter specified, of class "A" concrete as specified in the current State of California

Department of Transportation (Caltrans) “Standard Specifications” unless otherwise approved by the administrator.

E. The lateral and longitudinal slopes of sidewalks shall be in compliance with the most current City Standard Plans or Caltrans Standard Plans, whichever is the most restrictive.

F. The finish surface shall be sufficiently textured to the satisfaction of the administrator.

Section 15.

Subsection D of Section 13.08.100 (Discontinuance and restoration of service) of Chapter 13.08 (Water Service) of Title 13 (Public Services) of the Benicia Municipal Code shall be amended to read as follows:

D. Service which is disconnected may be restored upon correction to the satisfaction of the director of the condition causing discontinuance of service, and upon payment of all applicable fees and charges established by city council resolution.

Section 16.

Subsection B of Section 13.28.050 (Charges and fees) of Chapter 13.28 (Control of Backflow and Cross-Connection to City Water System) of Title 13 (Public Services) of the Benicia Municipal Code shall be amended to read as follows:

B. Charges and fees established by city council resolution may include:

1. Fees for reimbursement of costs to administer the city’s cross-connection and backflow prevention program;
2. Fees for inspection procedures;
3. Backflow prevention testing;
4. Fees for filing appeals;
5. Other fees as the City may deem necessary to carry out the requirements contained herein.

Section 17.

Subsection A of 13.50.100 (Charges and fees) of Chapter 13.50 Pretreatment and Source Control of Wastewater Disposal or Discharge) of Title 13 (Public Services) of the Benicia Municipal Code shall be amended to read as follows:

It is the purpose of this section to provide for the recovery of costs from users of the city’s POTW for the implementation of the program established herein. The applicable charges or fees shall be established by city council resolution.

A. Such charges and fees may include:

1. Fees for reimbursement of costs of setting up and operating the city’s pretreatment program;
2. Fees for monitoring, inspections and surveillance procedures;
3. Fees for reviewing accidental discharge procedures and construction;
4. Fees for permit applications;

5. Fees for filing appeals;
6. Other fees as the city may deem necessary to carry out the requirements contained herein.

B. These fees relate solely to the matter covered by this chapter and are separate from all other fees chargeable by the city.

Section 18.

Chapter 15.26 (Building Permit Fees and Other Fees) of Title 15 (Buildings and Construction) of the Benicia Municipal Code shall be amended in its entirety to read as follows:

Section 15.26.010 Permit and other fees. All permits and inspections required under Title 15 shall be subject to fees established by city council resolution.

Section 15.26.020 Investigation, Investigation fees, and work without a permit. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, an investigation shall be made before a permit may be issued for such work. An investigation fee established by city council resolution shall be collected whether or not a permit is then or subsequently issued. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

Section 15.26.030 Refunds. The building official may authorize the refunding of permit fees paid when no work has commenced under a permit in accordance with this code or when an applicant wishes to withdraw an application for a permit for which a plan review fee has been paid. Plan review fees collected shall not be subject to refund if plan review has been conducted. An administrative fee established by city council resolution will be assessed for any fee request refund at the discretion of the building official.

Section 15.26.040 Re-inspections. A re-inspection fee established by city council resolution may be assessed for each inspection or re-inspection when such portion of work for which inspection is scheduled is not complete or when corrections called for previously are not complete. In instances when re-inspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

Section 15.26.050 Plan review fees. When submittal documents are required, a plan review fee shall be paid at the time of submittal for plan review. Said plan review fee shall be a percent of the building permit fee as established by city council resolution. The plan review fees are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items, an additional plan review fee shall be charged at a rate established by city council resolution.

Section 19.

Subsections B, D and F of Section 15.28.130 (Excavating, grading and filling – Regulations) of Chapter 15.28 (Grading and Erosion Control) of Title 15 (Buildings and Construction) of the Benicia Municipal Code shall be amended to read as follows:

B. All grading and noise therefrom, including, but not limited to, warming of motors, shall be limited to the hours between 8:00 a.m. and 5 p.m., Monday through Friday, unless other times are specifically authorized in writing by the city engineer for special circumstances.

D. No grading shall be conducted so as to encroach upon or alter the established gradient and riparian habitat of natural drainage courses except when a valid permit and other necessary approvals are obtained from the appropriate state and federal authorities (i.e. Fish and Wildlife, etc.) and the necessary environmental review and approvals are received from the community development director, planning commission, or city council as the case may be.

F. Sediment controls and other best management practices shall be constructed on all developments, as determined by the city engineer, to manage runoff into biologically sensitive areas or onto adjacent property and to control sediment during construction until permanent erosion controls have been established. The sediment and silt collected on-site shall then be removed and the resulting material hauled from the site or used as topsoil. Additional erosion control measures shall be employed during the rainy season (approximately October 15 – April 15) as required by the city engineer pursuant to BMC Section 15.28.140 and BMC Chapter 15.64 - Stormwater Management and Discharge Control. Permanent siltation basins may be required in biologically sensitive areas.

Section 20.

Subsection A of Section 16.28.040 (Fees) of Chapter 16.28 (Vesting Tentative Maps) of Title 16 (Subdivisions) of the Benicia Municipal Code shall be amended to read as follows:

A. Upon filing a vesting tentative map, the subdivider shall pay all required fees and/or deposits for checking and processing maps, plans and reports as established by city council resolution.

Section 21.

Subsection A of Section 17.104.030 (Initiation) of Chapter 17.104 (Use permits and variances) of Title 17 (Zoning) of the Benicia Municipal Code shall be amended as follows:

A. A completed application form, signed by the property owner or authorized agent, accompanied by a fee established by City Council resolution, plans and mapping documentation in the form prescribed by the community development director;

Section 22.

Subsection E of Section 17.116.020 (Application requirements) of Chapter 17.116 (Development Agreements) of Title 17 Zoning of the Benicia Municipal Code shall be amended to read as follows:

E. The required fee established by city council resolution.

Section 23.

Subsection E of Section 17.120.030 (Required application materials for amendments initiated by property owners, residents or business owners) of Chapter 17.120 (Amendments) of Title 17 Zoning of the Benicia Municipal Code shall be amended to read as follows:

E. The required fee established by city council resolution.

Section 24.

Subsection A of Section 18.08.030 (Fees) of Chapter 18.08 (Permits) of Title 18 (Signs) of the Benicia Municipal Code shall be amended to read as follows:

A. The fee for a sign permit with or without a variance shall be established by City Council resolution.

Section 25.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 15th day of August, 2017, and adopted at a regular meeting of the Council held on the 5th of September, 2017, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date