

Chapter 12.08 ENCROACHMENTS

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12.08.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "City engineer" means the city engineer of the City or his duly authorized representative.

B. "Encroachment" means and includes going upon, over, under, or using any street in such a manner as to prevent, obstruct or interfere with the normal use of that street, including the performance thereon of any of the following acts:

1. Excavating or disturbing the streets;
2. Erecting or maintaining any post, sign, pole, fence, guardrail, wall, loading platform, seasonal display, athletic or sporting equipment, or other structure on or over or under the street;
3. Placing or leaving on the street any rubbish, brush, earth or other material of any nature whatsoever;
4. Constructing, placing or maintaining on, over, under or within the street any pathway, sidewalk, driveway or other surfacing, any culvert, or other surface drainage or subsurface drainage facility, any pipe, conduit or cable.

C. "Permittee" means any person or public agency that proposes to do work or encroach upon a street as herein defined, and has been issued a permit for such encroachment by the city engineer. All obligations, responsibilities and other requirements of the permittee as herein described, shall be binding on subsequent owners of the encroachment.

D. "Street" includes all streets, avenues, lanes, alleys, courts, paths or other public ways in the City which have been or may hereafter be designated and open to public use.

E. "Designated city location" means the following City of Livermore or City of Livermore successor agency-owned properties: Flagpole Plaza, as defined in LMC [12.45.110\(G\)](#), Livermore Valley Center Plaza, as defined in LMC [12.45.110\(I\)](#), and Mill Square Park, which is the property located at the southeast corner of First Street and South Livermore Avenue. (Ord. 2065 § 1(A), 2018; Ord. 2016 § 1(K), 2015; Ord. 1971 § 1(E), 2012; Ord. 1911 §§ 1, 2, 2010; 1960 code § 19.2)

12.08.020 Permit – Required for certain work in streets.

It is unlawful for any person, without first obtaining a written permit, to make or cause to be made any encroachment within, upon, over or under the limits of any street in the City; provided, however, that no permit shall be required for the continuing use or maintenance of encroachments installed by public utilities or for

changes therein or changes thereto where such changes or additions require no excavation of such street.
(Ord. 2065 § 1(A), 2018; 1960 code § 19.3)

12.08.030 Permit – Application requirements – Approval.

A. Application for the permit required by LMC [12.08.020](#) shall be made in writing to the city engineer on a form of application for permit supplied by the city engineer. When required by the city engineer, the applicant shall enclose with, attach or add to the application for a permit, a map, plat, sketch, diagram or similar exhibit of a size and in such quantity as the city engineer may prescribe, on which shall be plainly shown any and all information necessary to locate, delineate, illustrate or identify the proposed use or encroachment.

B. The application, when approved and signed by the city engineer or by his authorized representative, shall constitute the permit. (1960 code § 19.4)

12.08.040 Permit – To be secured when.

Permits required by LMC [12.08.020](#) shall be secured at least two working days before the work is commenced, except in the case of emergency. If an emergency street cut, opening or excavation is made, application for a permit shall be made on the next working day. In the event an encroachment permit is sought for a seasonal display or special event, the time frame for an application for an encroachment permit shall be the same as for special events, as set forth in Chapter [12.45](#) LMC. (Ord. 1911 § 3, 2010; 1960 code § 19.5)

12.08.050 Permit – Issuance conditions – Appeal.

Any person aggrieved by the refusal of a permit required by this chapter may appeal in accordance with the provisions of Chapter [1.22](#) LMC. If the hearing officer for the appeal finds all of the following to be true, the permit shall be granted:

- A. That the permittee will be substantially damaged by the refusal to grant the permit as requested;
- B. That no other reasonable method of obtaining the desired results is available except as proposed by the permittee;
- C. That the granting of the permit will not be materially detrimental to the public interest, safety, health and welfare, or injurious to other property. (Ord. 2052 § 1(Q), 2017; 1960 code § 19.8)

12.08.060 Permits not transferable.

Permits required by this chapter shall not be transferable. (1960 code § 19.6)

12.08.070 Time limit for completion of work.

The permit required by this chapter shall provide a time limit within which time work shall be completed. (1960 code § 19.7)

12.08.080 Work on state highways – State regulations applicable.

If the street cut, opening or excavation for which a permit is granted pursuant to this chapter is to be made in a state highway, the permittee shall not only comply with the provisions of this chapter, but shall also comply with all lawful regulations of the Division of Highways of the Department of Public Works of the state, and shall procure from such Division any lawful permit required therefor by the state. (1960 code § 19.9)

12.08.090 Fees for permit, field investigation and inspection – Advance deposit.

The permit fee to be paid for street openings shall be established by the City Council by resolution. Before a permit is issued, the applicant shall deposit with the city engineer the amount of the fee in cash or a certified check. Public utilities and public agencies may, at the city engineer's option, be billed for the fee. (Ord. 2065 § 1(A), 2018; Ord. 1229 § 1, 1987; 1960 code § 19.10)

12.08.100 Public utility deposit exemption.

Deposits will not be required of any public utility or any county, city, public or private corporation or public agency which is authorized by law to establish or maintain any works or facilities in, under or over any street. (Ord. 1229 § 2, 1987; 1960 code § 19.12)

12.08.110 Cash deposit requirements.

Unless LMC [12.08.100](#) and [12.08.120](#) through [12.08.150](#), inclusive, are waived in the permit and before a permit, issued pursuant to this chapter, is effective, an applicant shall deposit with the city engineer, or other agent authorized by resolution of the City Council, cash or a certified or cashier's check in a sum to be fixed by the city engineer as sufficient to reimburse the City for costs of restoring the street to its former condition, except as provided in LMC [12.08.120](#). (Ord. 2065 § 1(A), 2018; 1960 code § 19.11)

12.08.120 Bond in lieu of cash deposit when.

In lieu of a cash deposit provided for by LMC [12.08.110](#), the applicant for a permit pursuant to this chapter may, upon approval by the city engineer, file an approved surety bond issued by a company authorized to do general surety business in the state, in a sum fixed by the city engineer as sufficient to reimburse the City for expenses to be incurred in restoring the street to its former condition, subject to the schedules, if any, adopted by resolution of the City Council. (Ord. 2065 § 1(A), 2018; 1960 code § 19.13)

12.08.130 Additional bond or cash deposit required when.

The city engineer may require an additional bond or cash deposit to that required by LMC [12.08.110](#) or [12.08.120](#) at any time that evidence indicates that the amount of the bond or cash deposit previously made is insufficient to cover the cost of restoring the street to its former condition, subject to the schedules, if any, adopted by resolution of the City Council. (Ord. 2065 § 1(A), 2018; 1960 code § 19.14)

12.08.140 Conditions on bond or cash deposit.

The condition of any bond or cash deposit made pursuant to this chapter shall be that the permittee will diligently and in good faith comply with all the terms of this chapter and the terms and conditions of the permit. (1960 code § 19.15)

12.08.150 Release of bond or cash deposit.

Any bond or cash deposit required by the city engineer pursuant to this chapter shall be made payable to the City and shall be filed with the city engineer. Upon satisfactory completion of all work authorized in the permit, and fulfillment of all conditions of the permit, the City Council will release the bond or cash deposit upon the expiration of 90 days. (Ord. 2065 § 1(A), 2018; 1960 code § 19.16)

12.08.160 Standard specifications for performance of work.

Unless otherwise noted on the permit, all work performed on any street under the jurisdiction of the City shall conform to the construction specifications contained in the current edition of the standard specifications of the state, issued by the Department of Public Works, Division of Highways, as may be amended by special provisions adopted by the City Council. (Ord. 2065 § 1(A), 2018; 1960 code § 19.23)

12.08.170 Storage of materials.

- A. No material shall be stored within five feet of a street unless otherwise approved by the city engineer.

- B. Excess earth materials from trenching or other operations shall be removed from the pavement, traveled way or shoulder as the trench is backfilled or other work carried forward, unless otherwise approved by the city engineer. (1960 code § 19.24)

12.08.180 Interference with use of street or property prohibited – Permit required for street closure.

All work or use shall be planned and executed in a manner that will cause least interference with the safe and convenient travel of the general public at the place where the work or use is authorized, and at no time shall a

street be closed, or the use thereof denied the general public, without the written permission of the city engineer, nor shall use of private property be interfered with unreasonably without the consent of the owner. (1960 code § 19.19)

12.08.190 Removal or relocation of encroachments.

If any future construction, reconstruction or maintenance work on a street requires the relocation or removal of installations or encroachments in, on or under the street, the permittee owning, controlling or maintaining such installations or encroachments shall relocate or remove the same at his sole expense; provided, however, that this provision shall apply to and remain in force and effect only so long as the street upon which such installations or structures are located is used for usual highway purposes and not as a freeway, and this provision shall cease to apply when such highway becomes a freeway. When removal or relocation is required, the city engineer shall give the permittee a written demand, specifying the place of relocation, or that the installations or encroachments must be removed from the street, and specifying in the demand a reasonable time within which such encroachment must be removed or relocated. If the permittee fails to comply with the instructions, the City may cause the removal or relocation of the encroachment at the expense of the permittee. (Ord. 2065 § 1(A), 2018; 1960 code § 19.22)

12.08.200 Safety warnings and barricades.

The permittee, in the conduct of the work, use or maintenance of an encroachment authorized by a permit issued pursuant to this chapter, shall provide, erect or maintain such lights, barriers, warning signs, patrols, watchmen and other safeguards as are necessary to protect the traveling public. Any omission on the part of the city engineer to specify in the permit what lights, barriers or other protective measures or devices shall be provided, erected or maintained by the permittee, or the fact that the city engineer may not specify sufficient lights, barriers or other protective measures or devices, shall not excuse the permittee from complying with all requirements of law and appropriate regulations and ordinances for adequately protecting the safety of those using any street. If, at any time, the city engineer finds that suitable safeguards are not being provided, the City may provide, erect, maintain, relocate or remove such safeguards as are deemed necessary, or may cancel the permit and restore the street to its former condition, all at the expense of the permittee. (Ord. 2065 § 1(A), 2018; 1960 code § 19.17)

12.08.210 Warning lights and signs at nighttime.

A. A permittee making any excavation or erecting or leaving any obstruction within, under or upon the street, or causing the same to be made, erected or left, shall place and maintain lights at each end of the excavation or obstruction, at not more than 50-foot intervals along the excavation or obstruction, from one-half hour before

sunset of each day to one-half hour after sunrise of the next day, until the excavation is entirely refilled or the obstruction removed and the street made safe for use. In addition, reflectorized warning signs conforming to the requirements of the State Division of Highways shall be placed 200 and 400 feet from each excavation or obstruction, in such a position as to adequately warn public traffic.

B. The warning signs, lights and other safety devices shall conform to the requirements of Section [465.7](#) of the Vehicle Code of the state and of any sign manual issued by the State Department of Public Works. (1960 code § 19.18)

12.08.220 Backfilling and compaction.

Backfilling and compaction of an excavation shall be in accordance with specifications of the City, both as to material and method. (Ord. 2065 § 1(A), 2018; 1960 code § 19.25)

12.08.230 Restoration and maintenance of street.

A. Upon completion of the work, acts or things for which a maintenance or encroachment permit was issued, or when required by the city engineer, the permittee shall replace, repair or restore the street, as provided by this chapter, or as directed by the city engineer. The permittee shall remove all obstructions, impediments, material or rubbish caused or placed upon the street, and shall do any other work or perform any act necessary to restore the street to a safe and usable condition, as directed by the city engineer.

B. The permittee shall, upon notice from the city engineer, immediately repair any injury, damage or nuisance in any portion of the street, resulting from the work done under the permit. In the event that the permittee fails to act promptly, or should the exigencies of the injury of damage require repairs or replacement to be made before the permittee can be notified or can respond to notification, the City may, at its option, make the necessary repairs or replacements or perform the necessary work, and the permittee shall be charged with the actual costs of labor and materials, plus 15 percent as administrative costs. (Ord. 2065 § 1(A), 2018; 1960 code § 19.20)

12.08.240 Liability limitations.

The applicant for a permit pursuant to this chapter shall at all times comply with and shall cause all his agents and employees to comply with all such laws, ordinances, regulations, decisions of court, and similar authoritative orders, and shall protect and indemnify the City and all of its officers, agents and employees against any claim or liability proximately caused by the violation of any such law, ordinance, regulation or order

issued under police power and in accordance with law, whether by himself or his agents or employees. (Ord. 2065 § 1(A), 2018; 1960 code § 19.21)

12.08.250 Trees near streets – Trimming requirements.

It is unlawful and a misdemeanor for the owner or occupant of any premises in front of or adjacent to which any tree is standing or growing in any public street or way to fail or neglect to keep such tree trimmed so that no branches thereon, where more than two feet horizontally from the body of the street, shall be less than 10 feet above the official grade of the way on the street side of the curbing, nor less than eight feet above the official grade of the way on the sidewalk side of the curbing. (1960 code § 19.26)