



Title 7

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Chapter 12: Encroachments

This chapter establishes regulations for and the process to allow encroachments on public property, including within the public right-of-way. The purpose of these regulations and permit processes is to establish standards for the protection of the public health, safety, and general welfare, including traffic and pedestrian safeguards.

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Chapter 12: Encroachments

Article A: Purpose, Applicability, and Definitions

Sections:

- 7-12A-1 General Purpose
- 7-12A-2 Applicability
- 7-12A-3 Definitions

Draft Code Changes:

- *This new article explains the purpose and general applicability of the chapter, describing that the city regulates encroachments onto city property and within the public right-of-way in order to protect the public health, safety, and general welfare.*
- *There are two types of encroachments described herein: permits (short-term encroachments) and agreements (long-term encroachments).*
- *This article also includes specific definitions for terms unique to this chapter.*

7-12A-1 General Purpose

This chapter establishes regulations for and the process to allow encroachments on public property, including within the public right-of-way. The purpose of these regulations and permit processes is to establish standards for the protection of the public health, safety, and general welfare, including traffic and pedestrian safeguards.

7-12A-2 Applicability

It shall be unlawful for any person to place, erect or maintain, or to permit the placement, erection, maintenance, or existence of any encroachment upon, over, or under any public property without prior approval from the city. The city provides for two types of encroachments into the public right-of-way as described below and provided in articles 7-12B and 7-12C:

1. Encroachment Permits – short-term encroachments, such as construction fencing, concrete, utility installation and replacement, awnings, and semi-permanent fencing; and
2. Encroachment Agreements – long-term and permanent encroachments, such as outdoor seating along public sidewalks, planters, decks, columns, balconies, fencing, and other structures, primarily in the downtown.

7-12A-3 Definitions

For the purposes of this chapter, the following terms, phrases, and words shall have the following definitions:

City Manager. City manager shall mean the city manager of the city, or his or her designee.

Encroachment. Encroachment shall mean going upon, over, or under public property, or placing any facility upon, along, across, over, or under public property, or using any public property in such a manner as to prevent, obstruct, or interfere with the use of that public property. Encroachments include, but are not limited to, buildings, fences, signs, trees, plants, and underground facilities, or any excavations on public right-of-way.

Facility. Facility shall mean any pipe, pipeline, tube, hose, main, service, trap, vent, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, transformer, or any other material, structure, public improvement, or object of any kind or character, including a building, portion of a building, or any other structure, whether enumerated herein or not, which is or may be lawfully constructed, used, operated, left, placed, or maintained in, upon, along, across, under, or over any public right-of-way.

Improvement Standards. Improvement standards shall mean the city-adopted standard specifications for public works improvements as adopted by the city council and as may be amended from time to time.

Public Property. Public property shall mean public street, roadway, place, alley, sidewalk, parkway, square, plaza, right-of-way, or any other similar public property dedicated to public use.

Public Works Director. Public works director shall mean the public works director of the city, or his or her designee.

Utility. Utility shall mean any private company and/or corporation operating under regulation of the Public Utilities Commission, or municipal/county department or other governmental agency engaged in providing a particular service to the general public.

Chapter 12: Encroachments

Article B: Encroachment Permit (Short-Term Encroachments)

Sections:

- 7-12B-1 Purpose
- 7-12B-2 Encroachment Permit Required When
- 7-12B-3 Blanket Permits for Utility Work
- 7-12B-4 Application Contents and Processing
- 7-12B-5 Liability and Performance Surety
- 7-12B-6 Operation Standards for Encroachments
- 7-12B-7 Action after Permit Expiration
- 7-12B-8 Revocation
- 7-12B-9 Appeal
- 7-12B-10 Enforcement

Draft Zoning Code Changes:

- *This article establishes the procedures for application, review, and approval of encroachment permits.*
- *This article also establishes the standards under which an encroachment permit shall be executed.*

7-12B-1 Purpose

The purpose of this article is to establish the standards for and the process for reviewing and deciding encroachment permits for short-term encroachments within and on public property.

7-12B-2 Encroachment Permit Required When

An encroachment permit shall be required prior to the start of any work by any utility, agency, or private party, other than the city, on public property within the public right-of-way including, but not limited to, the following:

1. Trenching across public right-of-way for installation of water, sewer, storm drain, cable, and other underground utilities;
2. Construction of curb, gutter, sidewalk, driveway, and roadway pavement;
3. Traffic and pedestrian control measures related to construction within or adjacent to the public right-of-way; and
4. The use and crossing of existing public sidewalks by construction equipment (e.g., front loaders, bobcats, forklifts) during the construction of a new building, for additions to existing buildings, or landscaping or grading;
5. Awnings over sidewalks in downtown or semi-permanent fencing in residential areas.

7-12B-3 Blanket Permits for Utility Work

The designated approving authority for encroachment permits may issue a blanket encroachment permit for utilities to conduct work, including ongoing or emergency repairs or replacement of equipment, on or within public property. Such blanket permits shall only be issued on a yearly basis and shall only authorize excavation or work on existing facilities. Blanket permits shall not be issued for installation of new facilities.

7-12B-4 Application Contents and Processing

A. Application Contents

Application for an encroachment permit shall be made to the department of public works and shall include all of the following:

1. An application form, as provided by the department of public works.
2. Plans or sketches necessary to describe the encroachment.
3. If required prior to the permit being issued, agreement by the applicant that insurance, indemnification, and performance security requirements must be satisfied prior to a permit being issued.
4. Payment of a permit fee as established by resolution of the city council.

B. Approving Authority, Permit Issuance, and Expiration

The designated approving authority for encroachment permits shall be the public works director. The approving authority may impose conditions on the permit in order to ensure the safety of the public and to protect and preserve the public property.

The permit, if issued, will be prepared and issued when fees have been paid, insurance documents and performance security have been reviewed and accepted, and the applicant has signed the permit. Each permit shall identify an expiration date by which all work shall be completed and the encroachment shall be vacated. The approving authority may grant extensions of time, provided satisfactory reasons for issuance of an extension are presented by the applicant as determined by the approving authority.

7-12B-5 Liability and Performance Surety

A. Liability

1. The applicant for an encroachment permit shall hold harmless the city, its council members and other elected and appointed officials, officers, agents, employees, and representatives from liability for any award, damages, costs, and fees incurred by the city and/or awarded to any plaintiff in an action arising out of or in connection with the applicant's work to be performed under the encroachment permit. Applicant shall provide a defense for the city in any such action.
2. The above requirement shall be included on the application form for the encroachment permit and the applicant shall acknowledge this requirement prior to approval of the encroachment permit by the designated approving authority.

B. Insurance Requirement

The approving authority may require the applicant to obtain, prior to issuance of the encroachment permit, and maintain for the duration of the permit, insurance specifically naming the city. The amounts

and terms of such insurance coverage shall be consistent with the provisions set forth in the improvement standards.

C. Performance Surety

The applicant shall provide performance surety for the work covered under the encroachment permit in a form acceptable to the public works director, including but not limited to cash, a bond, letter of credit, or other acceptable mechanism. The amount of the surety shall be as established in the improvement standards so as to reimburse the city for the costs of restoring the public property to either its original condition or to complete the work in the event the applicant fails to do so.

7-12B-6 Operation Standards for Encroachments

A. Traffic Routing and Protection

1. It shall be the applicant's responsibility to place and maintain barriers and warning devices necessary for safety of the general public.
2. Barriers, signs, lights, and other warning and safety devices shall comply with the requirements of the "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work Upon Highways," issued by the State of California, Department of Transportation, and any additional requirements as specified by the approving authority.
3. The applicant shall take appropriate measures to ensure that during the performance of construction work on streets, traffic conditions are as near normal as practicable at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public. The applicant shall conform to the requirements of the improvement standards, as applicable. The applicant shall provide a traffic control plan to be approved by the public works director when requested by the approving authority.
4. When traffic conditions permit, or the extent of the work requires, the approving authority may, by written approval, permit the closing of streets and alleys to all traffic for a period of time as prescribed by the approving authority. The approval may require that the applicant provide approved detours and give notification to various public agencies and to the general public. In such cases, the approval shall not be valid until notice is given. Prior to issuance of the written approval, the applicant shall prepare a traffic detour plan for review and approval by the approving authority.

B. Structural Clearance

The encroachment shall be performed and conducted so as to not unreasonably interfere with access to fire hydrants, fire stations, fire escapes, water valves, sewer manholes, underground vaults, valve housing structures, and all other vital equipment designated by the approving authority.

C. Protection and Relocation of Existing Utilities

1. The applicant shall inform themselves as to the existence and location of all utility facilities likely to be encountered by their operations. Applicants shall contact an underground service alert service and provide the ticket number for the project and contact phone number for the service on all project plans.
2. The emergency contact names and phone numbers for all utility providers in the area of the work to be performed under the permit shall be printed on all plans.
3. All utility facilities affected by any excavation or other construction work shall be supported and protected by the applicant with methods approved by the utility facility owner. Should an

existing facility be damaged by the applicant's operations, and for this purpose pipe coating or other encasement or devices are to be considered as part of a facility, the applicant shall promptly notify the owner of the damaged facility. All facilities damaged by applicant's operations shall be repaired as directed by the owner and the expense of such repairs shall be charged to the applicant.

4. Unless the law otherwise provides, relocation of an existing utility facility shall be performed in accordance with a plan approved by the utility owner. No facility owned by the city shall be moved to accommodate the applicant's project unless the cost of such work is borne by the applicant and the work is approved by the city.

D. Abandonment of Existing Facilities

1. Whenever a facility is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein shall file with the approving authority a drawing or written statement indicating, in detail, the location of the facility to be abandoned. At the time of such abandonment, the approving authority may determine what portion, if any, of the abandoned facility shall be removed or otherwise treated.
2. Whenever a driveway approach is abandoned, or can no longer be justified by the use made of the abutting property, the approving authority may require removal of any associated driveway, apron, or curb depression, and restoration of any existing curb, gutter, or sidewalk across the driveway width.

E. Site Cleanup

The applicant shall regularly clean the work area of earth, rock, rubbish, and other debris. All cleanup operations shall occur at the expense of the applicant and meet National Pollution Discharge Elimination System (NPDES) standards and be to the satisfaction of the approving authority.

F. Protection of Watercourses

The applicant shall provide and maintain adequate waterways for all surplus water, including stormwater, runoff pumped from excavations, flushings, or other water resulting from the applicant's operations. All water leaving the site shall conform to the National Pollutant Discharge Elimination System (NPDES) and local, state, and federal laws and regulations regarding pollution prevention.

G. Preservation of Monuments

No monument set for the purpose of locating or preserving the lines of any street, property, or subdivision, including precise survey reference points or permanent survey bench marks within the city, shall be removed or disturbed by any person who has not first obtained written permission from the approving authority. Permission to remove, disturb, or replace monuments shall only be granted upon the condition that the removal, disturbance, or replacement of any monument be done under the supervision of a registered civil engineer or licensed land surveyor. Any expenses incurred by the city for the proper replacement of monuments shall be paid by the applicant.

7-12B-7 Action After Permit Expiration

It is unlawful for a person to place, erect, or maintain, or to permit the placement, erection, maintenance, or existence of any encroachment after the encroachment permit has expired or after the encroachment permit has been revoked.

7-12B-8 Revocation

The designated approving authority is authorized to cancel any permit for good and sufficient cause, including violation of any provision of the Lemoore municipal code, the improvement standards, or noncompliance with any condition of approval for the encroachment permit.

7-12B-9 Appeal

In the event the application for the permit is denied in whole or in part, or the conditions imposed by the approving authority are unacceptable to the applicant, the applicant may appeal the decision to the city council within ten (10) days of receiving notice of the decision.

Appeals shall be in writing, shall state the specific reasons and grounds asserted for relief, and shall be filed with the city clerk within ten (10) calendar days after the date of the action being appealed. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which the complaint is made shall be deemed to have been waived.

7-12B-10 Enforcement

A. Inspections

The public works director shall make inspections and shall establish rules and regulations reasonably necessary to enforce and carry out the intent of this article.

B. Enforcement

This article shall be enforced pursuant to the provisions of title 1 chapter 4 (penalty provisions) of this municipal code.

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Chapter 12: Encroachments

Article C: Encroachment Agreement (Long-Term Encroachments)

Sections:

- 7-12C-1 Purpose
- 7-12C-2 Encroachment Agreement Required When
- 7-12C-3 Application Contents and Processing
- 7-12C-4 Liability and Performance Deposits
- 7-12C-5 Standards for Encroachments
- 7-12C-6 Execution of Agreement
- 7-12C-7 Cancellation of Agreement

Draft Zoning Code Changes:

- *This article establishes the procedures for application, review, and execution of an encroachment agreement for long-term encroachments on public property.*

7-12C-1 Purpose

The purpose of this article is to establish the process for application, review, and approval of long-term encroachments on public property through the execution of encroachment agreements.

7-12C-2 Encroachment Agreement Required When

An encroachment agreement shall be required prior to the start of any work or placement of any long-term private improvements (other than utilities) on public property including, but not limited to, the following:

1. Permanent café or restaurant seating and planters along a public sidewalk within the downtown;
2. Balconies, arcades, galleries, and other portions of buildings within public sidewalks within the downtown; and
3. Other cases of structures encroaching into the public right-of-way.

7-12C-3 Application Contents and Processing

A. Application Contents

Application for an encroachment agreement shall be made to the department of public works and shall include all of the following:

1. An application form, as provided by the department of public works.
2. Plans or sketches necessary to describe the encroachment.
3. A copy of the approved planning permit authorizing the encroachment, if any.

4. A copy of the approved building permit authorizing construction of the encroachment, if any.
5. Acknowledgment by the applicant that insurance, indemnification, and performance security requirements must be satisfied prior to an agreement being issued; and
6. Payment of an agreement fee as established by resolution of the city council.

B. Approving Processing

The designated approving authority for encroachment agreements shall be the public works director. The approving authority shall execute encroachment agreements after review and recommendation by the planning director for conformance with title 9 (zoning) of this code and any applicable planning permits, and the building official for conformance with the city-adopted building code.

7-12C-4 Liability and Performance Deposits

A. Liability

1. The applicant for an encroachment agreement shall indemnify and defend and hold harmless the city, its council members and other elected and appointed officials, officers, agents, employees, and representatives from liability for any award, damages, costs, and fees incurred by the city and/or awarded to any plaintiff in an action arising out of or in connection with the applicant's work to be performed under the encroachment agreement. Applicant shall provide a defense for the city in any such action.
2. The above requirement shall be included within the text of the encroachment agreement.

B. Insurance Requirement

As a requirement to execution of an encroachment agreement, the city may require the applicant to hold insurance, naming the city, for the duration of the agreement. The amount and form of the insurance shall be as required by the city manager. As a condition of the encroachment agreement, the applicant shall provide evidence of the insurance annually to the city for the duration of the agreement. Failure to provide insurance shall constitute grounds for termination of the agreement.

7-12C-5 Standards for Encroachments

Encroachments under encroachment agreements shall conform to all applicable development standards of title 9 (zoning) of this code, the city-adopted building code, and any applicable planning permits.

7-12C-6 Execution of Encroachment Agreement

A. Form of Encroachment Agreement

Encroachment agreements shall be in a form satisfactory to the city attorney.

B. Execution of Encroachment Agreement

Encroachment agreements shall be executed by the city manager or designee.

C. Record of Encroachment Agreement

Encroachment agreements shall be kept on record in the office of the city clerk.

D. Issuance of Subsequent Permits

No subsequent permit, including but not limited to building permits, shall be issued until execution of the encroachment agreement.

7-12C-7 Cancellation of Agreement

The city may cancel any encroachment agreement for good and sufficient cause, including violation of any provision of the Lemoore municipal code, the improvement standards, planning permit, building permit, or noncompliance with any condition of approval for the encroachment agreement.

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