

12.04.010--12.04.030

Title 12

STREETS AND SIDEWALKS\*

Chapters:

- 12.04 Excavations
  - 12.08 Encroachments
  - 12.12 Parks
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Chapter 12.04

EXCAVATIONS\*\*

Sections:

- 12.04.010 Permit required.
- 12.04.020 Bond required.
- 12.04.030 Violation--Penalty.

12.04.010 Permit required. It is unlawful for any person to lay, construct, or maintain any pipes, drain or conduit across, along or on any city street or to make any excavation or cut or obstruction therein for such purpose, without first obtaining a permit to do so, in the manner provided in this chapter.

A. "Person" includes any firm, corporation or political subdivision.

B. "Obstruction" shall not be deemed to include poles or pole line appurtenances. (Ord. 447 §2, 1980: Ord. 123 §1, 1928).

12.04.020 Bond required. When any person desires to tear up or disturb any part of any paved street in the city, he shall, in addition to procuring the permit provided for in Section 12.04.010, also give to the city a cash bond, in such amount as the city council may require, conditioned that the street where torn up or disturbed shall be placed in the same condition that it was in before being torn up or disturbed. (Ord. 123 §2, 1928).

12.04.030 Violation--Penalty. The penalty for violations of this chapter shall be as prescribed in Section 1.20.010. (Ord. 334 §2(part), 1973: Ord. 123 §3, 1928).

\* For underground utility installation provisions, see Ch. 13.04, this code.

\*\* For statutory provisions regarding abandoned excavations, see Gov. Code §50230 et seq.

## Chapter 12.08

### ENCROACHMENTS\*

#### Sections:

- 12.08.005 Definitions.
- 12.08.010 Projecting windows.
- 12.08.020 Porches, awnings, roofs, balconies.
- 12.08.030 Permit--Required.
- 12.08.040 Council action.
- 12.08.050 Permit--Procedure.
- 12.08.060 Violation--Penalty
- 12.08.070 Restoration of public right of way.
- 12.08.080 City inspection.
- 12.08.090 Maintenance.
- 12.08.100 Non-conforming encroachments.
- 12.08.110 Relocation.
- 12.08.120 Enforcement.
- 12.08.130 City liability.
- 12.08.140 Time limit.

12.08.005 Definitions. Whenever in this Chapter the words or phrases defined in this Section are used, they shall have the following respective meanings:

A. “Adjoining property” means the private property located immediately adjacent to the section of public right of way to be encroached upon.

B. “Applicant” means any person, firm, partnership, association, corporation, company, entity or organization of any kind who proposes to encroach upon a public place, right of way, sidewalk or street and who has applied for a permit for the proposed encroachment, pursuant to the provisions of this Chapter.

C. “City Engineer” means the City Engineer of the City of Jackson or his or her designee.

D. “City Inspector” means the City’s senior Building or Public Works Inspector or his or her designee.

E. “Encroachment area” means the section of public right of way located between the property line and the edge of the walkway or roadway.

F. “Encroachment” means and includes any paving, obstruction, fence, stand, building, entry monument, or any structure or object of any kind or character, including, but not

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\* For statutory provisions authorizing cities to regulate the suspension of signs, etc. over sidewalks and alleys, see Gov. Code § 38774(b); for the provisions authorizing cities to require removal of encroachments from public ways, see Gov. Code § 38775.

limited to, a window in violation of section 12.08.010 or any improvement requiring an encroachment permit pursuant to section 12.08.020, which is placed on, in, along, under, over or across a public place, right of way, sidewalk or street by or for the use of the adjoining property.

G. “Encroachment work” means the work of constructing, placing or installing an encroachment.

H. “Excavation” means any opening in the surface of a public place, right of way, sidewalk or street made in any manner whatsoever. The term shall also include any excavation on private property which removes or imperils the lateral support of a public place, right of way, sidewalk or street.

I. “Occupy” means owning or operating any facilities that are located in rights of way.

J. “Person” means any living individual, public or private corporation, joint venture, partnership, other business entity, the State or a political subdivision of the State.

K. “Public walkway” means the portion of the public right of way improved and designated by the City for pedestrian travel.

L. “Right of way” means the surface and space in, on, above, through and below any real property in which the City of Jackson has a legal or equitable interest whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.

M. “Usable surface” means a relatively level surface intended for active recreation, passive occupation, or pedestrian access including but not limited to lawns, patios and decks, but excluding a walkway not exceeding forty-four inches (44”) in width that provides access from the public walkway to private property.

N. “Utility district” or “public utility” means any entity as defined in Public Utilities Code section 216 or the State or any political subdivision of the State providing substantially similar services. (Ord. 659, 2009; Ord. 39 1908)

12.08.010 Projecting windows. It is unlawful and a misdemeanor for any person to construct or permit to remain on premises belonging to him, or under his possession or control, any bow, or other window, projecting into or over any sidewalk from the first story of any building on the premises, within the City limits and without an encroachment permit issued pursuant to this Chapter. (Ord. 659, 2009; Ord. 39, 1908)

12.08.020 Porches, awnings, roofs, balconies. Except as authorized by an encroachment permit issued pursuant to this Chapter, it is unlawful and a misdemeanor for any person to erect and maintain, or permit to remain any post, pole or support of any kind imbedded in, attached to or connected with, sidewalks or streets of the City for the support of any porch, awning, roof, shelter, veranda or balcony in front of any premises owned or controlled by him. Except as authorized by an encroachment permit issued pursuant to this Chapter, all porches, awnings, roofs, shelters, verandas and balconies shall be at least ten feet above the main traveled

portion of sidewalks and be securely built into the buildings of which they form a part, or be supported by iron brackets, or other contrivances, securely and safely attached to buildings. (Ord 659, 2009; Ord. 69, 1912)

12.08.030 Permit--Required. It shall be a violation of this Chapter for any person to construct, create, occupy or use an encroachment in the public right of way without an encroachment permit. To the extent permitted by law the issuance of such a permit shall be discretionary and may be denied or revoked without cause. Application of this Chapter shall include, but not be limited to, private improvements, long-term commercial use and commercial sidewalk dining, temporary access for installation of private street improvements and all other intrusions into the public right of way whether temporary or permanent. (Ord 659, 2009; Ord. 316, 1972)

12.08.040 Council action. The City Council may establish from time to time by resolution, the procedures to be followed for requesting and obtaining written approval to encroach upon City property. The City Council may also, from time to time by resolution, adopt such regulations, conditions, standards or other requirements as it deems best and advisable in the circumstances consistent with the objectives of this Chapter. . (Ord 659, 2009; Ord. 316, 1972)

12.08.050 Permit--Procedure. Any person shall submit to the City Engineer an application for an encroachment permit, approval of which permit is required by the Engineer prior to any encroachment as defined in this Chapter.

A. Blanket Permit. Any utility district or public utility is entitled to apply for a blanket permit issued by the City Engineer, renewable annually, for the installation and maintenance of its facilities located within the City street right-of-way outside of paved roadway. Any utility district or public utility that has had a permit revoked for failure to comply with the provisions of this code may obtain a permit only after furnishing a bond.

B. Content of Permit. Every applicant shall state in detail the information required on the forms provided by the City, and all applicants for a permit other than a blanket permit shall state the following:

1. The location, dimension, purpose, extent and nature of the encroachment or encroachments;
2. The time during which it is estimated the excavation or obstruction will exist;
3. Such other information as may be required by the engineer including a designation of tie-in points.

In the case of an annual permittee such information, together with the annual permit number, shall be shown on the working sketch or plat.

C. Non-Utility Applicants. All permit applicants and drawings appurtenant thereto, other than those submitted annually by public utilities, shall be submitted to the City Engineer for his approval prior to the date for commencement of work involving the encroachment.

D. Utility Applicants. Public utilities who have been granted annual permits shall nevertheless submit a working sketch or plat for the City Engineer's review and signature of approval at least ten (10) days prior to the commencement of any work involving the encroachment. Public utilities with minor jobs and services involving an encroachment shall be excepted from this requirement with regard to those jobs only.

E. Actual Notification. All applicants and permittees shall provide the City with actual notifications, by telephone call or post card, to start work on the encroachment preferably ten (10) days but in no event less than forty-eight (48) hours in advance of commencement of the work.

F. Emergency Exceptions. Notwithstanding the requirements contained in subsections D and E of this Section, in the event of an emergency the applicant shall notify the City of the encroachment at the time of the occurrence or as soon thereafter as possible, providing that it was otherwise impossible for the utility to give notification in compliance with subsection E of this Section, or to provide work sketch pursuant to subsection D of this Section.

G. Permit Fee. The City Council shall establish by resolution a fee for all encroachment permits based on the City's costs of administration and inspection of said encroachments. And at least once a year the City Council shall set a cost per square foot of resurfacing as recommended by the City Engineer.

H. Issuance. After consulting with the City Inspector, the City Engineer shall issue a written decision regarding each encroachment permit application. If the decision grants the encroachment, it shall set forth the conditions to be imposed. The decision of the City Engineer shall be final ten (10) calendar days after mailing a copy of the decision to the applicant and shall be consistent with any regulations, conditions, standards or other requirements adopted by the City Council pursuant to section 12.08.040. In the event the City Engineer issues an encroachment permit and the applicant wishes to challenge a condition of the permit, the applicant may appeal the decision in the same manner as requesting an exception pursuant to subsection (I).

I. Exceptions. Any applicant wishes to appeal the City Engineer's decision shall request such appeal in writing to the City Council within ten (10) working days of the mailing of the City Engineer's decision. Applications which are inconsistent with any regulations, conditions, standards or other requirements adopted by the City Council pursuant to section 12.08.040 must be appealed to and approved by the City Council. A notice shall be sent to the property owners whose lots' front property lines are within three hundred feet (300') of the subject encroachment area site at least ten (10) calendar days prior to each body's consideration of the exception request. The notice will describe the proposed encroachment, make the plans available for review, and set a deadline for registering objections. Upon consideration of such appeal application, the City Council may approve, modify, or disapprove the application for encroachment. The action of the City Council shall be final.

J. Revocation. The City Engineer or the City Council may revoke any encroachment permit for noncompliance with the conditions set forth in granting such encroachment. A written notice shall be mailed to the permittee of such revocation. Within ten (10) working days of mailing of such notice of revocation to the permittee, a written appeal of such action may be

filed. Any such appeal shall be made to the City Council and the Council’s determination of the matter shall be final. (Ord 659, 2009; Ord. 447, 1980; Ord. 316, 1972)

12.08.060 Violation--Penalty. Violation of this Chapter shall be punishable as a misdemeanor as set forth in Section 1.20.010 of this Code. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a separate violation of such provision. (Ord 659, 2009; Ord. 334, 1973; Ord. 316, 1972; Ord. 69, 1912; Ord. 39, 1908)

12.08.070 Restoration of public right of way. Upon completion of the encroachment work authorized by a permit, the permittee shall restore the right of way or street by replacing, repairing or rebuilding it in accordance with the specifications or any special requirement included in the permit, but not less than to its original condition before the encroachment work was commenced and in all cases in good usable quality. The permittee shall remove all obstructions, materials and debris upon the right of way and street, and shall do any other work necessary to restore the right of way and street to a safe and usable condition, as directed by the City Engineer. Where excavation occurs within areas already paved, the City Engineer may require temporary paving to be installed within four (4) hours after the excavation area is backfilled. In the event that the permittee fails to act promptly to restore the right of way and/or street as provided in this section, or should the nature of any damage to the right of way or street require restoration before the permittee can be notified or can respond to notification, the City Engineer may, at his or her option, make the necessary restoration and the permittee shall reimburse the City for the full cost of such work, and such cost shall be a lien upon the permittee’s adjacent real property.

In addition, if upon completion of the backfilling of the excavation the permittee has cut an area of three hundred (300) square feet, more or less, the permittee shall paint the outside perimeters of the cut area to correspond with the underground service alert colors.

The area included within the painted perimeter shall be calculated in square footage and the square footage commitment for resurfacing shall be mutually agreeable between the permittee and the City Engineer at the time of final inspection.

Color	Symbol	Name
Blue	W	Water
Orange	Tele-FA	Communications
Green	D	Storm Drain
	S	Sewer
Red	L	Street Lighting
	E	Electric
	T	Traffic Signal
Yellow	G	Gas-oil

In case of an excavation involving more than one utility company, the U.S.A. color of the coordinating company shall be painted around the encroachment area. (Ord 659, 2009; Ord. 447, 1980)

12.08.080 City inspection. The City Inspector shall require that inspections be completed before commencement, and after completion of encroachment work. Inspections while encroachment work is in progress shall be completed as determined to be appropriate by the City Inspector or City Engineer. Such inspection fee shall be included in the permit fee. No cost of inspection shall be charged to any public corporation provided, however, that this section shall not operate to prevent charges made pursuant to Government Code Section 6103.6. (Ord 659, 2009; Ord. 447, 1980)

12.08.090 Maintenance. The permittee shall, by acceptance of the permit, exercise reasonable care to properly maintain any encroachment placed by it in the city right-of-way, and to properly inspect and immediately repair it, making good any damage to the street which occurs as a result of the encroachment or as a result of the work done under this permit.

If the City has made a commitment to repave an area for a permittee and the permittee has submitted payment therefor to the City, then the City shall assume all reasonable liability for the resurfacing or patching of the encroachment eight (8) months after the date of the commitment to repave. Reasonable liability by the City for the encroachment shall not include trench or compaction failure or other similar type repair. (Ord 659, 2009; Ord. 447, 1980)

12.08.100 Non-conforming encroachments. Existing encroachments which do not conform to this Chapter 12.08 and any regulations, conditions, standards or other requirements adopted pursuant to Section 12.08.040 must be removed or brought into conformance if the related structure on the adjoining property is significantly remodeled or reconstructed or if any new significant construction is proposed in the public right of way. Existing permitted improvements that have been made non-conforming by changes to these standards may otherwise remain provided any nonconforming element is not increased or expanded. The intent is to cause nonconforming encroachments to be brought into conformity concurrent with major alterations or entirely new structures constructed on adjoining private property.

Routine maintenance and repair may be performed on a nonconforming encroachment structure or improvement and replacement with a comparable improvement is permitted upon demonstration that the encroachment is deteriorated and creating an unsafe condition. (Ord 659, 2009; Ord. 447, 1980)

12.08.110 Relocation. Any permit issued under this Chapter shall contain a provision that in the event that future improvement of the right-of-way necessitates the relocation of such encroachment, the permittee will relocate the same at his sole expense, providing that the project necessitating the relocation is publicly funded. In said event, the City Engineer shall serve upon the permittee a written demand specifying the place of relocation and a reasonable time within which the work of relocation must be completed. (Ord 659, 2009; Ord. 447, 1980)

12.08.120 Enforcement. In addition to any other remedies provided in this Section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies: a temporary and/or permanent injunction; assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this Section; costs incurred in removing, correcting, or terminating the adverse effects resulting from violation; compensatory damages; and attorney fees. (Ord 659, 2009; Ord. 447, 1980)

12.08.130 City liability. The issuance of a permit under this Chapter shall not be construed as imposing any liability upon the City or upon any of its officers or employees by reason of damages or injury to persons or property resulting from any excavating or obstruction authorized by the permit; and any cleanup or other work related to any excavation which is not satisfactorily completed may be completed by the City at the permittee's expense.

12.08.140 Time limit. Any encroachment granted pursuant to the provisions of this Chapter shall be developed and utilized within a period not to exceed twelve (12) months from and after the date of the granting of such encroachment, and, if not so developed and utilized, such encroachment automatically shall become null and void at the expiration of such twelve (12) month period.

The permittee may apply in writing for one extension of time, not to exceed six (6) months, within which to develop and use such encroachment. The City Engineer, in his or her sole discretion after due consideration, shall either grant or deny the extension of time for such development and use. (Ord 659, 2009)

Chapter 12.12PARKS**Sections:**

<b>12.12.010</b>	<b>Hours of operation.</b>
<b>12.12.020</b>	<b>Extension of hours – Permit required.</b>
<b>12.12.030</b>	<b>Closure of entrances and exits – Signs</b>
<b>12.12.040</b>	<b>Glass containers restricted.</b>
<b>12.12.050</b>	<b>Drug free zones.</b>
<b>12.12.055</b>	<b>Alcoholic beverages restrictions.</b>
<b>12.12.057</b>	<b>Tobacco restrictions.</b>
<b>12.12.060</b>	<b>Penalty – Misdemeanor or infraction.</b>

**12.12.010 Hours of Operation.**

- A. All parks owned or operated by the city, except for Kennedy Tailing Wheels Park, shall close at nine p.m. Sundays through Thursdays, and at ten p.m. Fridays and Saturdays. The closing time at Kennedy Tailing Wheels Park shall be at sunset each day. Parks, except for Kennedy Tailing Wheels Park, will close at ten p.m. on official holidays as set forth from time to time by resolution of the city council.
- B. All parks owned or operated by the city, except Kennedy Tailing Wheels Park, shall open at seven a.m. The Kennedy Tailing Wheels Park shall open at eight a.m. (Ord. 691 §1 2016)

**12.12.020 Extension of hours – Permit required.**

- A. With issuance of a permit as specified below, regularly scheduled and approved events (baseball, swimming, dances, and other activities, etc.) may be extended past normal closing time of the parks(s).
- B. Use of a city park after closing time will be by permit only. The police department, including field officers, will be empowered to issue the permits if the officer determines that there is no significant likelihood of disturbance of the peace and no significant increase in potential for injury to persons or property.
- C. Persons without permission to be in the park after closing time will be asked to leave. Failure to do so constitutes an infraction for which they may be cited under this code. (Ord. 508§1 (C – E), 1986).

**12.12.030 Closure of entrances and exits – Signs.**

- A. Park entrances and exits may be chained or otherwise closed to access during hours the park is closed.

- B. Park entrances shall be conspicuously signed advising of park hours, traffic rules and other rules concerning the use thereof. (Ord. 508 §1 (F, G), 1986).

**12.12.040 Glass containers restricted.**

Glass containers for beverage will be allowed only in designated picnic areas. (Ord. 508 §1 (H), 1986).

**12.12.050 Drug free zones.**

The city parks and play grounds set forth in this section are declared to be drug free zones pursuant to California Health and Safety Code Section 11380.5 which sets forth enhanced penalties for specified offenses involving the possession or sale of controlled substances which occur upon the grounds of city parks and playgrounds. The parks and playgrounds declared to be drug free zones are as follows:

- A. Detert Park;
- B. Petkovich Park.

(Ord. 582. 1996).

**12.12.055 Alcoholic beverage restrictions.**

- A. No person shall use, possess or consume any alcoholic beverage within Petkovich Park or Detert Park.
- B. This prohibition shall become effective and enforceable only upon placement of signs of sufficient size, number and visibility to provide reasonable notice to park patrons of the prohibition. All such signs shall be approved by the chief of police prior to their placement.
- C. The city council may, from time to time, grant special use permits to permit the use, possession or consumption of alcoholic beverages in the parks listed in this section. Such permits shall be issued under standards that require liability insurance, security, and traffic and parking control for any such use. (Ord. 641 §1 (part). 1996).

**12.12.057 Tobacco Restrictions.**

- A. Tobacco use is prohibited in all current and future parks within the City of Jackson, including Detert Park, Aime Field, the Jackson Pool, Kennedy Tailing Wheel Park, Petkovich Park, and Gold Ridge Park. This shall include all areas of the parks, including streets and sidewalks within the parks.

- B. No person shall be in possession of a burning tobacco or tobacco related product including, but not limited to cigars, cigarettes, chewing tobacco, or electronic smoking devices. This includes e-cigarettes and all vapor smoking devices.
- C. Clear signage must be posted in all parks at any and all entrances and within the park notifying citizens of tobacco restrictions. This prohibition shall become effective upon the posting of the appropriate signage. (Ord. 686 §2, 2015).

**12.12.060 Penalty – Misdemeanor or infraction.**

Any person violating any provision of this chapter is guilty of a misdemeanor and may be punished by a fine of up to one thousand dollars or six months imprisonment of both. Provided, however, that in the discretion of the district attorney or city attorney any such violation may be charged as an infraction. Any such infraction shall be punishable by a fine of one hundred dollars for the first offense, two hundred and fifty dollars for the second offense, and five hundred dollars for the third and any sequent offense. (Ord. 641 §1 (part), 1996).