

## ***Chapter 134. Projections and Encroachments***

### **Sec. 134.01. Purpose.**

[The purpose of this chapter is:]

- (1) To allow use of the public right-of-way by adjacent property owners for purposes that cannot be reasonably satisfied on private property and where it is determined by the director of the department of public works that the area of projection or encroachment cannot be vacated under Chapter 130 of the Legislative Code.
- (2) To protect the health, safety and welfare of the public.
- (3) To protect nearby property owners from hardship or damage.
- (4) To protect other public interests as determined by the director.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.02. Permission required.**

No person shall construct and maintain any projection or encroachment within the public right-of-way except with the written permission of the director of the department of public works.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.03. Projection and encroachment defined.**

Projection and encroachment is defined as any above or below grade protrusion beyond the property line which extends into, upon, over, under or otherwise occupies any public street, alley, sidewalk, boulevard or right-of-way. Projection and encroachment shall include, but not be limited to, the following: steam lines, conduits, lighting standards, areaways, tunnels, trapdoors, retaining walls, parking bays and nonstandard walks, but shall exclude awnings, business signs and building projections regulated in sections 33.08 and 66.202.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.04. Public works director to issue permit.**

The director is authorized to grant permission to owners of abutting property to construct and maintain a projection or encroachment subject to the following conditions, restrictions and payment of fees set forth in this chapter.

(C.F. No. 94-242, § 1, 3-23-94; C.F. No. 06-823, § 1, 9-27-06)

### **Sec. 134.05. Permit application and fees.**

Application for permits shall be submitted on forms approved by the director and shall include the following:

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- (a) The location, nature, size and purpose of the proposed improvement.
  - (b) Plans and specifications as required by the director.
  - (c) The appropriate fees as established by council resolution.
  - (d) The application shall be signed by the owner of the abutting property.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.06. Regulations and general conditions.**

The director is authorized to enact reasonable rules and regulations, which shall as a minimum include the following:

- (a) All work shall be performed by licensed contractors and in accordance with plans and specifications approved by the director.
- (b) Payment of permit fees, as determined by council resolution, and payment of all additional costs of inspection incurred by the department.
- (c) During construction, the work area shall be guarded by day with suitable barriers and by night with flashing yellow lights to prevent injury or damage to persons or property.
- (d) The permittee shall assume full responsibility for all damages to persons or property arising out of the construction, repair or maintenance of the projection or encroachment.
- (e) All work shall be performed in accordance with all applicable laws or regulations, including obtaining required building permits.
- (f) Materials, methods of construction and location shall be subject to the approval of the director.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.07. Indemnity and hold harmless.**

The city, its officers, agents and employees shall be held harmless, indemnified and defended by the owners, its successors or assigns from any and all claims, actions or suits of any character brought as a result of injuries or damages received or sustained by any person, persons or property on account of the construction or maintenance of the projection or encroachment.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.08. Preexisting projections or encroachments without valid permits.**

All projections or encroachments existing as of the adoption date of this ordinance [March 23, 1994,] which exist without a valid permit from the city shall either be removed and the right-of-way restored at the sole expense of the owner of the adjacent property, or the owner shall make application for a permit in the same manner as if the projection or encroachment were to be newly installed.

(C.F. No. 94-242, § 1, 3-23-94)

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### **Sec. 134.09. Maintenance of the projection or encroachment.**

The property owner shall maintain the projection or encroachment in a safe condition and shall, at no cost to the city, repair any damage which may occur during the normal course of city maintenance and/or construction of public facilities within or adjacent to the right-of-way.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.10. Permit revocation.**

Any permit may be revoked by the director, upon reasonable written notice, for failure to properly maintain the projection or encroachment in a safe and aesthetic condition, comply with any applicable law or with the conditions of the permit, or where it has been determined by the director that the projection or encroachment may constitute a hazard to the safety or welfare of the public. The notice shall specify the reason(s) for recommending revocation, and in the case of defects or deficiencies, provide a reasonable time to correct them. If the defects or deficiencies are not corrected within a reasonable time, the director shall request that the city council revoke the permit. At the conclusion of the hearing, the city council shall determine whether the permit shall be revoked and the projection or encroachment should be removed and the public right-of-way restored at the expense of the adjacent owner.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.11. Permit expiration.**

Any permit issued hereunder shall be in effect for no longer than the life of the building or structure served by the same. Permits shall expire upon completion of demolition of the abutting building, structure or premises. The permittee or its successor in interest shall, concurrently with the demolition of the abutting premises, demolish, fill and seal to the satisfaction of the department of public works any opening serving such premises upon securing a permit therefor from the department of public works. All public right-of-way or property upon or under which such opening is located shall be restored to a condition acceptable to and as required by the department of public works.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.12. Public improvements; removal or relocation.**

In the event it shall become necessary during the term of the permit to remove or relocate the physical property of the permittee located within or upon any of the streets or public rights-of-way because of interference or use by the city or as a result of any public improvement undertaken by or on behalf of the city, the permittee shall, when so advised by the department, remove and relocate its facilities without cost to the city and shall place the street or right-of-way in the same condition as existed prior to construction of the projection or encroachment.

(C.F. No. 94-242, § 1, 3-23-94)

### **Sec. 134.13. Permit not relinquishment of city's rights.**

Any permission granted for a projection or encroachment shall not constitute a vacation or abandonment of the rights of the city to the street or right-of-way.

(C.F. No. 94-242, § 1, 3-23-94)

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**Sec. 134.14. Violation; penalty.**

Violation of any of the provisions of this chapter shall be deemed a misdemeanor punishable in accordance with the provisions of section 1.05 of this Code.

(C.F. No. 94-242, § 1, 3-23-94)