

Chapter 12.05

ENCROACHMENT PERMITS

12.05.010: DEFINITIONS:

For purposes of this chapter, the words and phrases defined in this section apply:

CITY ENGINEER: The individual designated by the city of Payette to perform engineering services for the city of Payette.

CITY STREET SUPERINTENDENT: The individual designated by the city of Payette to administer the Payette street department.

EASEMENTS: Any right created by grant, reservation, agreement, prescription or necessary implication in favor of the city of Payette to use the land of another, including, but not limited to, an easement for vehicular access and utilities.

ENCROACHMENT: Any excavation, digging, paving, landscaping, construction of an improvement or placement of personal property within an easement or right of way. Encroachments include, but are not limited to, fences, sidewalks, driveways, mailboxes, newspaper boxes, utility boxes and poles, trees, shrubs, grass, sprinklers and other landscaping improvements.

PUBLIC WORKS DIRECTOR: The individual designated by the city of Payette to administer the public works department, including the Payette street department.

RIGHT OF WAY: Any property owned by, or dedicated to, the city of Payette for the purposes of providing city services and general circulation to the public. Such rights of way include, but are not limited to, the following: public streets, alleys and sidewalks. (Ord. 1284 § 1, 2007)

12.05.020: ACTIONS REQUIRING ENCROACHMENT PERMIT:

It shall be unlawful for any person or entity other than the city or its contractors or agents, or that person's or entity's contractor, subcontractor, paving company, landscaper or agent, to excavate, dig, pave, landscape or construct improvements, within or on any right of way or easement or make any alterations thereto without first obtaining an encroachment permit from the city of Payette. The issuance of an encroachment permit does not establish any property or easement rights to the permittee. An encroachment permit is merely a license and is revocable by the city of Payette at any time for any reason. (Ord. 1284 § 1, 2007)

12.05.030: ENCROACHMENT PERMIT APPLICATION:

The party applying for a permit shall provide, at a minimum, the following information to the city of Payette at least three (3) business days prior to any action being taken on the permit application:

- A. Name, phone number and address of applicant;
- B. Location of proposed encroachment;
- C. Need or reason for encroachment;
- D. Description of activity within the right of way or easement, including a plan;
- E. Time period in which the proposed encroachment will take place;
- F. Contractor performing the work if other than the applicant;
- G. Appropriate application processing fee;
- H. Any additional information requested by the city. (Ord. 1284 § 1, 2007)

12.05.040: ACTION ON ENCROACHMENT PERMIT APPLICATION:

The public works director or his or her designee may issue an encroachment permit only after determining the following:

- A. Granting the request will not contribute to the public expense;

- B. Granting the request will not jeopardize the public health, safety or welfare;
- C. Construction will be conducted in such a way that circulation needs can reasonably be met;
- D. Drainage systems will not be adversely affected;
- E. Following construction, the affected right of way or easement will be restored to its original condition.

The public works director or his or her designee may impose reasonable conditions to an approved encroachment permit. (Ord. 1284 § 1, 2007)

12.05.050: CITY STANDARDS:

All encroachments shall be constructed in accordance with any applicable city standards. (Ord. 1284 § 1, 2007)

12.05.060: FEES, ENCROACHMENT PERMIT:

- A. Any application for an encroachment permit shall be accompanied by a nonrefundable application fee set by resolution by the Payette city council. A review of an application for an encroachment permit is not required until the appropriate application fee has been submitted.
- B. The bonding requirements set forth in section [12.05.070](#) of this chapter shall also apply as set forth therein.
- C. Upon approval of an application for an encroachment permit and at the time of the issuance of the encroachment permit, the applicant shall pay an inspection fee set by resolution by the Payette city council.

D. In the event a person or entity is required to file an application for an encroachment permit pursuant to subsection [12.05.100D](#) of this chapter, the applicant shall, at the time of filing an application for an encroachment permit, pay a nonrefundable discovery/notification fee set by resolution by the Payette city council. (Ord. 1284 § 1, 2007)

12.05.070: BONDING REQUIRED:

All commercial enterprises, including paving companies, general contractors, subcontractors and landscapers, submitting an application or performing work under the provisions of this chapter shall also provide or have on file with the city clerk a current bond in the minimum amount of two thousand dollars (\$2,000.00). The minimum amount of the bond required in this section may be adjusted by the city engineer, depending upon the size and nature of the project. In lieu of a bond, cash may be substituted for a bond. (Ord. 1284 § 1, 2007)

12.05.080: APPEALS:

Any applicant may appeal a decision or action made in connection with this chapter to the Payette city council within fifteen (15) days from the date of the decision or action. The appeal shall specifically state the decision appealed and the reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision or action shall be deemed final. (Ord. 1284 § 1, 2007)

12.05.090: PROHIBITED ACTS:

A. No person or entity shall water or irrigate property in such a manner that water is sprayed upon pavement within a right of way or easement.

B. Loading, unloading or operation of track type vehicles on pavement areas in a right of way or easement is prohibited. (Ord. 1284 § 1, 2007)

12.05.100: VIOLATION; PENALTIES AND REMEDIES:

- A. Violations: Any violation of this chapter shall be a misdemeanor punishable by fine and/or imprisonment up to, but not exceeding, the maximum penalties set forth in Idaho Code section 50-302, as amended. Each day during which a violation takes place or is allowed to continue shall constitute a separate violation of this chapter.
- B. Civil Remedies: In addition to any remedy available to the city, the city may maintain an action for an injunction and/or damages pursuant to Idaho law for any violation of this chapter. If the city is determined to be the prevailing party in any such action, the city shall be entitled to recover from the other party or parties all attorney fees incurred in connection with such action.
- C. Removal Of Encroachment: In addition to any remedy available to the city, the city may remove any encroachment with or without notice to the person or entity responsible for encroachment, and may seek damages for the reimbursement of costs of the removal of the encroachment.
- D. Requirement Of An Encroachment Permit For Previously Installed Encroachment: In the event a person or entity violates the provisions of this chapter by failing to obtain an encroachment permit, the city may, in addition to any other remedy available to the city, require the person or entity to file an application for an encroachment permit. In the event the city denies the encroachment permit application for such an encroachment, the city may then pursue any of its other remedies described in this section. In the event an encroachment will require an inspection after an approval of an encroachment permit, the inspection fee shall be paid as required by subsection [12.05.060C](#) of this chapter. But if an encroachment will not require an inspection after an approval of an encroachment permit, the inspection fee established by subsection [12.05.060C](#) of this chapter is not required to be paid. (Ord. 1284 § 1, 2007)

12.05.110: ENCROACHMENT PERMIT FOR FIBER OPTIC CABLE, INTERSTATE SERVICES AND OTHER COMMUNICATION, CONDUCTION OR TRANSMISSION FACILITIES EXCLUDED FROM TELECOMMUNICATIONS AND TELECOMMUNICATIONS SERVICES:

A fiber optics communication system is an interstate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for fiber optics communication but which is

excluded from telecommunications and telecommunications services. The city shall determine through the application process whether this permit is appropriate for applicant's activities. (Ord. 1292 § 1, 2008)

12.05.115: FIBER OPTIC CABLE LICENSE:

No person shall place, install, construct, operate or maintain any fiber optic equipment, facilities or system for fiber optic communication services, any interstate services or other communication, conduction or transmission facilities excluded from the definition of telecommunications and telecommunications services as defined in Idaho Code title 61, chapter 1 and section 63-3501, in, upon or under the surface of any highway, public place, street or right of way, unless a fiber optic cable license has first been obtained in accordance with the provisions of this chapter. In addition to obtaining the fiber optic cable license as provided herein, any person desiring to place, install, construct, operate or maintain such facilities in, upon or under any highway must also obtain a fiber optic cable, encroachment permit, as required herein.

- A. The requirement to obtain a fiber optic cable license set forth in this section does not apply to those activities or operations of a telecommunications corporation which meets the requirements set forth in Idaho Code section 62-618.

- B. A fiber optic cable license pursuant to this chapter shall not authorize the use of the highways to provide any other service; nor shall the issuance of the same invalidate any franchise, license or permit that authorizes the use of the highways for such other services; nor shall the fact that a person holds a franchise, license or permit to make any other use of the highway or to provide or operate any other service, authorize installation, maintenance, construction or operation of fiber optic cable, interstate services or other facilities required to be licensed by this section in any highway in the city, or permit such licensee to provide fiber optic cable services by means of such facilities without obtaining a fiber optic cable license hereunder.

C. Any license granted pursuant to this section shall not be exclusive. (Ord. 1292 § 1, 2008)

12.05.120: APPLICATION FOR FIBER OPTIC CABLE LICENSE:

A person desiring a fiber optic cable license shall file an application with the city manager, in the form prescribed by the city manager, together with that part of the nonrefundable

application processing fee established by council resolution. The full fee shall be paid on demand from the city and shall be in an amount established by the city manager as necessary to recover all reasonably related costs incurred by the city to review and process the application. At the discretion of the department, an application for a fiber optic cable license may be processed simultaneously with the same applicant's application for an encroachment permit for the installation of the fiber optic cable or other facilities permitted under this section. It is anticipated the city will retain outside experts to assist in the review and processing of complex license and encroachment permit applications and all costs for such experts shall be recovered through the application processing fee. (Ord. 1292 § 1, 2008)

12.05.125: TERMS AND CONDITIONS FOR A FIBER OPTIC CABLE LICENSE:

- A. The applicant shall maintain insurance of the types and in the amounts specified by the city, and provide proof of insurance as required by the city; post performance bonds and security funds required; shall agree to fully indemnify the city, its officers, agents, boards and commissions, in a form satisfactory to the city; and shall agree that it shall have no recourse whatsoever against the city, its officers, agents, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of any provision or requirement of the city because of the enforcement of the license or franchise or because of defects in this chapter; or the license or franchise issued or as a result of any damage that may result from the city's exercise of its rights under the license, or applicable provisions of law.

- B. The initial license term shall be for a period of five (5) years and may be renewed for five (5) year terms.

- C. A fiber optic cable license is personal to the licensee. Except as provided in the license, no transfer or change of control over the licensee (including, but not limited to, forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made to the city and the city's prior written consent is obtained, which consent will not be unreasonably withheld or delayed.

- D. Licensee shall produce books and records for the city's inspection and copying, prepare reports, respond to questions and permit the city to have access to its facilities as the city may request in order to determine whether licensee has complied with its obligations under the license or other applicable law or regulation.

- E. The applicant shall agree to provide and maintain accurate maps showing the location of all its facilities including all the facilities it will use in the highways within the city, and to comply with such other mapping requirements that the city may establish from time to time.
- F. The applicant shall agree to comply with right of way use requirements that the city may establish from time to time.
- G. The applicant shall agree to comply with and be bound by the administrative and enforcement provisions as may be prescribed from time to time by the city.
- H. The applicant must agree to abide by such other conditions and terms as required by the city council upon consideration of the application.
- I. In the event there is a conflict between the provisions of this chapter and the provisions contained in a franchise or license granted by the city to an applicant, the provisions of the franchise or license shall prevail. (Ord. 1292 § 1, 2008)

12.05.130: REVOCATION:

A fiber optic cable license shall be subject to revocation for the same reasons and upon the same notice and hearing provisions as set forth in section [12.05.125](#) of this chapter, except subsection [12.05.125C](#) of this chapter is not a basis for revocation of the license regulated in this section.

- A. The licensee fails to comply with the terms and conditions of the license or other applicable law.
- B. The licensee fails to make the payments in the amounts and at the times specified in the license agreement or in this chapter.

- C. The licensee fails to provide current, accurate as built plans and maps showing the location of all facilities installed or constructed in the city.

Provided, however, a license shall not be revoked unless the licensee is given written notice of the defect in performance and fails to cure the defect within sixty (60) days of the notice, except where the city finds that the defection performance is due to intentional misconduct, is a violation of criminal law, or is part of a pattern of violations where the licensee has already had notice and opportunity to cure. (Ord. 1292 § 1, 2008)

12.05.135: PERMIT APPLICATION PROCESS:

- A. Any person desiring an encroachment permit pursuant to this section shall file an application with the city, in the form prescribed by the city, together with that part of the nonrefundable application processing fee established by council resolution. The full fee shall be paid on demand from the city and shall be in an amount established by the department as necessary to recover all reasonably related costs incurred by the city to review and process the application.

- B. This encroachment permit shall not be construed to be a franchise or a license as that term is used in Idaho statutes and the ordinances of the city of Payette, and is required in addition to the fiber optic license required herein. (Ord. 1292 § 1, 2008)

12.05.140: REQUIRED INFORMATION FOR BOTH LICENSE AND PERMIT:

Applicants shall submit all of the applicable information listed in section [12.05.125](#) of this chapter. (Ord. 1292 § 1, 2008)

12.05.145: SPECIAL TERMS AND CONDITIONS FOR PERMIT:

In addition to the general terms and conditions for all encroachment permits listed above, permits issued pursuant to this section shall also comply with the following conditions:

- A. At the option of the city, the permittee may be required to construct conduits, ducts and associated appurtenances such as pull boxes, which will become the property of the city

upon completion of construction, in lieu of payment of annual and/or permit fees. It is intended that fees be computed as described in the fee resolution adopted by council and waived only to the extent of equal value received by construction in kind. The city may, at its option, rent or sell to others the conduits, duct(s) and other appurtenances which are determined to be in excess of its needs.

- B. The permittee shall, without cost to the city, allow the use by the city of space in the then existing conduits and subways for wires, fire alarms, police, traffic control and all other applicable municipal purposes as determined by the license agreement with the city.

- C. In addition to the indemnification required in the general encroachment permit terms hereinabove, the permittee shall agree to indemnify, defend and save the city harmless from any losses, expenses or lost revenues incurred by the permittee other than the reasonable cost of repair to the permittee's cable and appurtenances damaged as the result of negligence by employees of the city. (Ord. 1292 § 1, 2008)

12.05.150: APPLICATION APPROVAL:

Applications for an encroachment permit pursuant to this section shall be reviewed by such outside expert consultants and city staff as deemed necessary by the city who shall approve, deny or conditionally approve such applications unless the encroachment permit application was combined with an application for a fiber optic cable license, in which event the city council may approve, deny or conditionally approve the two (2) applications together. (Ord. 1292 § 1, 2008)

12.05.155: FEES, FIBER OPTIC CABLE:

In addition to the nonrefundable encroachment permit application processing fee which covers the cost of reviewing and processing the application; the inspection fees which cover the cost of inspection of the construction, work or installation to ensure it meets all city requirements; a fee to recover all of the reasonable costs associated with construction, maintenance and operation of permittee's facilities in the right of way, including, but not limited to, all reasonable costs associated with damage caused to the right of way; persons subject to this permit are also required to obtain a fiber optic cable license and thus will be required to pay the license application processing fee and shall also pay an annual license fee established by resolution of the city council. This fee shall be based on one of the following:

A. On the gross income from the business;

B. On the fair market value of the property to be used; or

C. Any other basis which the council determines is appropriate and in the best interests of the city.

The fee shall be paid annually in advance at the issuance of the permit and within thirty (30) days of the anniversary date of the issuance of the permit. (Ord. 1292 § 1, 2008)