



MANITOU SPRINGS CITY COUNCIL WORK SESSION AGENDA

City Council meetings are held as hybrid, Zoom (remote) or
in-person at Memorial Hall.

Memorial Hall

606 Manitou Avenue

Manitou Springs, CO 80829

Remote: www.manitouspringsgov.com; click on meeting
link under "Government; City Council" page

Position	Name	Term Expires
Mayor	Natalie Johnson	January 4, 2028
At-Large	Mayor Pro Tem Judith Chandler	January 4, 2028
At-Large	John Shada	January 4, 2028
At-Large	Julie Wolfe	January 4, 2028
Ward 1	Nate Nassif	January 8, 2030
Ward 2	Carey Storm	January 8, 2030
Ward 3	Gloria Latimer	January 8, 2030

January 13, 2026

5:00 PM

NO DECISIONS WILL BE MADE AT THIS WORK SESSION

A. CALL TO ORDER

B. ROLL CALL

C. DISCUSSION

1. Proposed Ordinance to Implement Cost Recovery for Emergency and Non-Emergency Services Provided by the Manitou Springs Fire Department
2. Proposed Ordinance for Existing Inadvertent Encroachments on City Property or Right-of Way

D. RECEIVE COUNCIL CORRESPONDENCE

E. CITY ADMINISTRATOR REPORT

ADJOURN

The City of Manitou Springs does not discriminate on the basis of disability in the admission to, access to, or operations of programs, services or activities. Reasonable accommodation will be provided to ensure equal access to all. Individuals who would like to request auxiliary aids or services should contact the ADA Coordinator at (719) 685-5481 or jfryer@manitouspringsco.gov. You may also contact the City Clerk's Office at cityclerk@manitouspringsco.gov or (719) 685-2554. Please provide a minimum of 3-5 days advance notice.



Memorandum

Title: Proposed Ordinance to Implement Cost Recovery for Emergency and Non-Emergency Services Provided by the Manitou Springs Fire Department

From: Fire Chief Keith Buckmiller

To: Mayor and City Council

CC: City Administrator Denise Howell

Allocated Time: 30 Minutes

January 13, 2026

Purpose:

The purpose of this ordinance is to establish a cost recovery mechanism for emergency and non-emergency services provided by the Manitou Springs Fire Department. The goal is to ensure financial sustainability while maintaining high quality response services.

Background:

The demand for emergency and non-emergency services in Manitou Springs continues to rise each year. Additionally, compliance with environmental protection requirements and Homeland Security regulations has increased operational costs for the Fire Department.

Historically, these costs have been absorbed by the City's general fund, which places a disproportionate burden on property taxpayers. Raising property taxes to meet these demands is not equitable, as the costs should be borne by the parties responsible for the incidents.

The proposed ordinance allows the City to recover actual costs incurred by the Fire Department through a fair and transparent billing system. Fees will be set by resolution and may include contracting with third party administrators for billing and insurance claims. This approach aligns with practices of similarly situated municipalities and ensures that the Fire Department can continue providing timely, effective service that saves lives and protects property.

Fiscal Impact:

The fiscal impact is dependent on the number of qualifying emergency responses.

Workload Impact:

The impact on staff workload will be minimal. Staff will gather information on the scene and report it to a third party vendor for billing and collection.



Recommended Action:

Review the draft ordinance and provide comments/direction to staff prior to scheduling first and second readings.

COUNCIL BILL NO. _____

ORDINANCE NO. _____

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, ADDING A NEW CHAPTER 3.55 TO THE MANITOU SPRINGS MUNICIPAL CODE TO IMPLEMENT A COST RECOVERY MECHANISM FOR EMERGENCY AND NON-EMERGENCY SERVICES PROVIDED BY THE MANITOU SPRINGS FIRE DEPARTMENT

WHEREAS, the need for emergency and non-emergency services in the City continues to increase each year;

WHEREAS, environmental protection requirements and Homeland Security regulations involving equipment and training have created additional demands on all operational aspects of the City's fire department;

WHEREAS, the City's fire department has investigated different options for maintaining a high level of quality emergency and non-emergency services during these times of constantly increasing service demands, where effective responses by the fire department decreases the costs to insurance carriers, businesses, and individuals;

WHEREAS, timely and effective management of emergency situations saves lives and reduces property and environmental damage;

WHEREAS, raising real property taxes to meet the increase in service demands is not equitable when the party or parties responsible should be responsible for the costs of their actions; and

WHEREAS, the City Council of the City of Manitou Springs desires to implement a fair and equitable procedure to recover the costs of providing emergency and non-emergency services provided by the City's fire department, which shall include a billing system in accordance with applicable laws, regulations and guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: A new Chapter 3.55 is hereby added to the Manitou Springs Municipal Code to read as follows:

Chapter 3.55 – EMERGENCY AND NON-EMERGENCY FIRE DEPARTMENT SERVICES – COST RECOVERY

3.55.010 – Purpose.

The purpose of this Chapter is to capture a portion of the cost of emergency and non-emergency incident response services provided by the Manitou Springs

Fire Department, which increase each year making it difficult for the City to cover the costs of providing high-quality response services from the fire department.

3.55.020 – Cost Recovery

A. The City shall recover the costs its fire department incurs in delivering emergency and non-emergency services, including without limitation the costs incurred by the fire department for personnel, supplies and equipment delivered to the scene of emergency and non-emergency incidents via any authorized legal means. The City Council shall, by resolution, set the fees to be charged to recover these fire department costs, which shall be based on actual costs of the services. The costs shall be consistent with those usually, customarily and reasonably incurred by other similarly situated fire departments delivering similar services.

B. The City may contract with third parties for the administration of the cost recovery program authorized by this Chapter, including without limitation, billing and collection services, which may include filing claims with the responsible parties through their insurance carriers.

Section 2. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 4. This ordinance shall take effect five (5) days after publication following final passage.

Passed on first reading and ordered published this ____ day of _____ 2026.

City Clerk, Elena Krebs

A Public Hearing on this ordinance will be held at the _____, 2026 City Council meeting. The City Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: _____, 2026. (in full)

City's Official Website and City Hall

Passed on second reading and adopted by Council this ____ day of _____ 2026.

Mayor, Natalie Johnson

Attest: _____
City Clerk, Elena Krebs

Published: _____, 2026 (in full)
City's Official Website and City Hall

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made effective as of _____, 2026 (“Effective Date”), by and between **FIRE RECOVERY USA, LLC**, a California limited liability company (“Company”), and **City of Manitou Springs**, (“Client”). The Company and Client are referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Company engages in the business of performing billing services (“Company Services”) for United States Fire Departments in connection with the motor vehicle incidents and other emergency incidents at which the Client provides emergency services: and

WHEREAS, Client seeks the services of Company to assist with the billing for services that Client provides in connection with motor vehicle incidents and other emergency incidents; and

WHEREAS, Company and Client desire to enter into this Agreement to memorialize their agreements regarding the Company Services to be provided to Client.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Client agree as follows:

ARTICLE 1

ENGAGEMENT

- 1.1. Engagement: Client hereby engages Company to provide the Company Services described in Article 4 herein, and Client hereby accepts such engagement, all on the terms and conditions set forth herein. Company will determine the method, detail and means of performing the services detailed below.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

- 2.1. Representations and Warranties of Company: Company hereby represents and warrants to Client that, at all times during the term of this Agreement, Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

- 2.2. Representations and Warranties of Client: Client hereby represents and warrants to Company that, at all times during the term of this Agreement, Client is, or Governs, or Contracts with an organized fire department established pursuant to the laws and ordinances of the state in which Client is located.

ARTICLE 3

COMPANY STATUS AND QUALIFICATIONS

- 3.1. Independent Contractor: Company enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Company agrees that it will not become an employee, partner, agent or principal of Client while this Agreement is in effect.
- 3.2. Payment of Income Taxes: Company is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by Client to Company for services rendered under this Agreement. On request, Company will provide Client with proof of timely payment. Company agrees to indemnify Client for any claims, costs, losses, fees, penalties, interest, or damages suffered by Client resulting from Company's failure to comply with this provision.
- 3.3. Use of Employees or Subcontractors: Company may, at Company's own expense, use any employees or subcontractors as Company deems necessary to perform the services required of Company by this Agreement. Client may not control, direct, or supervise Company's employees or subcontractors in the performance of those services.
- 3.4. Qualifications: Company represents that it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of Client.
- 3.5. Ownership Interest: Company will have no ownership interest in Client.
- 3.6. No Benefit Contributions: Company shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by Client.
- 3.7. Attorney-in-Fact: Client appoints Company as Client's attorney-in-fact for the following purposes:
- (a) Billing and Collections: To bill and collect ("Collections") all revenue earned by and due to Client, in connection with Client's provision of emergency services provided/rendered at the sites of motor vehicle incidents and other emergency incidents, and to receive all Collections on Client's behalf and to sue for and give satisfaction for monies due on account and to withdraw any claims, suits, or proceedings pertaining to or arising out of Company's or Client's right to collect such amounts; and

- (b) Endorsement: To take possession of and endorse in Client's name any notes, checks, money orders, and any other instruments received as Collections.

ARTICLE 4

GENERAL RESPONSIBILITIES OF COMPANY

- 4.1. Minimum Amount of Service: Company agrees to devote as much time and attention to the performance of the Company Services under this Agreement as may be, in Company's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Company is responsible under this Agreement.
- 4.2. Company Services: Company agrees to perform the Company Services as set forth in the "List of Company Services" attached hereto as Schedule "A" and incorporated herein by reference; including those additional services requested by Client and accepted in writing by the Company during the term of this Agreement.
- 4.3. Non-Exclusive Relationship: Company may represent, perform services for, and contract with as many additional clients, persons, or companies as Company, in Company's sole discretion, sees fit.
- 4.4. Time and Place of Performing Work: Company may perform the services under this Agreement at any suitable time and location Company chooses.
- 4.5. Materials and Equipment: Company will supply all materials and equipment required to perform the services under this Agreement.
- 4.6. Workers' Compensation: Company agrees to provide workers' compensation insurance for Company and Company's employees and agents and agrees to hold harmless and indemnify Client for any and all claims arising out of any injury, disability, or death of any of Company's employees or agents.
- 4.7. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Company without the prior written consent of Client, which consent shall not be unreasonably withheld.

ARTICLE 5

COMPENSATION OF COMPANY

- 5.1. Compensation for Company Services: All Company Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in the "List of Company Services," attached hereto as Schedule A.

- 5.2. The provisions of Article 11 of this Agreement will govern any dispute associated with compensation.

ARTICLE 6

OBLIGATIONS OF CLIENT

6.1. Cooperation of Client: The Client agrees to comply with all reasonable requests of Company and provide access to all documents reasonably necessary to the performance of Company's duties under this Agreement.

6.2 Assignment: Once a run is assigned to Company for processing, Company will pursue collection until all efforts have been exhausted. While Company is pursuing payment on a claim Client is precluded from assigning any duties or obligations under this Agreement to any other party, without the written consent of Company. Client may not negotiate a settlement of a run Company is processing without Company's written consent to the terms of the settlement and compensation due to Company for processing the run. Once Company has determined a run is not collectible it will either be archived and closed or sent to a collection agency (only if Client chooses to do so). Sending an account to collection incurs additional fees to Client. If payment is received from a collection agency, the amount received will be posted to Client's account by Company. Company will reimburse Client at the rate set forth in Schedule A, List of Company Services for that particular run, minus any additional fees from the collection agency.

ARTICLE 7

CLIENT AUTHORIZATION

7.1. Authorization: Notwithstanding other provisions of this Agreement, Company shall obtain authorization from Client prior to performing any of the following:

- (a) The sale conveyance, transfer, pledge exchange, assignment, hypothecation, or encumbrance of Client's interest in any sums owed to Client; and
- (b) All other limitations as stated by the terms of this Agreement.

ARTICLE 8

TERMINATION OF AGREEMENT

8.1. Termination on Notice: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving thirty days (30) written notice to the other party. Unless earlier terminated as set forth below, this Agreement shall be effective as of the

date first set out above and shall continue for a period of one (1) year thereafter. This Agreement shall automatically renew for successive one (1) year periods, unless either party provides written notification to the other party of its decision not to renew this Agreement. Any runs submitted for processing to Company prior to the date of the notice of termination will continue to be processed under the terms of the List of Company Services set forth in this Agreement.

8.2. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events;

- (a) Bankruptcy or insolvency of either party;
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

8.3. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days (5) after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Company's failure to complete the services specified in the Description of Services;
- (b) Client's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Company's material breach of any representation, warranty or agreement contained in this Agreement;
- (d) If the Fire Department does not maintain a minimum of 6 billable runs per year, the Fire Department will be subject to a minimum account service fee of \$250 annually or termination of the account.

ARTICLE 9

PROPRIETARY RIGHTS

9.1. Confidential Information: Any written, printed, graphic, or electronically or magnetically recorded information furnished by Client for Company's use are the sole property of Client. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Client's employees, products, services, prices, operations, and subsidiaries. Company will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the Client's approval, and only to the extent necessary to perform the services under this Agreement. This

prohibition also applies to Company's employees, agents, and subcontractors. On termination of this Agreement, Company will return any confidential information in Company's possession to Client.

9.2 Confidential Information: Any written, printed, graphic, electronically or magnetically recorded information, computer-based hardware, software, applications, software scripts, or software links furnished by Company for Client's use are the sole property of Company. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Company's employees, products, services, prices, operations, and subsidiaries. Client will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the Company's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to Client's employees, agents, and subcontractors. On termination of this Agreement, Client will return any confidential information in Client's possession to Company.

ARTICLE 10

INDEMNIFICATION

10.1. Indemnification: To the extent permitted by applicable law, the Company will indemnify and hold the Client harmless from and against any and all loss, damage, liability, claims and/or injury resulting from all negligent actions performed by the Company, or its agents on the Company's behalf, in connection with this Agreement. However, this indemnification shall not apply with respect to any legal cause, action or consequential liability or losses as a result from inaccurate or incomplete information or unfounded or unreasonable submissions furnished to the Company by the Client nor shall it apply to any act, omission or negligence of the Client.

ARTICLE 11

GENERAL PROVISIONS

11.1. Governing Law: This agreement shall be governed in all respects by the laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of Colorado).

11.2. Entire Agreement: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the parties.

11.3. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and

administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

11.4. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Company to:

Fire Recovery USA, LLC
2271 Lava Ridge Court, Suite 120
Roseville, CA 95661
Attention: Craig Nagler

with a copy to:

The Watkins Firm, APC
9915 Mira Mesa Boulevard, Suite 130
San Diego, CA 92131
Attention: Chris Popov, Esq.

If to Client to:

City of Manitou Springs
620 Manitou Ave.
Manitou Springs, CO 80829

with a copy to:

Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202-4260

Or, if delivered by telecopy, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday or a Federal Holiday.

11.5. Waiver; Amendments: This Agreement sets forth the entire agreement of the parties respecting the subject matter hereof, (ii) supersede any prior and contemporaneous

understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof, and (iii) may not be amended orally, and no right or obligation of any party may be altered, except as expressly set forth in a writing signed by such party.

- 11.6. Counterparts: This Agreement may be signed in several counterparts.
- 11.7. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.
- 11.8. Waiver of Jury Trial; Exemplary Damages: The parties hereto hereby waive their rights to trial by jury with respect to any dispute arising under this agreement or any transaction document. No party shall be awarded punitive or other exemplary damages respecting any dispute arising under this agreement or any transaction document contemplated hereby.
- 11.9. Cooperative Purchases: This Agreement may be used by other government agencies. Company has agreed to offer similar services to other agencies under the same or similar terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between the Company and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The City/County/or Client/Protection District will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchase by other agencies.
- 11.10. Governmental Immunity: Client, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act. C.R.S. §24-10-101, et seq., as amended, or otherwise available to Client and its officers or employees.
- 11.11. Subject to Annual Appropriations: Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of Client not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of Client hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

Signatures on the following page:

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

COMPANY:

FIRE RECOVERY USA, LLC.

a California limited liability company

Signature: _____

Name: M. Craig Nagler

Title: Manager

CLIENT:

City of Manitou Springs

Signature: _____

Name (printed): _____

Title: _____

SCHEDULE A

LIST OF COMPANY SERVICES

1. Company agrees to bill the responsible party on the Client's behalf for services provided/rendered during motor vehicle incidents and other emergency incident. The Mitigation Rates as established by the Client's City Council annually or as adjusted by the City Council from time to time. Client shall immediately notify Company of the rates so established and Company shall adjust charges accordingly.
2. Company will provide, as a normal matter of business; entry of claims and submission to the responsible party, collections of monies deemed due to the Client, payments of the agreed upon percentage of said monies to Client, and reporting of progress.
3. Company agrees to bill to the best of its ability all claims provided to Company by the Client.
4. Company will not begin litigation against a person, entity, or insurance carrier without prior written approval by the Client.
5. Company agrees to reimburse Client a portion of the monies collected at a rate of 78% (seventy-eight percent) of the total monies collected on the Client's claims. Total monies collected will be net, after any credit card processing fees (charged at 4%) or any collection agency fees. If Client submits a claim to Company and later wants to cancel the claim, Client may be subject to a billing fee. If Client agrees to submit a claim to Company's collection agency and later wants to remove it from collection status, Client may be subject to a fee of up to 35% of the amount of the claim to compensate for efforts made to collect the claim.
6. Company agrees to pay these monies collected to the Client on a monthly basis within seven (7) working days after the close and accounting of the monthly billing cycle.
7. Company agrees to make available reports via a password protected website to the Client which detail billable claims outstanding (which are claims submitted but not yet completed) and claims completed in the prior billing cycle.
8. Company will not be responsible for, nor accept any liability for, any erroneous, invalid, or illegal procedure codes or claims submitted to Company by the Client on the Run Sheets.

MOTOR VEHICLE INCIDENTS

Level 1 - \$584.00

Provide hazardous materials assessment and scene stabilization. This will be the most common “billing level”. This occurs almost every time the fire department responds to an accident/incident.

Level 2 - \$667.00

Includes Level 1 services as well as clean up and material used (sorbents) for hazardous fluid clean up and disposal. We will bill at this level if the fire department has to clean up any gasoline or other automotive fluids that are spilled as a result of the accident/incident.

Level 3 – CAR FIRE - \$813.00

Provide scene safety, fire suppression, breathing air, rescue tools, hand tools, hose, tip use, foam, structure protection, and clean up gasoline or other automotive fluids that are spilled as a result of the accident/incident.

ADD-ON SERVICES:

Extrication - \$1,757.00

Includes heavy rescue tools, ropes, airbags, cribbing etc. This charge will be added if the fire department has to free/remove anyone from the vehicle(s) using any equipment. We will not bill at this level if the patient is simply unconscious and fire department is able to open the door to access the patient. This level is to be billed only if equipment is deployed.

Creating a Landing Zone - \$537.00

Includes Air Care (multi-engine company response, mutual aid, helicopter). We will bill at this level any time a helicopter landing zone is created and/or is utilized to transport the patient(s).



Memorandum

Title: Proposed Ordinance for Existing Inadvertent Encroachments on City Property or Right-of Way

From: Frederick Rollenhagen, Planning Director

To: Mayor and City Council

CC: City Administrator Denise Howell

Allocated Time: 30 Minutes

January 13, 2026

Purpose:

The purpose of this Ordinance is to identify a method in the Municipal Code for the City to consider and continue to allow encroachments onto City right-of-way or city property that are inadvertent and/or have existed for a long duration. The proposed definition of an "existing inadvertent encroachment" is; *an encroachment into public property that exists due to an inadvertent and unintentional act of the current or prior property owner.*

Background:

Over the years, City staff has, on rare occasion, received requests from property owners to grant permission for an existing encroachment to continue to exist. In many scenarios, these encroachments consist of landscaping, but also could include small improvements, or portions of structures that were inadvertently constructed on city property. In many cases, these encroachments have existed for decades, especially prior to more modern survey and engineering requirements that currently help avoid such encroachments in development scenarios today. For the most part, these types of encroachments are usually harmless or do not pose a threat to life or safety. Most of the time when permission is requested, it is because a property is being sold or transferred and a mortgage company or title company has identified the unknown encroachment and has required its resolution prior to property transfer to assure ownership is clean. This usually means the property owner must obtain an easement or encroachment agreement from the city that formally and legally permits the encroachment. All encroachment requests undergo an internal review to ensure they do not create public safety concerns or that there will not be a future need for the property.

Fiscal Impact:

The draft amendment currently contains a compensation section (12.04.808(E)) that would allow the City to require compensation for the encroachment and charge fees for the application. This would allow the City to recoup any costs it incurs on considering the request, as well as compensation for the use of the city land/right-of-way itself.



Workload Impact:

Staff does not anticipate significant additional workload from the adoption of this Ordinance. Staff receives no more than 1 or 2 requests per year. It is common for municipalities to have a mechanism to consider and approve inadvertent encroachments. Generally, older cities and those with older neighborhoods will have a higher chance of encountering inadvertent encroachments due to the nature of developing land prior to more stringent survey and engineering requirements for development. This mechanism would also be helpful to address and resolve newly-uncovered encroachments during a proposed redevelopment or improvement of property that is making a larger redevelopment application.

Recommended Action:

Review draft amendments and provide comments/direction to staff prior to scheduling first and second readings.

Chapter 12.04 WORK AND ENCROACHMENT ON CITY PROPERTY¹

Sections:

12.04.010 Purpose.

This chapter provides procedures and regulations for the placement of structures and infrastructure, construction, excavation, encroachments, and work activities within or upon any public right-of-way or other city property, and is intended to protect the integrity of city property. To achieve these purposes, it is necessary to require permits for temporary or continuing uses of the public rights-of-way and to establish permit procedures.

(Ord. No. 3917, § 1, 11-21-2017)

12.04.020 Definitions.

[For purposes of this chapter, the following terms shall have the following meanings:]

[“Existing Inadvertent Encroachment” means an encroachment into public property that exists due to an inadvertent and unintentional act of the current or prior property owner.](#)

"Minor encroachment" means an encroachment which does not impede vehicle or pedestrian traffic, effect the rights of the city or other third parties in the encroachment area. "Minor encroachments" are not required to be permanent in nature.

"Major encroachment" means any encroachment or work which is not a minor or temporary encroachment.

"Mobile vending" means peddling, vending, selling, serving, displaying, offering for sale or giving away services, goods, wares, merchandise, food, or beverages from a location without a fixed structure. "Mobile vending" includes, without limitation, offering services and goods from a mobile vending unit, a mobile food cart, tables, mats, or blankets.

"Public property" means any and all property, right-of-way or other real or personal property owned or controlled by a public entity, including the surface, underground and the airspace above such property.

"Right-of-way" means any public street, way, place, alley, sidewalk, utility easement, owned or controlled by the city, including the surface, underground and the airspace above such property.

"Temporary encroachment" an encroachment which is a minor encroachment and is not intended to remain in the public right-of-way or on public property for a period of longer than ninety days, except as provided for in this chapter.

"Work" means any labor performed on, or any use or storage of equipment or materials, including, but not limited to, construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices. It shall also mean construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults,

¹Editor's note(s)—Ord. No. 3917, § 1, adopted Nov. 21, 2017, repealed the former Ch. 12.04, §§ 12.04.010—12.04.080, and enacted a new Ch. 12.04 as set out herein. The former Ch. 12.04 pertained to alteration of streets and other rights-of-way and derived from Ord. 8, Series 1946, §§ 1—3; Ord. 8, Series 1948, §§ 4—7; Ord. 0977, § 3(part), adopted 1997; and Ord. 4702, § 1, adopted 2002.

buried cable, wire, or any other similar structure located below surface, and installation of overhead poles and wires or conductors, used for any purpose.

(Ord. No. 3917, § 1, 11-21-2017)

12.04.030 Police powers.

The permittee's rights hereunder are subject to the police powers of the city, which include the power to adopt and enforce ordinances, including amendments to this section, necessary to the safety, health, and welfare of the public. The permittee shall comply with all applicable laws and ordinances enacted, or hereafter enacted, by the city or any other legally constituted government unit having lawful jurisdiction over the subject matter hereof. The city reserves the right to exercise its police powers, notwithstanding anything in this section, any permit issued hereunder, any franchise, or any other permit to the contrary. Any conflict between the provisions of this chapter, any franchise or any permit and any other present or future lawful exercise of the city's police powers shall be resolved in favor of the latter.

(Ord. No. 3917, § 1, 11-21-2017)

12.04.040 Temporary encroachments—Permit required.

- A. Temporary encroachments may be placed on public streets or on public sidewalks. Placement that obstructs a public sidewalk shall require submission of plans for the provision of safe pedestrian movements. In no instance shall placement of a temporary encroachment cause the public street to become impassable for emergency or other vehicles. Sandwich board signs, as provided for in Chapter 15.16 of this code, shall not be considered temporary encroachments for purposes of this chapter.
- B. A permit for a temporary encroachment may be issued following submission and review of an application and payment of the fee as indicated in the following section to the city. The city may approve, conditionally approve, or deny an application for use of the public streets or sidewalks based on the recommendations and input from the police department, fire department, and streets department and consideration of the proposed location and time of year. In determining whether to grant a permit and the duration of a permit, consideration shall be given to pedestrian and vehicular sightlines, safety and movement, the impact on parking availability, and the impact on the neighboring properties, including visual impacts.
- C. An application for a permit shall be accompanied by a permit fee as established in the schedule of fees adopted by resolution of the city council.
- D. A permit for a temporary encroachment may be revoked by the city for any violation of this section.
- E. Special regulations for roll-off dumpsters and similar objects.
 - 1. Roll-off dumpster, storage pods or other similar objects may be permitted within the public right-of-way under this section only for as long as they are in active use in connection with construction, remodeling, or any other project.
 - 2. Notwithstanding any other provision in this chapter, the maximum duration of a permit under this subsection D shall be ninety days; unless an extended permit period is warranted upon demonstration of need due to the nature of the project (such as a large project that reasonably requires the placement of a storage pod for more than ninety days or unforeseen delays not the fault of the permit holder that require an extension of the initial permit expiration date). In no instance shall placement of a roll-off dumpster, storage pod, or other large immovable object under such a permit be used as a substitute for long-term or on-site trash or materials storage or disposal arrangements.

[F. Permits for temporary encroachments shall be approved by the city administrator or the city administrator's designee.](#)

(Ord. No. 3917, § 1, 11-21-2017)

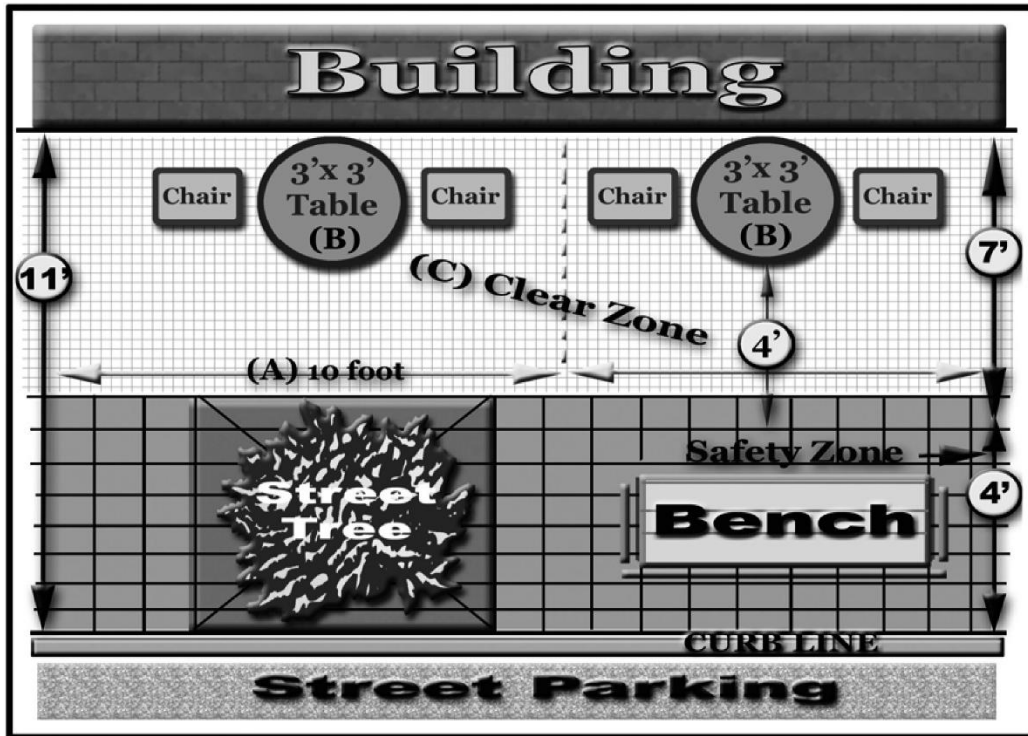
12.04.050 Minor encroachments—License agreement required.

- A. No person shall construct any minor encroachment, such as fences, private landscaping, or mailbox pillars, or place any object in the public right-of-way or public property without first obtaining a revocable license agreement approved by the city. This section shall not include trash receptacles that are placed adjacent to the traveled lanes for removal on the scheduled date of pick-up.
- B. A fee for processing the revocable license agreement shall be set by city council resolution from time to time. The revocable license agreement granted by the city is revocable at will by the city.
- C. Application.
 - 1. An application for a minor encroachment shall be made on a form provided by the city. Upon submission of a complete application, the city shall forward copies of the applications to all appropriate departments for review and comment. The application shall be accompanied by any applicable fee.
 - 2. Upon approval by appropriate departments, the city shall prepare ~~either a revocable license agreement or an easement to be signed first by the applicant and final signature by the city administrator~~ [depending upon the nature of the minor encroachment, the request of the applicant, and the requirements of the city. Whether to require a license agreement or an easement and the form of those documents shall be at the sole discretion of the city. The city administrator may approve license agreements. Easements shall be subject to city council approval.](#)
- D. Standards for Approval. A revocable license agreement may be issued if the application meets the following criteria:
 - 1. The proposed encroachment does not create an obstruction to vehicle, bicycle or pedestrian traffic in any way unless otherwise permitted in this section;
 - 2. The proposed encroachment does not infringe upon any easement rights held by the city, other public agencies or utilities;
 - 3. The proposed encroachment does not obstruct the vision clearance triangle;
 - 4. The proposed encroachment does not create or contribute to a safety hazard; and
 - 5. The proposed encroachment meets all standards and requirements of the city for location and improvements.
- E. Special regulations for outdoor displays, outdoor seating and mobile vending.
 - 1. Each business may have one outdoor display not to exceed a fifteen square foot footprint or one outdoor seating area consistent with rules found within this section.
 - 2. Placement of outdoor displays or seating on public property must provide a minimum four feet in which there will be no obstructions, known as the pedestrian clear zone. Within the downtown and commercial districts, no more than one foot of the pedestrian clear zone may be within the curbside paver brick amenity zone.
 - 3. Outdoor displays, benches and seating may not be permanently affixed to the public sidewalk.
 - 4. For outdoor seating, no more than one table or bench for every ten feet of linear frontage is permitted. Tables may not exceed three feet by three feet in size. Tables, chairs, benches and umbrellas must be

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(Supp. No. 71, Update 2)

placed along the front of the business so that a minimum pedestrian clear zone is maintained. No more than one foot of the four-foot clear zone may be within the paver brick safety zone. No tables or chairs are permitted within the paver brick safety zone, as shown below:



5. Consumption of alcohol is prohibited within the public right-of-way, including an approved outdoor seating area.
6. The business owner is responsible for the cleanliness and maintenance of the outdoor display area.
7. Between November 1 and April 1, all outdoor tables, displays, benches and seating must be removed from the public right-of-way between the hours of 8:00 p.m. to 8:00 a.m. to allow for snow and ice removal.
8. Approval for outdoor displays and seating shall be obtained in conjunction with the business' annual business license. Applicants will provide a sketch of the proposed seating area with dimensions, the location and size of the tables and chairs, and the proposed hours of operation of the outdoor seating area. The applicant must obtain the required permissions from CDOT prior to city approval, unless the city is given authorization to manage outdoor seating within CDOT right-of-way.
9. Mobile vending within the public right-of-way or on publicly owned property is prohibited, unless such vending is part of event as permitted pursuant to Chapter 12.24 of this code.

(Ord. No. 3917, § 1, 11-21-2017)

12.04.060 Major encroachments and work on public property—Permit required.

- A. No person except the city, or a person exempted by contract with the city, shall undertake or permit to be undertaken any major encroachment involving the construction, excavation, work and/or encroachment in the public right-of-way or public property, or operate and maintain any utility within the right-of-way without first obtaining a permit from the city as set forth in this section. Each permit obtained, along with

associated documents, shall be maintained on the job site and available for inspection upon request by the city. Provided, however, the city may waive a permit for minor repairs to existing sidewalks or driveways.

- B. No permittee shall perform construction, excavation, work in, or encroachment of an area larger or at a location different than that specified in the permit or permit application. When construction, excavation, or work is commenced under an approved permit, it becomes necessary to perform construction, excavation, or work in a larger or different area than originally requested under the application; the permittee shall notify the city immediately and within twenty-four hours shall file a supplementary application for the additional construction, excavation, or work.
- C. Permits for construction, excavation or work shall not be transferable or assignable and work shall not be performed in any place other than that specified in the permit. The applicant may subcontract the work to be performed under a permit provided that the holder of the permit obtains all insurance and financial security as required. The permittee shall be and remain responsible for the performance of the work under the permit. The physical construction of public improvements in new developments is the responsibility of the developer of the land. Ownership of those improvements remains with the developer of the land until acceptance by the city. Any person performing work on those improvements which are within a public way, or on an area proposed for dedication as a public right-of-way or utility easement, but prior to acceptance by the city, shall obtain a permit from the city, and permission from the owner of the improvements and the proposed public way. The permittee shall be financially responsible to the owner of the improvements to carry out all remedial work necessary to receive acceptance by the city of those improvements. This financial obligation shall apply only to the work in the public way done by the permittee.
- D. Any work or use of other city property, other than rights-of-way, may be allowed by the city only if it is appropriate in the city's discretion or authorized by other city ordinances or regulations. Such use may be subjected to the provisions of this section in addition to any other terms and conditions required by the city.
- E. Once the construction, excavation or work has been completed and accepted by the city, the permit shall run with the land, unless revoked by the city.
- F. The installation of utility and communications facilities in rights-of-way controlled by the Colorado Department of Transportation shall nonetheless require the city's approval, and compliance with applicable city ordinances.
- G. [Permits for major encroachments in the public rights-of-way or public property shall be approved by the city administrator or the city administrator's designee; provided that if an easement is required for a major encroachment, City Council approval of the easement shall be required.](#)

(Ord. No. 3917, § 1, 11-21-2017)

12.04.070 Major encroachments-Application and conditions.

- A. An applicant for a permit for a major encroachment to allow construction, excavation, work or encroachment in the public right-of-way or other public property under this section shall:
 - 1. File a written application made upon a form provided by the city, which will include information necessary or convenient for the administration and enforcement of this section, including, but not limited to, a statement that the applicant or its contractor is not delinquent in payments due to the city on prior work. A fee, payable upon application, for processing the permit shall be set by city council resolution from time to time.
 - 2. Attach copies of all permits or licenses (including required insurance, deposits, bonds, and warranties) required to do the proposed work, and to work in the public rights-of-way, if license or permits are

required under the laws of the United States, the state of Colorado, or the ordinance or regulations of the city.

3. Provide a satisfactory plan of work showing:
 - a. The date of commencement and completion of the construction, excavation or work;
 - b. A statement that such work will be performed in strict compliance with the requirements of this chapter;
 - c. Protection of the subject property and adjacent properties when the City determines such protection is necessary;
 - d. Protection of shade and ornamental plants and the restoration of turf when the city determines that damage may occur to such plants or turf;
 - e. A description and illustration or plan concerning the exact location, depth, length, width, surface area and nature of the construction, excavation, or work desired to be made, together with the location of any underground utilities within a radius of ten feet;
 - f. A satisfactory traffic control and erosion protection plan for the proposed construction, excavation, or work; and
 - g. List of all anticipated subcontractors.
- B. All permits issued for construction, excavation or work may be granted only for the time to complete the work. The applicant is required to renew the permit prior to the expiration of the permit.
- C. The permit shall be issued with terms and conditions as necessary and appropriate to implement this section and protect the public health, safety and welfare, including provisions for insurance, indemnification, a hold harmless and damage release for the city, warranty, and repair periods, requirements for as-built plans and requirements to reimburse the city for any costs it incurs as a result of relying on inaccurate "as-built" drawings submitted to the city.
- D. Indemnification. Any permittee who applies for a permit shall agree to indemnify and save harmless the city, its authorized agents, officers, representatives and employees from and against any and all claims, penalties, liability or loss resulting from claims or court actions, whether at law or in equity, arising directly or indirectly out of any act or omission of the contractor, his agents, officers, representatives or employees, in constructing, excavating or performing any work on any street, alley, sidewalk, public right-of-way or city-owned property.
- E. Insurance. The permittee shall post with the city certification of general liability insurance covering such excavation work. All insurance policies required in this section shall include complete operation coverage for a period of two years from the date of application for each permit. Failure to maintain such insurance shall not relieve any applicant from liability. Such proof of insurance shall contain a clause that the city shall be notified by the insurer not less than thirty days prior to any change in the policy or cancellation of such policy. All liability insurance shall be approved by the city attorney as to form. The minimum coverages required by the city include general liability insurance with minimum combined single limits of one million dollars each occurrence and one million dollars general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall be endorsed to include the city and the city's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations. All liability insurance shall be approved by the city attorney as to form.

F. Performance Bond.

1. Each permittee, before being issued a permit, shall provide the city, at the permittee's expense, with a performance bond in a form and amount approved by the city. The bond shall be in an amount equal to one hundred and fifteen percent of the city's estimate of the cost of restoration of the site of the construction, excavation or work. The cost of restoration shall include, without limitation, the removal of defective material, re-compaction of subgrade and base material and construction of surface improvements.
2. Only one bond is required for any number of permits, provided the bond has not been declared forfeit, or has not been reduced by the provisions of any other section of this chapter. The condition of such bond shall be that the permittee shall comply with all the ordinances and specifications of the city relating to excavating or working in any street, alley, sidewalk or other public right-of-way or city-owned property.
3. Such bond shall be approved by the city as to sufficiency and by the city attorney as to form, and shall remain in full force and effect for a period of two years from and after the date any excavation is made.
4. In the event of a breach of any of the conditions of the bond, the city shall give notice of same to the surety, shall cause to be remedied the condition wherein the bond is breached, and the city attorney shall bring action in the name of the city to recover the penalty of the bond, or so much thereof as may be necessary to reimburse all costs and expenses the city may have incurred incidental thereto.
5. No permit under this section shall be issued to any applicant whose bond, or any portion thereof, has been declared forfeit, unless and until such bond shall be reinstated or a new bond filed as provided in this chapter.
6. The provisions of subsections 1 through 5 of this section shall not apply to the holder of a valid franchise agreement with the city.

G. Time of Completion. All work covered by the permit shall be completed by the date stated on the application. Permits shall be void if work has not commenced within six months of issuance, and in such case, performance bonds shall be returned with any applicable administrative or city costs deducted.

H. Traffic Control.

1. When it is necessary to obstruct traffic, a detour plan shall be submitted to the city prior to starting construction. No permit will be issued until the plan is approved by the city. No permittee shall interrupt access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valve, underground vaults, valve housing structures, or any other vital equipment unless permission is obtained in writing from the owner of that facility, equipment or property.
2. If a street closing is desired, the applicant will request the assistance and obtain the approval of the city. It shall be the responsibility of the permittee to notify and coordinate all work in the public way with police, fire, ambulance, transit organizations, and affected property owners at least twenty-four hours in advance. When necessary for public safety, the permittee shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the city and traffic control devices, as defined in Part VI of the Manual on Uniform Traffic Control Devices, must be used whenever it is necessary to close a traffic lane or sidewalk.

I. Minimizing the Impact of Work in the Right-of-Way.

1. Relocation and Protection of Utilities. Before any permittee begins excavation in any public way, he shall contact the Utility Notification Center of Colorado and make inquiries of all ditch companies, utility companies, districts, municipal departments, and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the Utility Notification

Center of Colorado and request field locations of all facilities in the area at least seventy-two hours in advance. Field locations shall be marked prior to commencing work. The permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus, which may be affected by the work from damage during construction or settlement of trenches subsequent to construction.

2. Noise, Dust, Debris, Hours of Work. Each permittee shall conduct work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the work, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris. No work shall be done between the hours of 7:00 p.m. and 7:00 a.m., nor at any time on Sunday, except with the written permission of the city, or in case of an emergency.
3. Trash and Construction Materials. Each permittee shall maintain the work site so that:
 - a. Trash and construction materials are contained so that they are not blown off of the construction site;
 - b. Trash is removed from the construction site often enough so that it does not become a health, fire, or safety hazard; and
 - c. Trash dumpsters and storage or construction trailers are not placed in the street without specific approval of the city.
4. Deposit of Dirt and Materials on Roadways. Each permittee shall comply with the requirements to eliminate the tracking of mud or debris upon any street or sidewalk and work shall be performed so as to permit the free passage of water in the gutter and the passage of pedestrians on the sidewalk. Equipment and trucks used during construction, excavation, or work activity shall be cleaned of mud and debris prior to leaving the work site.
5. Protection of Trees and Landscaping. Each permittee shall protect trees, landscape, and landscape features as required by the city. All protective measures shall be provided at the expense of the permittee.
6. Protection of Paved and Improved Surfaces from Equipment Damage. Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles with grousers are not permitted on paved or improved surfaces unless specific precautions are taken to protect the surface. The permittee will be responsible for any damage caused to the surfaces by the operation of such equipment and shall repair such surfaces. Failure to do so will result in the use of the applicant's performance security by the city to repair any damage, and possibly, the requirement of additional warranties.
7. Protection of Property. Each permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The permittee shall, at his own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public way.
8. Clean-up. As the work progresses, all public rights-of-way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All clean-up operations shall be done at the expense of the permittee.
9. Preservation of Monuments. Each permittee shall not disturb any surface monuments or survey hubs and points found on the line or work unless approval is obtained from the city. Any monuments, hubs, and points disturbed will be replaced by a Colorado Registered Land Surveyor at the permittee's expense.
10. Each permittee shall make provisions for employee and construction vehicle parking so that neighborhood parking adjacent to a work site is not impacted.

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11. Each permittee shall maintain an adequate and safe, unobstructed walkway around a construction site or blocked sidewalk in conformance with city building codes.
 12. Each permittee shall clear all snow and ice hazards from public sidewalks at the work site by noon following a snowfall.
 13. The permittee shall provide adequate sanitary facilities.
- J. Standards and Specifications. The permittee shall be fully responsible for the cost and actual performance of all work in the public way. The permittee shall do all work, including restoration and repair of unpermitted disturbances, in conformance with any and all construction specifications, and the city's minimum standards and specifications. These standards shall apply to all work in the public way unless otherwise indicated by the permit.
- K. Location and Relocation of Facilities.
1. The location of the permittee's facilities shall be subject to the prior approval of the city, shall be located to maximize the potential use of the right-of-way, minimize interference with the city's use and facilities, and conform to requirements of city standards and specifications.
 2. The city recognizes that it is within its police power as a home rule municipality to preserve the physical integrity of its streets and highways, control the orderly flow of vehicles and pedestrians, and efficiently manage the gas, electric, water, cable, broadband, telephone, and other facilities that crisscross its streets and public rights-of-way. It is the city's policy to efficiently use public rights-of-way for a variety of infrastructure and utilities in order to provide public services; advance the city's goal of increasing opportunities for access to traffic control, communication, and broadband services; limit the frequency of street closures and cutting of public streets; and reduce road degradation caused by repeated boring and trenching of public rights-of-way. To this end, the city requires all person proposing work under this section that involve directional boring or open trenching within a public right-of-way that extend for more than one hundred feet in length to collocate and install city conduit simultaneously with the work proposed. The city will review all permit applications in a competitively neutral manner and make all permit decisions based on substantial evidence. The city may, upon initial review of the permit application, determine that the proposed work does not demonstrate a need for collocation of city infrastructure.
 3. For any work that requires collocation of city conduit, the city shall, as a condition of the issuance of the permit or continued validity of a permit, require the permittee to install city conduit with tracer wire and associated infrastructure, as identified by the city, concurrent with the installation of the permittee's infrastructure. The requirement for the permittee to install city conduit with tracer wire and the associated infrastructure shall be completed after the city has reviewed and approved all estimated costs associated with the co-location of the city conduit. The permittee shall install the city conduit with tracer wire adjacent to the permittee's infrastructure and within the same bore or trench alignment. The city will bear all costs associated with the city conduit, pull boxes, and all other materials and infrastructure to be installed and the incremental increased costs incurred by the permittee (or its contractor or subcontractor) that are reasonably and directly attributable to the required co-location of city conduit, materials and infrastructure.
 4. When a collocation of city conduit is required, this completion inspection shall include physical verification of the installed city conduit. The permittee may be required to submit signed as-built documentation of the city's conduit to the city if physical verification of the city conduit is not possible.
 5. If at any time the city requests the permittee to relocate its facilities in order to allow the city to make any use of rights-of-way, or if at any time it shall become necessary or convenient to move or change the permittee's facilities within or adjacent to streets or rights-of-way in any manner, either temporarily or permanently, because of a change in the grade or by reason of the improving, repairing,

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- constructing, or maintaining of any street or rights-of-way, by reason of traffic conditions, public safety, by reason of installation of any type of city utility facilities or other improvement, or by reason of any program from the undergrounding of such facilities, the city shall notify the permittee at least ninety days in advance, except in the case of emergencies, of the city's intention to perform or have such work performed. The permittee shall thereupon, at its sole cost and expense, accomplish the necessary relocation, removal, or change within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the city has notified the permittee that it intends to commence its work or immediately in the case of emergencies. Upon the permittee's failure to accomplish such work, the city may perform such work at the permittee's expense and the permittee shall reimburse the city within thirty days after receipt of a written invoice. Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to construction by the permittee at the permittee's expense, and revised as-built plans submitted to the city.
6. The city may require the relocation of facilities which are not installed in the approved location or corridor following the procedures set out in (4) above.
- L. Emergency Procedures. Any person maintaining facilities in the public way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. Emergency work is defined to mean any work necessary to restore water, sewer, gas, phone, and electric facilities. Repairs on other facilities in the public way may also be administratively classified as emergency by the city. The person doing the work shall apply to the city for a permit on the first working day after such work has commenced. All emergency work will require prior telephone notification to the city police department and the appropriate fire protection agency.
- M. Issuance of Permits. The city shall issue permits for work and encroachment under this section for an application that conforms with the requirements of this section.
- N. Revocation of Permits.
1. Any permit may be revoked or suspended by the city after notice to the permittee for:
 - a. Violation of any condition of the permit or of any provision of this section.
 - b. Violation of any provision of any other ordinance of the city or state law relating to the work.
 - c. Existence of any condition or performance of any act which the city determines does constitute or cause a condition endangering life or damage to property.
 2. Suspension or revocation by the city and a stop work order shall take effect immediately upon notice to the person performing the work in the public way, or to the permittee's last known address.
 3. A stop work order may be issued by the city to any person or persons doing or causing any work to be done in the public way without a permit, or in violation of any provision of this section, or any other ordinance of the city.
 4. Any stop work or suspension order or revocation of any permit may be appealed by the permittee to the city administrator by filing a written notice of appeal within ten days of the order or revocation.
 5. Notice of revocation of an encroachment permit shall be sent by the city to the permittee at the address provided in the application. Revocation of the permit shall be effective ten days after the date of the notice. Permittee shall be obligated to remove the encroachment within thirty days of the effective date of the revocation.
- O. Administration and Enforcement.
1. Any person who violates any provision of this Chapter 12.04 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in an amount that does not exceed the maximum fine

provided for in Chapter 1.16. The city may also maintain an action in a court of competent jurisdiction to enjoin any violation of this chapter, or of any permit issue pursuant hereto.

2. The city shall refuse to issue a permit under this chapter to any person who shall have suffered two convictions hereunder within a period of five years from the date of the first or former conviction, for a period of at least one year after such second conviction.

(Ord. No. 3917, § 1, 11-21-2017)

12.04.080 Existing inadvertent encroachments.

A. A property owner may seek authorization from the City for the continuation, but not expansion, of an existing inadvertent encroachment. The review and decision regarding whether to authorize the continuation of an existing inadvertent encroachment shall be made by the City Administrator if a license is being sought and by the City Council if an easement or fee title is being sought. Each decision shall be based on the specific facts involved, and the City retains full authority to grant, deny, or condition authorization for the continuation of an existing inadvertent encroachment.

B. To seek authorization, the property owner shall submit a complete application to the City Planning Department on a form provided by the City, which shall include:

1. A diagram of the property involved showing the encroachment and measurements of the encroachment;
2. A written narrative explaining the circumstances that caused the encroachment and why the encroachment meets the definition of an existing inadvertent encroachment;
3. Photographs of the encroachment; and
4. Any other information requested by the Planning Department.

C. In reviewing the application, the City Administrator or City Council, as applicable, shall consider the following:

1. Whether the encroachment meets the definition of an existing inadvertent encroachment;
2. Whether the encroachment poses any hazard to pedestrians, vehicles, or the public in general;
3. The City's current and future need for the public property and the area where the encroachment exists;
4. The size of the area and the specific rights being requested by the property owner; and
5. Any other matter the City Council deems relevant in its sole discretion.

D. For review conducted by the City Administrator, the City Administrator may, but shall not be required to, consult with the Planning Department and any other parties the City Administrator deems necessary. For review conducted by the City Council, the City Council may, but shall not be required to, take comment from City Planning Department staff, the property owner, and the public. The City Administrator may only approve a license agreement. If the City Administrator determines that an easement or fee title may be more appropriate, the City Administrator shall refer the matter to the City Council for review. Regardless of a request by the applicant for an easement or fee title, the City Council may grant authorization for the encroachment via any lawful method, including a license agreement, an easement agreement, or conveyance of fee title to the area where the encroachment exists, pursuant to any terms and conditions the City Council deems appropriate in its sole discretion. The City Council may also deny authorization for the encroachment. The City Council and the City Administrator may, but shall not be required to, provide reasons for their decision. Nothing set forth herein shall be deemed to make a decision by the City Administrator or the City Council a quasi-judicial matter, subject to appeal by the property owner. The City retains full discretion over the disposition and use of all public property and all decisions relating to existing inadvertent encroachments shall be at the City's sole discretion.

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E. Compensation. Depending on the nature of the encroachment, the rights approved by the City Administrator or City Council, and any other factor the City Administrator or City Council deems relevant, the City may require compensation for the encroachment, which shall be the City's estimate of the fair market value of the property rights the City has approved to authorize the encroachment. In addition, the City may charge a fee for an application, the amount of which shall be determined by the City Council and included in the City's fee schedule. Finally, the City may require payment of the costs incurred by City for any consultants engaged by the City to review the application, advise the City, and prepare any necessary documents, including without limitation, the costs of legal counsel, engineers, and surveyors.