

**ORDINANCE**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 12.04, REPEALING CHAPTER 12.06, REPEALING AND REENACTING CHAPTER 12.08, REPEALING CHAPTER 12.12, REPEALING CHAPTER 12.34 OF THE MANITOU SPRINGS MUNICIPAL CODE CONCERNING ENCROACHMENTS AND WORK IN THE PUBLIC RIGHTS OF WAY OR PUBLIC PROPERTY**

**WHEREAS**, the City's regulations for encroachment and work on public property, including City right of way have not been updated recently; and

**WHEREAS**, the City desires to amend the Code to reflect current practices for encroachment and work on public property.

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

**Section 1:** Chapter 12.04 of the Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

**Chapter 12.04 - WORK AND ENCROACHMENT ON CITY PROPERTY.**

**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.

**12.04.020 - Definitions.**

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

#### **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.

#### **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 (90) 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 (90) 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.

**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.

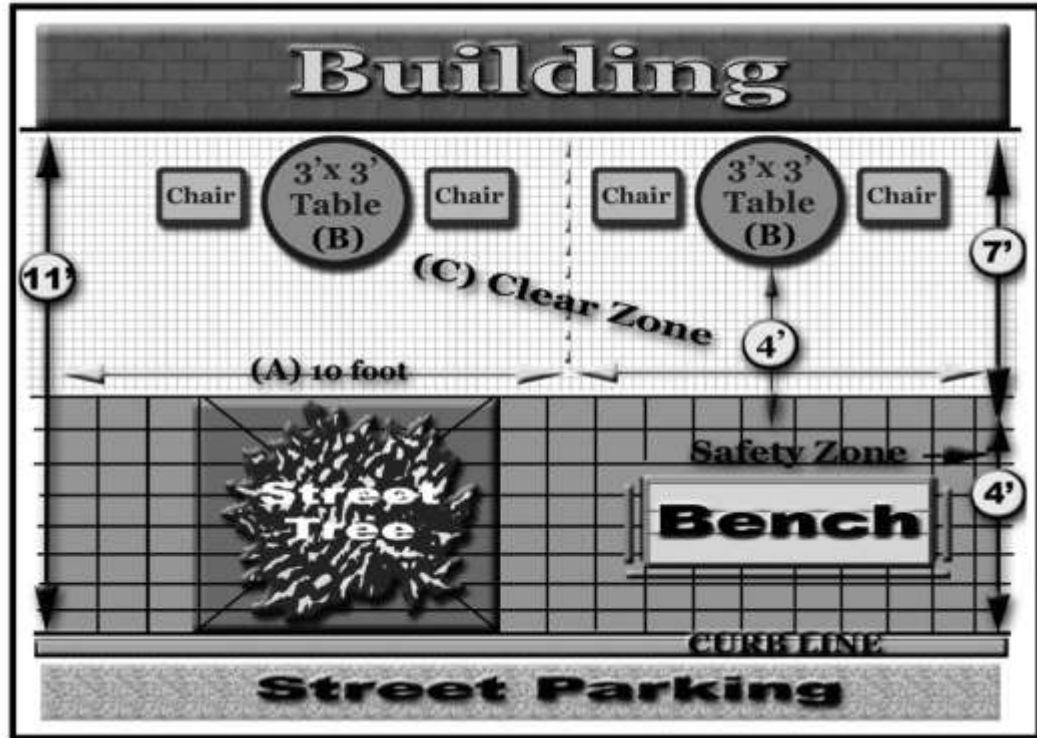
B. A fee for processing the Revocable License Agreement shall be set by City Council resolution from time to time. The revocable license agreement granted by the City is revocable at will by the City.

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 a Revocable License Agreement to be signed first by the applicant and final signature by the City Administrator.

- 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 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 pm to 8 am 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.

**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 (24) 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.

**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 (10) 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 (2) 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 (30) 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 (\$1,000,000) each occurrence and one million dollars (\$1,000,000) 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 (115%) 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 (1) 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 (2) 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 (6) 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 24 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 72 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 warrantees.

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.

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 100 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 collocation 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 ways in any manner, either temporarily or permanently, because of a change in the grade or by reason of the improving, repairing, 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 (90) 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 (3) 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 (30) 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 (10) 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 (10) days after the date of the notice. Permittee shall be obligated to remove the encroachment within thirty (30) 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 (2) convictions hereunder within a period of five (5) years from the date of the first or former conviction, for a period of at least one year after such second conviction.

**Section 2:** Section 12.08 of the Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

**Chapter 12.08 – EXCAVATIONS – SPECIFICATIONS AND STANDARDS**

**12.08.010 - Definitions.**

As used in this chapter:

A. "Drainage channels" includes natural and manmade drainage routes.

B. "Excavation" includes removal or placement of dirt and other material from its natural place of rest for building or other purposes.

**12.08.020 - Excavation on Private Property - Permit.**

A. No person shall alter the natural configuration of their land or that of any other person for building or other purposes without having first obtained a permit. Application for such permit shall be made to the City and shall recite specifically the exact location, size, nature and extent of such excavation.

B. Excavation or filling for the purpose of building will be granted with the building permit. The permit must be secured prior to the start of any excavation or filling.

C. Excavating or filling not specifically covered by a building permit must be approved under a separate permit. Instances where such excavation or filling will adversely affect adjacent property, drainage or the general character of the area will be subject to disapproval.

**12.08.030 - Work near drainage channel – Permit required.**

No person shall narrow, reroute, bridge, wall in or build over or within ten feet of any stream, creek, drainage channel or other waterway without having first obtained a permit pursuant to Chapter 12.04.

**12.08.040 - Street excavation – Encompassing total width—Driveway required.**

In all cases where excavations are made entirely across the public highway a substantial driveway shall be maintained by the party making the excavation across such public highway until such excavation is refilled and approved by the City

**12.08.050 - Backfilling.**

A. The permittee shall return the street, alley or other public way to the condition in which it existed prior to making the cut for which permission was requested, which shall include compaction of the backfill to ninety-five percent of the Standard Proctor Density at optimum moisture in the top foot and ninety percent in the remainder of the trench; provided, however, that in the event that the cut is made in a state highway, the required compaction is one hundred percent of Minimum Relative Compaction.

B. Two compaction tests are required as a minimum, one just above the pipe zone and one at the surface. Testing shall be completed every one hundred linear feet at varying depths. Failed tests will require reexcavation, recompaction and new testing. All testing shall be done at the applicant's expense by an engineer registered to practice in the State of Colorado. The engineer shall file written reports of all such tests with the City Administration office. Compaction test results shall be submitted to the City within thirty (30) days of cutting but not less than five (5) days prior to patching for hard surfaced streets. Only unfrozen material may be used in backfill. All frozen material shall be removed from the site. The applicant may request the release of the bond not sooner than thirty (30) days following the delivery to the City Administration office of the written report that all tests were successful.

C. Flow Fill is acceptable so long as it is designed within the Range of thirty to ninety PSI maximum strength at twenty-eight days. Compaction testing is not required if Flow Fill is used the full depth of the trench.

**12.08.060 - Limitation on Cutting Streets.**

No street, alley or other public way within the city with a paved, overlaid or hard surface shall be cut, or the surface thereof otherwise broken through, by any person, firm, corporation or association for a period of one year subsequent to the date of final acceptance of such construction or reapplication of the paved, overlaid or other hard

surface unless a permit is issued upon proper application and payment of all fees required by this chapter, and upon payment of an additional paved street cut fee if set by resolution of the city council. This section shall not apply to gravel surfaced streets or emergency maintenance of utility lines as authorized by city.

**Section 3:** Chapters 12.12 and 12.34 of the Manitou Springs Municipal Code are hereby repealed.

**Section 4:** 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 5:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Passed on first reading and ordered published this 17th day of October, 2017.

/s/ Donna Kast  
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the November 21, 2017, City Council meeting. The meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: October 19, 2017 (in full)  
*City's Official Website and City Hall*

Passed on second reading and adopted by Council this 21st day of November, 2017.

/s/ Nicole Nicoletta  
Mayor, Nicole Nicoletta

Attest: /s/ Donna Kast  
City Clerk, Donna Kast

Ordinance Published: November 22, 2017 (in full)  
*City's Official Website and City Hall*