

**ORDINANCE NO. 24, SERIES OF 2017**

**AN ORDINANCE AMENDING TITLE 12 OF THE CAÑON CITY MUNICIPAL CODE BY REPEALING AND REENACTING CHAPTER 12.12 AND REPEALING 12.20, REGARDING WORK AND ENCROACHMENT ON CITY PROPERTY.**

**WHEREAS**, Chapters 12.12 and 12.20 of the Cañon City Municipal Code (the "Code") sets forth permitting requirements and provides standards for various construction and excavation activities concerning sidewalks and curbs within the City of Cañon City;

**WHEREAS**, the City Council of Cañon City now wish to repeal and replace Chapter 12.12 and repeal Chapter 12.20 in its entirety, in order to provide a comprehensive permitting procedure for work and encroachment on city property; and

**WHEREAS**, the City Council of Cañon City finds that this ordinance is in the best interest of the City and its residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF CAÑON CITY:**

Section 1. Chapter 12.12 of the Cañon City Municipal Code is hereby repealed and reenacted as follows:

**Chapter 12.12  
WORK AND ENCROACHMENT ON CITY PROPERTY**

**12.12.010 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, as well as the health, safety, and welfare of the public. 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.

**12.12.020 Definitions**

"Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles, more generally defined as an unobstructed, relatively flat area beyond the edge of the traveled way that allows a driver to stop safely or regain control of a vehicle that leaves the traveled way. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired minimum width is dependent upon traffic volumes and speeds and on the roadside geometry. The Clear Zone width is at the discretion of the City Engineer based on characteristics of the roadway and traffic, but is typically 2 feet from the back of the curb when present or 10 feet from the edge of the pavement when no curb is present.

"Horizontal Landscaping" means landscaping that is generally low to the ground and includes shrubs or plants shorter than thirty (30) inches, sod, seed, and other living ground cover, rock, stone, brick, concrete, asphalt or other like materials for non-living ground cover. Rock, stone, or brick shall not exceed a nominal size of six (6) inches or be stacked or placed to a height greater than eight (8) inches. Includes irrigation pipe and irrigation appurtenances.

"Incidental Encroachment" means an encroachment which is incidental to the general public's use of the right of way, accompanying or consequential to a land owner's use of their property but not a major part of their use, and typical in nature throughout the City.

"Minor Encroachment" means an encroachment which does not impede vehicle or pedestrian traffic, affect the rights of the City or other third parties in the encroachment area, or is temporary in nature.

"Major Encroachment" means any encroachment which is not a minor or incidental encroachment.

"Public property" means any and all property, right of way or other real or personal property owned or controlled by a public entity.

"Right of way" means any public street, way, place, alley, sidewalk, utility easement, owned or controlled by the City.

"Vertical Landscaping" means shrubs or plants taller than thirty (30) inches, trees, and/or rocks, stones, and boulders exceeding a nominal size of six (6) inches or are stacked or placed to a height greater than eight (8) inches.

"Vision Triangle" means a triangular area on a lot at the intersection of two (2) streets or a street and a railroad or alley, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines and intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. The vision clearance area shall contain no plantings, walls, structures or temporary or permanent obstructions exceeding two and one-half (2-1/2) feet in height, measured from the top of the curb or existing street grade. The vision triangle shall be measured as provided in 17.20.200.

"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, *or surveying, that requires street lane closures or excavation;* 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.

### **12.12.030 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 Section, 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.

### **12.12.040 Incidental Encroachments – No Permit or License Agreement Required**

Incidental encroachments such as private horizontal landscaping or mailbox pillars, driveway markers, or trash receptacles with a capacity of 96 gallons or less that are placed adjacent to the traveled lanes for removal on the scheduled date of pick-up, or any other object deemed by the City Engineer to be incidental will not require a permit or license agreement.

### **12.12.050 Minor Encroachments – License Agreement Required**

A. No person shall construct or install any minor encroachment, as determined by the City Engineer, such as fences, private vertical landscaping, or place any object temporarily in the public right of way or public property without first obtaining a Revocable License Agreement approved by the City Engineer.

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 Engineer 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 Engineer shall prepare a Revocable License Agreement to be signed first by the applicant and final signature by the City Engineer and 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 within existing or planned travel lanes and/or pathways;
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 triangle at intersections of streets, alleys, or driveways as determined by the City Engineer;
4. The proposed encroachment will not be within the Clear Zone, as determined by the City Engineer, based on the characteristics of the roadway and the traffic;
5. The proposed encroachment does not create or contribute to a safety hazard;
6. The proposed encroachment meets all standards and requirements of the City for location and improvements; and
7. The proposed encroachment will not have to be relocated in the next 48 months due to a planned City project and as determined by the City Engineer.
8. City street trees approved and maintained by the City are not subject to the regulations in this Chapter.

#### **12.12.060 Major Encroachments – 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. Except that, pursuant to Section 17.45.060(B), no application or permit shall be required for the installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with the national safety code, subject to the exceptions listed therein.

B. No permittee shall perform construction, excavation, work in, or create an 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, as well as all subcontractors, obtain a contractor's license, 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 expire, unless an encroachment on public property remains. In that case, the Permit shall continue until terminated or the encroachment is removed. Regardless of whether a permittee maintains a permit for a continuing encroachment, any new work on the encroachment will require a new permit pursuant to this Chapter.

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.

#### **12.12.070 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 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 pursuant to applicable rules, regulations or specifications of the City or as 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 and any other applicable provision of the Code;

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 and permit, in accordance with Chapter 8.70, 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 review the permit prior to the expiration of the permit.

C. Permits shall not be issued to any person, firm or corporation that is not licensed with the City in accordance with Chapter 5.12 of this Code except concerning construction, excavation or work performed pursuant to an applicable and current franchise agreement with the City and the departments of the City.

D. 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.

E. Permit Fees. Upon completion of the Work, the applicant shall pay to the City, a permit fee in an amount set pursuant to applicable rules, regulations or specifications of

the City or as set by City Council resolution from time to time. Permit fees shall be waived for work done on behalf of the City. Pursuant to C.R.S. § 38-5.5-108 and Chapter 17.45, in exchange for permission to attach wireless service facilities to poles or structures in a right of way owned by the City, payment shall not be in excess of the amounts set forth in 47 U.S.C. § 224 and 47 C.F.R. § 1.1409.

F. 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.

G. Insurance. The permittee shall post with the City Engineer 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. City Council shall set the minimum coverages required by resolution. All policies 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.

H. 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 or \$5,000, whichever is greater. 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. For permittees who typically have greater than 10 permits annually have the option of providing one bond annually in the amount of \$15,000.

2. 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 Engineer 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 Engineer 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 any municipalities, quasi-municipal entities, ditch companies, utilities and the City.

I. 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 thirty (30) days of issuance, and in such case, performance bonds shall be returned with any applicable administrative or City costs deducted. A permit renewal fee will be charged for every thirty (30) days of the work included under the permit.

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 pursuant to the City of Cañon Standard Construction 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. 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 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. *Exceptions will be granted by the City Engineer for utility main line or significant facility relocation, for which the City and affected utility will coordinate and agree upon a reasonable time frame for the relocation.* 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 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.

3. The City may require the relocation of facilities which are not installed in the approved location or corridor following the procedures set out in (2) 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.

#### **12.12.080 Existing Encroachments**

A. Any permittee holding an existing right of way permit obtained from the City prior to enactment of this Chapter shall be subject to the requirements of such permit, notwithstanding the provisions this Chapter.

B. Any encroachment, existing as of the adoption of this Chapter, is subject to all of the provisions of this Chapter, except as provided for herein. An existing encroachment shall not be required to obtain a license pursuant to Sec. 12.12.050 or a permit pursuant to Sec. 12.12.060. Upon alteration of an existing encroachment or work within an existing encroachment, the applicable license or permit shall be obtained pursuant to this Chapter.

#### **12.12.090 Administration and Enforcement**

A. Except as otherwise provided in Chapter 17.45 concerning wireless service facilities, the following shall apply:

1. If a permittee does not successfully complete all work required under a permit issued by the City pursuant to this chapter, the City may take corrective measures and charge the cost of such corrective measures to the permittee. Such costs shall include the actual cost of any work deemed necessary by the City Engineer, plus reasonable administrative and inspection costs and any civil penalties imposed pursuant to this Chapter.

2. Civil Penalties. The City Engineer is hereby authorized to impose and collect civil penalties not to exceed two hundred and fifty dollars (\$250.00) per violation per day if an alleged violator who is served a written notice of violation, identifying one or more specific violations of this chapter or of an approved permit, fails to take the remedial action set forth in the notice of violation or otherwise fails to cure the violations set forth therein within ten (10) days after the notice of violation is served upon the owner or operator (or such longer period as is authorized in writing by the City Engineer, if a cure cannot reasonably be accomplished in ten (10) days), except as provided herein. If the violation is for working or having worked in the public way without first having obtained a permit, or not having proper traffic control in place before work commenced, the City Engineer may issue a notice of violation requiring immediate compliance with this Chapter, may order any and all work to cease immediately and any civil penalty may be imposed from the time of service of the notice.

a. The amount of the penalty shall depend upon the severity of the violation and may be appealed to the City Administrator using the same process as is provided for in subsection b below. The City shall not prosecute any alleged violator nor seek the imposition of criminal penalties with respect to any violation for which a civil penalty was imposed and paid pursuant to this subsection.

b. Notice of a violation, including details of the alleged violation(s) shall be served by personal delivery or by mail to the last known address of the permittee. The notice shall be effective upon the date of mailing or personal delivery. The permittee may file a written protest objecting to the notice within twenty-four (24) hours of the effective date of the notice.

c. If no protest is filed, then the charges shall become due and payable on the date set forth in the notice, which date shall be after the expiration of the time in which to file an appeal.

d. In the event a protest is filed, a hearing on such protest shall be held before the City Administrator or its designee within fifteen (15) days from the date of receipt of the written protest. If any violations

are affirmed upon completion of such hearing, then the charges shall become due and payable ten (10) days after the issuance of the order upon such protest.

3. **Criminal Penalties.** Any person who violates any provision of this Chapter 12.12 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 Section 1.28.010. 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.

4. **Revocation of Permits.**

a. In addition to the remedies above, any permit may be revoked or suspended by the City after notice to the permittee for:

b. Violation of any condition of the permit or of any provision of this section.

c. Violation of any provision of any other ordinance of the City or state law relating to the work.

d. 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.

e. 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.

f. 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.

g. 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 10 days of the order or revocation.

h. 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 10 days after the date of the notice. Permittee shall be obligated to remove the encroachment within 30 days of the effective date of the revocation.

5. The City Engineer 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. Chapter 12.20 is hereby repealed in its entirety.

Section 3. Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance, the intent being that the same are severable.

Section 4. Effective Date. Pursuant to Article XII, Section 3 and Section 5 of the Charter, this Ordinance shall be effective five (5) days after final publication if it is published after adoption or if not so published, five (5) days after its adoption.




Preston R. Troutman, Mayor

08/21/2017 – Introduced, Read by title & Passed on first reading

08/25/2017 – Published

09/05/2017 – Passed & Adopted, on second reading

09/10/2017 – Effective

  
Cathy Rabe, MMC  
City of Cañon City, Colorado