

HAILEY ORDINANCE NO. 993

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING CHAPTER 12.16 OF THE HAILEY MUNICIPAL CODE ENTITLED ENCROACHMENT PERMITS BY AMENDING SECTION 12.16.010 TO ADD DEFINITIONS FOR MAJOR PROJECT AND PLANNING DIRECTOR; BY AMENDING SECTION 12.16.020 TO PROHIBIT FENCES AND EXEMPT STREET SIGNS WITHIN A RIGHT-OF-WAY; BY AMENDING SECTION 12.16.030 TO REQUIRE A DESCRIPTION OF THE ZONING DISTRICT IN THE APPLICATION; BY AMENDING SECTION 12.16.040 TO DELETE STANDARDS AND TO CREATE STANDARDS FOR MAJOR PROJECTS; BY AMENDING SECTION 12.16.050 TO ALLOW THE PLANNING DIRECTOR TO IMPOSE CONDITIONS TO AN ENCROACHMENT PERMIT; BY PROVIDING FOR A REPEALER CLAUSE; BY PROVIDING FOR A SEVERABILITY CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Mayor and the City Council of the City of Hailey recognize the need to have control of the City rights-of-way and easements in order to provide the public with the necessary fire protection, water services, sewer services, snow removal and other emergency and public services;

WHEREAS, the Mayor and the City Council of the City of Hailey wish to amend the encroachment permit chapter of the Hailey Municipal Code to create standards and conditions for the issuance of Encroachment Permits for major projects; and

WHEREAS, the Mayor and City Council find that the amendments to the Encroachment Permit Chapter will further the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 12.16.010 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

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

“City engineer” means the individual designated by the city of Hailey to perform engineering services for the city of Hailey.

“City street superintendent” means the individual designated by the city of Hailey to administer the Hailey street department.

“Easements” means any right created by grant, reservation, agreement, prescription or necessary implication in favor of the city of Hailey to use the land of another, including but not limited to an easement for vehicular access and utilities.

“Encroachment” means any excavation, digging, paving, landscaping, construction of an improvement or placement of personal property within an easement or right-of-way. Encroachments include but are not limited to fences, sidewalks, driveways, mailboxes,

newspaper boxes, utility boxes and poles, trees, shrubs, grass, sprinklers and other landscaping improvements.

“Major project” means any encroachment that is twenty five feet (25’) or more in length or width along the contiguous boundary of a right-of-way or easement.

“Planning director” means the individual designated by the City of Hailey to administer the planning department.

“Public works director” means the individual designated by the city of Hailey to administer the public works department, including the Hailey street department.

“Right-of-way” means any property owned by, or dedicated to, the city of Hailey for the purposes of providing city services and general circulation to the public. Such rights-of-way include, but are not limited, the following: public streets, alleys and sidewalks.

Section 2. Section 12.16.020 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

12.16.020      Actions requiring encroachment permit.

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

B. Fences. Fences shall be prohibited in an easement or right-of-way.

C. Street signs. Notwithstanding the provisions set forth in this section, city approved traffic, street and directional signs are exempt from the provisions of this Chapter and are allowed in an easement or right-of-way.

Section 3. Section 12.16.030 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

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

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

Section 4. Section 12.16.040 of the Hailey Municipal Code is amended by the deletion of the stricken language and by the addition of the underlined language, as follows:

12.16.040 Standards of evaluation. The public works director or his or her designee may issue an encroachment permit if the applicant can establish all of the general standards and all of the applicable specific standards, as follows:

A. General standards.

1. Granting the request shall not contribute to the public expense;
2. Granting the request shall not jeopardize the public health, safety or welfare;
3. Construction shall be conducted in such a way that circulation needs can be reasonably met;
4. Drainage shall not be adversely affected; and
5. Unless otherwise permitted, the right-of-way or easement shall be restored to its original condition.

B. Specific standards.

1. Mailboxes and newspaper boxes.

- a. A mailbox or newspaper box shall be located at least eight feet (8') from the street pavement, as measured between the point on the approved grade directly below the front of the mailbox or newspaper box and the edge of the street pavement and shall be permanently installed in the ground. In the event the application of this specific standard for the location of mailboxes and newspaper boxes increases the hazard to the public health, safety and welfare, the Public Works Director or his or her designee may approve a revised location for a mailbox or newspaper box.
- b. Installation of any mailbox shall receive approval by the United States Postal Service.
- c. Mailboxes or newspaper boxes shall consist of either wood or metal (standard steel or aluminum pipe) post supports of adequate strength. At a maximum, wood post supports shall consist of a post with a 4" diameter or a standard 4" x 4" and metal post supports shall consist of a post with a 2" diameter.
- d. Metal post supports shall not have an anchor plate but may have an anti-twist device no more than 10" below the ground surface.
- e. There shall be only one support for any mailbox or newspaper box.
- f. A support for a mailbox or newspaper box may be embedded no more than 24" into the ground.
- g. A support for a mailbox or newspaper box shall not be set in concrete, either permanently in the ground or as a movable support.
- h. The bottom of the mailbox or newspaper box shall not be less than 41" or more than 48" from the ground surface.
- i. The applicant shall ensure adequate access to the mailbox or newspaper box.

~~2. Other encroachments.~~

- ~~a. Fences. Fences shall not be allowed in an easement or right of way.~~
- ~~b. Street signs. Notwithstanding the provisions set forth in this section, city approved traffic, street and directional signs are allowed within an easement or right of way.~~

2. Major Projects.

- a. Any major project shall comply with all applicable streetscape design standards of the City Standards, as established by the Hailey Subdivision Ordinance, and applicable standards of design review for the zoning district contiguous with the encroachment within the right-of-way or easement, as established by the Hailey Zoning Ordinance.

Section 5. Section 12.16.050 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

12.16.050 Conditions of approval. The public works director or his or her designee and the planning director may impose reasonable conditions to an approved encroachment permit, including but not limited to:

A. Any city infrastructure, such as water valves and manholes, within a right-of-way or easement must remain visible and accessible.

B. The city of Hailey shall assume no responsibility for damage to any encroachment regardless whether the damage is caused by the city of Hailey, or its agents and employees. The applicant and the applicant's successors, heirs and assigns shall indemnify, defend and hold the city of Hailey harmless from any and all claims for personal injury and property damages resulting from the installation and maintenance of an encroachment.

C. If applicable, the property owner adjacent to a mailbox or a newspaper box shall be responsible for clearing snow to allow access.

Section 6. Repealer Clause. All Ordinances or Resolutions or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 7. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 8. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL** and approved by the Mayor this 21<sup>st</sup> day of September, 2007.

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Susan McBryant, Mayor  
City of Hailey

ATTEST:

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Heather Dawson, City Clerk

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