



CITY OF WHITEFISH

Public Works Department
418 E. 2nd Street * PO Box 158
Whitefish, MT 59937
Phone: (406) 863-2460 * Fax: (406) 863-2419

APPLICATION FOR STRUCTURAL (Permanent) ENCROACHMENT PERMIT

\$50 Application Fee Required

Application for Permit to:

(Insert Nature of Permit)

1. Name of Applicant: _____

2. Address of Applicant: _____

3. Telephone number of Applicant: _____

4. Legal Description: Subdivision: _____

Lot(s): _____ Block: _____ Address: _____

5. Property Owner: _____

(Permittee)

6. Property Owner's Address: _____

7. If Permittee is a Corporation, give State of Incorporation and names of President and Secretary:

8. Nature of Permit desired (Give sufficient detail to enable thorough understanding. Attach additional pages as may be necessary. Submit all attachments, blueprints or sketches in duplicate.) : _____

9. Location of installations or structures to be installed: _____

10. For how long a period is the permit desired: _____

REMARKS: _____

Dated at _____, Montana, this _____ day of _____, 20_____.

Approved by: _____

Signature of Property Owner (Permittee)

CITY OF WHITEFISH

REVOCABLE STRUCTURAL ENCROACHMENT PERMIT

This revocable Encroachment Permit is issued with respect to the following facts and subject to the following conditions:

1. The Applicant is _____, referred to as "Applicant," whose place of business is located at _____.

2. Applicant is the sole owner of the real property described as _____, Flathead County, Montana, Assessor No. _____, referred to as "Property."

3. The encroachment is a set of structures appurtenant to a commercial building, consisting of awnings on level one and balconies on level two, as illustrated in the attached Exhibit A, referred to as the "encroachment." The encroachment is located on public right-of-way adjacent to the _____ boundary of the Property.

4. Applicant is the sole owner of the structure which is located on the public right-of-way and will be responsible for any and all activities and expenses necessary to maintain the structure in good repair. Applicant will not install any additional improvements on the public right-of-way, nor may Applicant install or store any hazardous waste or materials on the public right-of-way.

5. This Encroachment Permit shall also be subject to the following conditions:

- a. Balconies shall not extend more than four (4) feet into the public right-of-way.
- b. No glass containers shall be allowed on the balconies.
- c. No containers shall be projected or thrown from the balconies.
- d. The original number of street trees along _____ Avenue shall be subject to approval by the Public Works Director.
- e. All applicable provisions of the 2009 International Fire Code shall apply, including but not limited to fire sprinkler requirements for the awnings and balconies, occupancy load limits, and no grills or propane heaters shall be allowed on the balconies. The terms of this condition do not preclude the Fire Chief or his representative from invoking additional requirements for the structure.
- f. Balconies and awnings shall be structurally independent from and not integrated into the building structure so they can be removed if needed. This condition shall be approved in the design phase of the project, prior to the issuance of a Construction Encroachment Permit and prior to the start of construction.

- g. The applicant and current property owner and their heirs and assigns shall indemnify and hold the City harmless from all liability associated with the construction and use of the balconies. The current and future property owners shall provide the City of Whitefish Public Works Director with an annual Certificate of Insurance naming the City of Whitefish and its officers and employees as "additional Insured" under the insurance policy.
- h. The balconies and awnings shall include gutters or similar features to prevent rainfall and snowmelt from flowing or dripping on to the sidewalk.
- i. Any snow removed from the balconies shall not be stored in the public right-of-way.

6. Applicant agrees to indemnify, defend, and hold the City of Whitefish harmless from any and all claims or liabilities resulting from the installation, maintenance or use of the encroachment and the public right-of-way.

7. This Encroachment Permit is revocable, personal to and of benefit only to the Applicant, and may not be transferred. This Encroachment Permit will not run with the land, and will not automatically benefit Applicant's heirs, assigns, or future owners or transferees of the Property.

8. This Encroachment Permit shall automatically terminate upon the sale or transfer of any of Applicant's interest in the Property.

9. This Encroachment Permit does not constitute a lease of public property, and Applicant shall not by the terms of this permit obtain a leasehold interest in any public right-of-way.

10. The Applicant will keep and maintain the encroachment and public right-of-way in a safe, clean and neat condition and will use the public right-of-way and encroachment only for lawful purposes, and in compliance with all state and local laws and regulations.

11. The Applicant will regularly control and eradicate noxious weeds on the public right-of-way as required by Whitefish City Code §§ 4-3-1 through 4-3-6, as amended.

12. The City will be entitled at all reasonable times to inspect the encroachment and public right-of-way.

13. Upon the City's notice of revocation or termination, the Applicant will remove the encroachment located within the public right-of-way within thirty (30) days of the notice, and will return the public right-of-way to the condition that it was in prior to the construction of the encumbrance, reasonable and ordinary wear excepted. If the Applicant fails to remove any encroachment and restore the right-of-way as provided

herein, the City may choose to remove any encroachment and restore the right-of-way and may record a lien for the costs of removal and restoration against the Property.

14. This Encroachment Permit shall at all times be subject to Whitefish City Code § 7-2-1, as amended.

15. A separate application and issuance of a separate Revocable Construction Encroachment Permit is required prior to the start of construction.

Applicant hereby agrees to the terms and conditions set forth above and in all referenced or attached documents.

DATED: _____
_____ Applicant

GRANT OF PERMIT

The revocable Encroachment Permit set forth above is hereby granted to the Applicant by the City of Whitefish, subject to all of the terms set forth above.

DATED: _____
_____ Dana Smith, City Manager

ORDINANCE NO. 11-18

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AMENDING WHITEFISH CITY CODE AND ESTABLISHING A PROCESS FOR TEMPORARY ENCROACHMENT PERMITS.

BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Title 7 - PUBLIC WAYS AND PROPERTY
Chapter 2 - Streets and Public Ways

(Insertions shown underlined and deletions shown with strikethrough)

SECTION:

- 7-2-1: Encroachments
- 7-2-2: Snow And Ice Removal
- 7-2-3: Skateboards

7-2-1: ENCROACHMENTS:

- A. An "encroachment" is the existence of a privately owned or maintained structure, item of personal property, or excavation in, on, or across city owned property, or over city owned property. The term encroachment includes, but is not limited to, items such as a fence, garage, roof overhang, ditch, culvert, or pipeline in, on, across or over city owned property. A driveway or point of access and any associated culverts onto a city owned street shall not be considered an encroachment for purposes of this section.
- B. It shall be unlawful for an individual or entity to create or maintain an encroachment in, on, across or over city owned property unless a permit authorizing such encroachment has been issued by the city.
- C. **Obstruction of Public Rights of Way.**
 - 1. Except as otherwise provided by city code and regulation, no person shall erect, place or leave any private sign, eaves, marquee or similar other structure, fixture or device, or cause or allow the same to remain or encroach upon any public right of way. (Ord. A-169, 7-7-1969)
 - 2. Awnings, fascia, roofs and other structures that encroach into or over the public way or public property, or that could shed ice, snow or water onto the public way or onto public property, shall be subject to regulation by the city, in order to prevent property damage and injury to members of the public. (Ord. 04-10, 6-21-2004)

D. **Exceptions.** This section shall not be construed to prohibit the following in the WB-3 Downtown Business District:

1. Private advertising signs, eaves, marquees and similar devices overhanging the right of way provided: (Ord. A-169, 7-7-1969)

a. The overhanging device received the required prior approval and authorization appropriate to the device from city architectural review, planning and zoning, including sign regulations, building standards, and fire and safety codes, and any city code or regulation in force or hereafter adopted or established.

b. The lowest part of any such device which extends over any public way shall be at least eight feet (8') above the level of the walk or public way over which it extends and the outside support for such devices, if any, shall be at least two feet (2') back from the curb or street line. Further, the overhanging device may not interfere with access from the street and parking areas. (Ord. A-169, 7-7-1969; amd. 2003 Code)

c. Such device is maintained in compliance with city standards, codes and regulations, kept clean and in good repair, and subject to the control of and as authorized by the director of public works or designee. (Ord. A-169, 7-7-1969)

2. Merchandise, provided:

a. Merchandise may be temporarily displayed on the sidewalk in front of that respective business. Merchandise can only be placed on sidewalks during business hours.

b. Sidewalk displays of merchandise must provide at least six feet (6') of unobstructed clearance, exclusive of any canopy support post, and must be maintained at all times. Further, sidewalk displays may not interfere with access from the street or parking areas. (Ord. A-169, 7-7-1969; amd. Ord. A-180, 8-16-1971; Ord. 94-10, 12-5-1994; 2003 Code)

3. Benches, planters, garbage cans, bike racks and other similar devices upon the right of way, provided:

a. Such similar devices may be temporarily displayed on the sidewalk in front of the respective business and must provide at least six feet (6') of unobstructed clearance and may not interfere with access from street or parking areas.

b. Benches, tables and chairs, planters, garbage cans, bike racks and other fixtures must receive prior written authorization from the director of public works or designee.

c. All such similar devices are maintained in compliance with city standards, codes and regulations, and subject to the control of and as authorized by the director of public works or designee. (Ord. A-169, 7-7-1969; amd. Ord. A-180, 8-16-1971; Ord. 94-10, 12-5-1994)

E. **Construction and Maintenance Work.**

1. Except as otherwise provided by this code, all public right-of-ways, including streets, sidewalks, alleys and paths, and all public places of the city, shall at all times be kept free, clear, and clean of all obstructions, debris, encumbrances, and encroachments which hamper or interfere with the public's free and safe use.

2. No person shall impede, obstruct, or tear up any pavement, sidewalk, or crosswalk, or any part thereof, dig any hole, shaft, ditch, or drain, or dig or remove any sod, earth, stones, sand, or gravel from any street, avenue, alley, and public place without first having obtained a permit from the director of public works or designee. Nor shall any person hinder or obstruct the making or repairing of any public improvement or work ordered or done by, or under the authority of the city.

3. **Permits for construction and maintenance work in right-of-way and public places of the city shall be subject to an application fee established by resolution, and any conditions of the permit.**

F. **Encroachment Permits.**

1. **Construction Encroachment Permit. An individual or entity may apply to the city for an encroachment permit by filling out and submitting an application to the director of public works or designee on forms furnished by the city, and by paying the appropriate fee, as set by resolution. Such fee shall be nonrefundable.**

2. **Structural Encroachment Permit. An individual or entity may apply to the city for a structural encroachment permit by filling out and submitting an application to the city manager on forms furnished by the city, and by paying the appropriate fee, as set by resolution. Such fee shall be nonrefundable.**

3. **The application for a construction or structural encroachment permit must include a drawing of the location and dimensions of the right-of-way area proposed for the encroachment and the arrangement of objects, fixtures, or portions of structures expected to be located on the right-of-way.**

4. The city may act on the application, and may either grant, grant with conditions and limitations on the use of the right-of-way, or deny the application. The applicant shall be notified in writing of the city's determination, mailed to the applicant's address on the application.

5. The permit is a revocable license, personal to the applicant, and may not be transferred.
- G. The determination of the city may be appealed to the city council by a letter or other written notice, signed by the applicant, indicating the applicant's desire to appeal, provided that the city receives such appeal within thirty (30) days of the date that the city manager's determination is mailed. If an unsuccessful applicant appeals a decision by the city, then a hearing shall be scheduled before the city council. After receiving input from the applicant and the public, the city council shall grant, grant with conditions, or deny the application. The decision of the city council shall be final.
- H. The granting of an encroachment permit is a matter of grace, resting solely in the discretion of the city manager or designee, or when applicable, the city council, and a denial of an encroachment permit is not a denial of a right. Whether or not the permit so states, encroachment permits granted pursuant to this section shall be for such term as determined by the city. Permits shall not run with the land, but instead shall automatically terminate upon removal of the encroachment or upon transfer of all interest in the property benefited by the encroachment. Any encroachment permit granted shall be revocable by the city, whether or not the permit so states, after providing the applicant with thirty (30) days' prior written notice of the revocation mailed to the property at the address provided on the application. The property owner may appeal the revocation to the city council provided the city receives such written appeal within thirty (30) days of the date that the city's revocation notice is mailed. If timely appealed, the property owner's appeal will be heard at a council meeting. After receiving input from the property owner and the public, the city council shall grant, grant with conditions or deny the appeal. The decision of the city council shall be final. In the event of revocation of an encroachment permit, no compensation shall be due from the city to the applicant. (Ord. 04-18, 9-20-2004)
- I. Upon receiving a written complaint from any individual or entity with respect to an unlawful encroachment, the city manager or designee shall provide written, mailed notice to the owner of the property benefited by such encroachment of the need to obtain an encroachment permit, or cease and desist from maintaining the encroachment. Such owner shall have fifteen (15) days after the mailing of such notice to eliminate the encroachment or apply for an encroachment permit. Any encroachment which remains in violation of this section may be abated by the city, as determined appropriate by the city manager. The city manager may cause to be issued a civil citation pursuant to the provisions of section 1-4-5 of this code or, alternatively, may direct the city attorney to issue a civil complaint and a summons or initiate a criminal prosecution. A violation of this section shall constitute a misdemeanor subject to the general penalty identified in section 1-4-1 of this code. For each separate incident, the city shall elect to treat the violation as a misdemeanor, as a municipal infraction, or as a matter to be enforced through a civil action. If a violation is repeated, the city may treat the repeat violation differently than it treated the initial violation, and may utilize a

different remedy. Each day that a violation remains after notice to the owner as described above shall constitute a separate violation of this section. (Ord. 09-20, 10-19-2009)

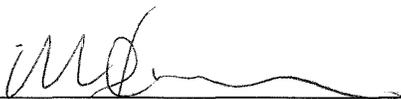
- J. An encroachment existing as of the date of adoption of this section shall not be considered legal. Instead, any encroachment existing as of the date of the adoption of this section shall be considered in violation of this section until a permit authorizing such encroachment is granted.

Section 1: All of the text amendments to the Whitefish City Code, as set forth above, are hereby adopted as text amendments to the Whitefish City Code.

Section 2: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 5TH DAY OF DECEMBER, 2011.



Michael Jenson, Mayor

ATTEST:



Necile Lorang, City Clerk

RESOLUTION NO. 11- 59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, TO ESTABLISH ENCROACHMENT PERMIT FEES.

WHEREAS, the City of Whitefish, a charter city with self-government powers, may establish, alter, maintain and control the public right of ways and City property and establish fees related to the cost of any special service, benefit, or the provision of a service by Sections 7-2-4102(2), 7-1-4123, and 7-1-4124, MCA; and

WHEREAS, the City of Whitefish has the authority to regulate, establish and change fees for City services that are reasonable and related to the cost of providing the service by Section 7-6-4013, MCA; and

WHEREAS, by Ordinance No. 04-18, and Ordinance No. 11-18, the City Council established encroachment permits which require an application and payment of the appropriate fee, but did not establish the appropriate fee; and

WHEREAS, as required by Section 7-6-4013, MCA, public notice on the City's proposed encroachment fee for the use of public right of way and City property, was published on November 23 and November 30, 2011; and

WHEREAS, at a lawfully noticed public hearing on December 5, 2011, after receiving public comment, reviewing staff reports, and having considered the cost of reviewing, processing, and approving applications for encroachment permits, the Whitefish City Council found the proposed encroachment permit fee of \$50.00 plus any costs and expenses for the City, to be reasonable; and

WHEREAS, the permit fee proposed by the City is reasonable and is directly related to the cost of providing services; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the encroachment permit fee.

NOW, THEREFORE, BE IT RESOLVED by the **City Council** of the **City of Whitefish, Montana**, as follows:

Section 1: The fee for an encroachment permit in the amount of \$50.00, plus any costs and expenses to the City, is adopted.

Section 2: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 5TH DAY OF DECEMBER, 2011.



Michael Jensen, Mayor

ATTEST:



Necile Lorang, City Clerk