TOWN OF MINTURN, COLORADO
ORDINANCE NO. 4, SERIES 2009

AN ORDINANCE AMENDING CHAPTER 11 OF THE MINTURN MUNICIPAL CODE BY THE CREATION OF A NEW SECTION AS IT PERTAINS TO ENCROACHMENTS AND OBSTRUCTIONS

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS as follows:

Section 1. Amendment. The Municipal "Code of the Town of Minturn is amended by the addition of a Chapter 11, Article 3, Section 11-3-10 through 11-3-110, as follows:

ARTICLE 3

Encroachments and Obstructions

Sec. 11-3-10. Encroachments and obstructions prohibited.
No encroachment or obstruction whatever, other than that provided by law or by this Article or some other Town ordinance, shall be made or placed upon any street, alley or other public place within the Town. An encroachment includes any building, structure, stand, dumpster, storage pod, portable toilet, cart, fence, sign, barrier, post, hedge or other material or substance. An obstruction includes any thing which prevents passage or renders passage unreasonably inconvenient or hazardous.

Sec. 11-3-20. Application for occupation of street.
(a) Any person desiring to occupy any portion of a street, alley or other public place in connection with the erection, construction, remodeling or demolishing of any building or improvement on property abutting or adjacent thereto shall make written application to the Town Administrator on a form prepared and provided by the Town. The application shall give the following information:
(1) The applicant's name, address and telephone number.
(2) The street, alley or other public place affected and the amount thereof.
(3) The address of the property on which the work is to be done.
(4) The reason for occupying the street.
(5) The amount of time the permit is needed.
(6) The applicant shall agree in making the application to be bound by all of the provisions of this Article.

Sec. 11-3-30. Term of permit; renewal and revocation.
No permit required under this Article shall be issued for a period of more than ninety (90) days, provided that the Town Administrator may renew any such permit for additional ninety (90) day periods upon written application. Any permit issued under this Article may be revoked by the Town Administrator if the holder thereof violates any of the provisions of this Article, if the work allowed by the permit unduly interferes with pedestrian or vehicular traffic, or for any other reason deemed sufficient by the Town Administrator.

Sec. 11-3-40. Surety bond required.
Any person applying for a permit under Sections this Article shall file with the Town an acceptable corporate surety bond conditioned for the faithful performance of the work in accordance with the rules, regulations and ordinances of the Town and the terms of the permit, and indemnifying and saving harmless the Town against and from any and all damages or claims for damages, loss, costs and charges

or expenses that may be brought against it by any person for or on account of injury to persons or property resulting from or occasioned by reason of the occupation of the street, alley or public place.

Sec. 11-3-50. Protection of pedestrian and vehicular traffic.
The holder of any permit issued under this Article shall provide whatever fencing the Town Administrator requires to protect pedestrian and vehicular traffic on the abutting public property. If required, the permit holder shall build and maintain a good and substantial protected walkway around the obstruction. The permit holder shall adequately light and mark the obstruction so as to protect pedestrian and vehicular traffic.

Sec. 11-3-60. Adequate drainage and access to fire hydrants required.
Any person holding a permit issued under this Article shall take such measures as may be required to ensure that adequate drainage is maintained around the obstruction. All fire hydrants shall be kept clear of all building materials, rubbish and other obstructions, and easy access to such hydrants shall be provided and kept clear at all times. Upon completion of the work, the permit holder shall remove all obstructions, materials, debris and rubbish within ten (10) days.

Sec. 11-3-70. Permittee liable in case of nonconformance.
In the event any permit holder fails to do anything required of him or her hereunder, the Town Administrator may cause the same to be done, and the cost of the same shall be charged to the holder of the permit, and such holder shall be liable therefore.

Sec. 11-3-80. Permit application for encroachment.
Any person desiring to erect a building, fence, barrier, post or other obstructions or encroachments upon any street, avenue, alley, sidewalk, highway, public right-of-way or other public ground within the Town shall file a written application for a permit therefore upon a form prepared and provided by the Town. Said application shall state therein the following:
(1) The applicant's name, address and telephone number.
(2) The location of the proposed encroachment, obstruction or structure.
(3) The type of encroachment, obstruction or other structure.
(4) The purpose of the proposed encroachment, obstruction or other structure.
(5) That the applicant agrees to abide by the provisions of this Article.

Sec. 11-3-90. Investigation; fee; revocation of permit.
(a) The application provided for in Section 11-3-80 shall be made to the Town Administrator. The Town Administrator, or his or her authorized agent, shall make an investigation of the information contained in the application and, prior to the issuance of a permit, shall determine that the proposed encroachment, obstruction or other structure does not constitute a nuisance, destroy or impair the use of the right-of-way by the public or constitute a traffic hazard. The encroachment applicant shall provide overwhelming evidence that the requested encroachment cannot be reasonably accommodated on the applicant's own property and outside of the right-of-way. The requested encroachment shall not be the result of a situation created by the applicant or the applicant's agents. The applicant affirmatively shall demonstrate with evidence that a hardship exists necessitating the encroachment and that the hardship was not created by the applicant or his/her agents. No permit shall be issued where the above conditions are found to exist. At the time of issuance of a permit hereunder, the applicant shall pay a fee set by the Town. Any such permit so issued may be revoked by the Town Administrator at any time the conditions above referred to are found to exist, or when it is determined that the property upon which the encroachment, obstruction or structure exists is required for use by the public.

(b) The applicant shall execute an agreement, in a form acceptable to the Town, indemnifying the Town from any and all damages to property or persons resulting from the encroachment.

(c) The applicant shall obtain and provide the Town with a copy of an umbrella liability policy covering the encroachment area and in limits of no less than one million dollars ($1,000,000.00). Such policy shall be renewed by the applicant for the life of the encroachment, and a copy of each new policy shall be furnished to the Town upon the anniversary date of the license to encroach. Failure to provide the policy as required shall automatically nullify the license to encroach without necessity of further notice and shall require the applicant's removal of the encroachment at the applicant's sole expense. Should the applicant fail to remove the encroachment within a reasonable time, the Town may declare the encroachment a public nuisance, undertake removal and attach a lien to the applicant's property for the costs of the removal.

Sec. 11-3-100. Notice to remove encroachment.

(a) Whenever any encroachment, obstruction or structure is made or located contrary to the terms of the permit therefore or without a permit or at such time as the permit is revoked as above provided for, the Town Administrator or his or her authorized agent shall give notice to the person who made or located such encroachment, obstruction or structure or caused or permitted the same to be done, or who owns or controls the premises with which such encroachment, obstruction or structure is connected, to remove such encroachment, obstruction or other structure. The same shall be removed within ten (10) days after notice.

(b) It shall be unlawful for any person to continue any encroachment, obstruction or other structure for a period of ten (10) days after receipt of the notice provided for above.

Sec. 11-3-110. Noncompliance with notice.

(a) In case any notice given under Section 11-3-100 shall not be complied with, the Town Administrator or his or her authorized agent is hereby authorized and empowered to cause the removal of the encroachment, obstruction or structure.

(b) Upon completion of such removal, the Town Administrator or his or her authorized agent shall certify to the Town Clerk the cost of said removal, and the Town Clerk shall thereupon, by personal deliver or certified mail addressed to the owner of the premises with which the obstruction is connected, give notice of such removal and the cost incurred for such work, together with a statement that the cost of the work will be assessed against the owner's lot, tract or parcel of land if such cost is not paid to the Town within thirty (30) days after mailing of such notice.

(c) If such person fails to make payment within thirty (30) days, the Town shall make assessment by resolution against the lot, tract or parcel of land in connection with which the encroachment, obstruction or structure was made, and such assessment shall be certified to the County Treasurer for the purpose of having the same placed upon the tax rolls and collected in the same manner as general taxes are collected.

Sec. 11-3-120. License Agreements.

The Town Council, by ordinance, may enter into a long-term license agreement on public right-of-way or a public easement for encroachments that are permanent in nature, upon a finding that the standards for a revocable permit set forth in this chapter have been met, the indemnification and insurance provisions of MMC 11-3-90 are complied with, and there will be no public need for the permit area during the license period. The Town Council shall add any conditions and terms to the license agreement to ensure that the Town's real property interests are maintained and public improvements are fully restored upon revocation, termination, or expiration of the license agreement.

Section 2. Severability. If any part, section, sub-section, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council for the Town of Minturn, Colorado, hereby declares that it would have passed this Ordinance and each part, section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 3. Penalty. It is unlawful for any person to violate any provision of, or fail to comply with any of the requirements of this Ordinance. Any person who violates any provisions of this Ordinance shall be punished by a fine of not more one thousand dollars or by imprisonment for a period of not more than one (1) year, or by both such fine and imprisonment; provided, no person under the age of eighteen years shall be punished by imprisonment.

Section 4. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THE 15 DAY OF July, 2009. A public hearing on this ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the 5 day of August, 2009, at 7 P.M. in the Minturn Town Center 302 Pine Street, in the Town of Minturn, Colorado.

Hawkeye Flaherty
Mayor

Attest:

TOWN OF MINTURN, COLORADO SEAL 1904

Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS 5 DAY OF August, 2009.

Hawkeye Flaherty

Mayor

Attest:

Town Clerk

Wed, Jul 29, 2009 14:05:47

3770978

Ad Ticket #5

Acct: 1032852
Phone: (970)827-5645
E-Mail: MANAGER@MINTURN.OR
Client:
Caller: Carrie Kendall
Receipt

Name: Town of Minturn
Address: P.O. Box 309

City: MINTURN
State: CO **Zip:** 81645

Ad Name: 3770978D
Editions: 8VD/8VDI/
Start: 07/24/09
Color:
Copyline: 3770978 Ordinance No. 4-2009

Original Id: 0
Class: 0990
Stop: 07/24/09
Issue 1
Rep: Pam Schultz

Lines:	153
Depth:	12.69
Columns:	3
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
Total	436.05
Payment	0.00

Ad shown is not actual print size

Ad ID 3770978 Date 07/29/2009 Time 2:03 PM

TOWN OF MINTURN, COLORADO
ORDINANCE NO. 4, SERIES 2009

AN ORDINANCE AMENDING CHAPTER 11 OF THE MINTURN MUNICIPAL CODE BY THE CREATION OF A NEW SECTION AS IT PERTAINS TO ENCROACHMENTS AND OBSTRUCTIONS

NOW, THEREFORE, THE TOWN OF MINTURN, COLORADO, ORDAINS as follows:

Section 1.
Amendment. The Municipal Code of the Town of Minturn is amended by the addition of a Chapter 11, Article 3, Section 11-3-10 through 11-3-110, as follows:

ARTICLE 3

Encroachments and Obstructions

Sec. 11-3-10. Encroachments and obstructions prohibited.
No encroachment or obstruction whatever, other than that provided by law or by this Article or some other Town ordinance, shall be made or placed upon any street, alley or other public place within the Town. An encroachment includes any building, structure, stand, dumpster, storage pod, portable toilet, coal, fence, sign, barrier, post, hedge or other material or substance. An obstruction includes any thing which prevents passage or renders passage unreasonably inconvenient or hazardous.

Sec. 11-3-20. Application for occupation of street.
(a) Any person desiring to occupy any portion of a street, alley or other public place in connection with the erection, construction, remodeling or demolishing of any building or improvement on property abutting or adjacent thereto shall make written application to the Town Administrator on a form prepared and provided by the Town. The application shall give the following information:
(1) The applicant's name, address and telephone number.
(2) The street, alley or other public place affected and the amount thereof.
(3) The address of the property on which the work is to be done.
(4) The reason for blocking the street.
(5) The amount of time the permit is needed.
(6) The applicant shall agree in making the application to be bound by all of the provisions of this Article.

Sec. 11-3-30. Term of permit; renewal and revocation.
No permit required under this Article shall be issued for a period of more than ninety (90) days, provided that the Town Administrator may renew any such permit for additional ninety (90) day periods upon written application. Any permit issued under this Article may be revoked by the Town Administrator if the holder thereof violates any of the provisions of this Article, if the work allowed by the permit unduly interferes with pedestrian or vehicular traffic, or for any other reason deemed sufficient by the Town Administrator.

Sec. 11-3-40. Surety bond required.
Any person applying for a permit under Sections this Article shall file with the Town an acceptable corporate surety bond conditioned for the faithful performance of the work in accordance with the rules, regulations and ordinances of the Town and the terms of the permit, and indemnifying and saving harmless the Town against and from any and all damages or claims for damages, loss, costs and charges or expenses that may be brought against it by any person for or on account of injury to persons or property resulting from or occasioned by reason of the occupation of the street, alley or public place.

Sec. 11-3-50. Protection of pedestrian and vehicular traffic.
The holder of any permit issued under this Article shall provide whatever fencing the Town Administrator requires to protect pedestrian and vehicular traffic on the abutting public property. If required, the permit holder shall build and maintain a good and substantial protected walkway around the obstruction. The permit holder shall adequately light and mark the obstruction so as to protect pedestrian and vehicular traffic.

Sec. 11-3-60. Adequate drainage and access to fire hydrants required.
Any person holding a permit issued under this Article shall take such measures as may be required to ensure that adequate drainage is maintained around the obstruction. All fire hydrants shall be kept clear of all building materials, rubbish and other obstructions, and easy access to such hydrants shall be provided and kept clear at all times. Upon completion of the work, the permit holder shall remove all obstructions, materials, debris and rubbish within ten (10) days.

Sec. 11-3-70. Permittee liable in case of non-performance.
In the event any permit holder fails to do anything required of him or her hereunder, the Town Administrator may cause the same to be done, and the cost of the same shall be charged to the holder of the permit and such holder shall be liable therefor.

Sec. 11-3-80. Permit application for encroachment.
Any person desiring to erect a building, fence, barrier, post or other obstructions or encroachments upon any street, avenue, alley, sidewalk, highway, public right-of-way or other public ground within the Town shall file a written application for a permit therefore upon a form prepared and provided by the Town. Said application shall state therein the following:
(1) The applicant's name, address and telephone number.
(2) The location of the proposed encroachment, obstruction or structure.
(3) The type of encroachment, obstruction or other structure.
(4) The purpose of the proposed encroachment, obstruction or other structure.
(5) That the applicant agrees to abide by the provisions of this Article.

Sec. 11-3-90. Investigation; issuance or denial of permit.
(a) The application provided for in Section 11-3-80 shall be made to the Town Administrator. The Town Administrator, or his or her authorized agent, shall make an investigation of the information contained in the application and, prior to the issuance of a permit, shall determine that the proposed encroachment, obstruction or other structure does not constitute a nuisance, destroy or impair the use of the right-of-way by the public or constitute a traffic hazard. The encroachment applicant shall provide overwhelming evidence that the requested encroachment cannot be reasonably accommodated on the applicant's own property and outside of the right-of-way. The requested encroachment shall not be the result of a situation created by the applicant or the applicant's agents. The applicant alternatively shall demonstrate with evidence that a hardship exists necessitating the encroachment and that the hardship was not created by the applicant or his/her agents. No permit shall be issued where the above conditions are found to exist. At the time of issuance of a permit hereunder, the applicant shall pay a fee set by the Town. Any such permit so issued may be revoked by the Town Administrator at any time the conditions above referred to are found to exist or when it is determined that the property upon which the encroachment, obstruction or structure exists is required for use by the public.
(b) The applicant shall execute an agreement, in a form acceptable to the Town, indemnifying the Town from any and all damages to property or persons resulting from the encroachment.
(c) The applicant shall obtain and provide the Town with a copy of an umbrella liability policy covering the encroachment area and in limits of no less than one million dollars ($1,000,000.00). Such policy shall be renewed by the applicant for the life of the encroachment and a copy of each new policy shall be furnished to the Town upon the anniversary date of the license to encroach. Failure to provide the policy as required shall automatically nullify the license to encroach without necessity of further notice and shall require the applicant's removal of the encroachment at the applicant's sole expense. Should the applicant fail to remove the encroachment within a reasonable time, the Town may declare the encroachment a public nuisance, undertake its removal and attach a lien to the applicant's property for the costs of the removal.

Sec. 11-3-100. Notice to remove encroachment.
(a) Whenever any encroachment, obstruction or structure is made or located contrary to the terms of the permit here or without a permit or at such time as the permit is revoked as above provided for, the Town Administrator or his or her authorized agent shall give notice to the person who made or located such encroachment, obstruction or structure or caused or permitted the same to be done, or who owns or controls the premises with which such encroachment, obstruction or structure is connected, to remove such encroachment, obstruction or other structure. The same shall be removed within ten (10) days of the notice.
(b) It shall be unlawful for any person to continue any encroachment, obstruction or other structure for a period of ten (10) days after receipt of the notice provided for above.

Sec. 11-3-110. Noncompliance with notice.
(a) In case any notice given under Section 11-3-100 shall not be complied with, the Town Administrator or his or her authorized agent is hereby authorized and empowered to cause the removal of the encroachment, obstruction or structure.
(b) Upon completion of such removal, the Town Administrator or his or her authorized agent shall certify to the Town Clerk the cost of said removal, and the Town Clerk shall thereupon, by personal delivery or certified mail addressed to the owner of the premises with which the obstruction is connected, give notice of such removal and the cost incurred for such work, together with a statement that the cost of the work will be assessed against the owner's lot, tract or parcel of land if such cost is not paid to the Town within thirty (30) days after mailing of such notice.
(c) If such person fails to make payment within thirty (30) days, the Town shall make assessment by resolution against the lot, tract or parcel of land in connection with which the encroachment, obstruction or structure was made, and such assessment shall be certified to the County Treasurer for the purpose of having the same placed upon the tax rolls and collected in the same manner as general taxes are collected.

Sec. 11-3-120. License Agreements.
The Town Council, by ordinance, may enter into a long-term license agreement on public right-of-way or a public easement for encroachments that are permanent in nature, upon a finding that the standards for a revocable permit set forth in this chapter have been met, the indemnification and insurance provisions of MMC 11-2-90 are complied with, and there will be no public need for the license during the lease period. The Town Council shall add any conditions and terms to the license agreement to ensure that the Town's real property interests are maintained and public improvements are fully restored upon revocation, termination, or expiration of the license agreement.

Section 2. Severability. If any part, section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance; and the Town Council of the Town of Minturn, Colorado, hereby declares that it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more parts, sections, sub-sections, sentences, clauses or phrases be declared invalid.

Section 3. Penalty. It is unlawful for any person to violate any provision of, or fail to comply with any of the requirements of this Ordinance. Any person who violates any provision of this Ordinance shall be punished by a fine of not more than one thousand dollars or by imprisonment for a period of not more than one (1) year, or by both such fine and imprisonment; provided, no person under the age of eighteen years shall be punished by imprisonment.

Section 4. The repeal or the repeal and re-enactment of any provision of the Minturn Municipal Code as provided in this ordinance shall not affect any right which has accrued, and duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision repealed or repealed and re-enacted. The repeal of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS _____ DAY OF _____, 2009. A public hearing on this ordinance shall be held at the regular meeting of the Town Council of the Town of Minturn, Colorado, on the _____ day of _____, 2009, at 7 P.M. in the Minturn Town Center 302 Pine Street in the Town of Minturn, Colorado.

_____
Mayor

Attest:

_____
Town Clerk

INTRODUCED, READ BY TITLE, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN FULL THIS ___ DAY OF _____, 2009.

_____
Mayor

Attest:

_____
Town Clerk

Published in the Vail Daily July 24, 2009. (3770978)

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