

ORDINANCE NO.157

AN ORDINANCE FOR THE CITY OF FERNAN LAKE VILLAGE, KOOTENAI COUNTY, IDAHO, PROVIDING THAT UNPERMITTED ENCROACHMENTS ON CITY WAYS OR REAL PROPERTY TO BE ILLEGAL, PROVIDING FOR PERMITS FOR ENCROACHMENTS, PROVIDING FOR STANDARDS IN THE GRANTING OF PERMITS, AND PROVIDING FOR THE ENFORCEMENT, PENALTIES, FEES, SEVERABILITY, AND AN EFFECTIVE DATE.

BE IT ORDAINED by the mayor and city council of the City of Fernan Lake Village, Kootenai County, Idaho:

**Section 1.** It shall be unlawful for any person to make, create, place, maintain, or store an encroachment upon the public streets, alleys, ways, or real property of the City without first having obtained a permit therefore from the City.

**Section 2. Application for Permit; Approval or Denial.**

A. Every person desiring a permit to make, create, place, construct, maintain, or store an encroachment in, under, over, or across a public street, alley, way, or real property of the City shall file with the city clerk an application, in writing, designating the nature of the encroachment, the place of encroachment, the materials constituting the encroachment, the dimensions of such encroachment and the duration for which the applicant seeks the encroachment.

B. Upon the filing of such application for encroachment permit, the city council may grant, deny, or modify such application, and place such conditions upon such encroachment as the city council shall set forth in the permit if the permit be granted in whole or as modified, and shall, if such permit is issued, set forth in writing all terms and conditions thereof which permit shall be signed not only by an authorized representative of the City, but also by the applicant prior to such permit becoming effective.

C. Prior to granting a permit, the city council shall determine whether an encroachment as proposed by the applicant will promote, or be adverse to, the general welfare of the City, whether such encroachment will maintain the peace; whether there is likely to be an adverse effect upon neighboring property owners; whether such encroachment will impede traffic, pedestrians, public utilities, commerce, or the general public in any substantial respect; and whether such encroachment will create a public nuisance or other detriment to the public, including the offenses of smell, sight, sound, or pose a danger to public health or the environment.

D. Any encroachment permit issued by the City shall require the applicant to indemnify and hold harmless the City, its officials, agents, and employees from any action, suit, cause of action, administrative claim, damages, fines, or any other claim of any person or governmental entity growing out of, or in any way pertaining to, such encroachment. In connection therewith, the city council may require the applicant post bond, or provide a policy of liability insurance, and keep same in full force and effect as directed by the City, with the City named as a loss payee.

E. Unless otherwise set forth by the council in the permit issued to the applicant, such permit shall be personal and effective only as to the applicant, and not to the applicant's successors or assigns.

F. Upon expiration of the permit, or upon abandonment of the encroachment, by the applicant, or upon the sale or transfer of the real property by the applicant which real property is adjacent to the encroachment, or upon the failure of the applicant to comply with the conditions contained in the permit, such permit shall terminate and expire and, upon demand of the City, the applicant shall forthwith remove such encroachment and return the land encroached upon to a good state of repair.

G. The council may, by resolution, set a fee for making application for a permit, issuance of permit, and any other related reimbursement of cost incurred by the City. In addition, the City may charge a fee or rent payable by the applicant as prescribed by the city council for maintenance of the encroachment.

H. The city council may, prior to granting, denying, or modifying such permit, conduct a public hearing. The cost of the giving of such notice of public hearing shall be paid by the applicant.

I. The city council may impose such conditions upon the applicant in the granting of such permit as the council deems to be in the best interest of the City and the public, including the duration of such encroachment, the inspection of the encroachment, costs of engineering and surveying, and such other conditions as the council deems necessary or advisable, and further may require the applicant to pay the costs of same..

**Section 3. Violation and Penalty.** Any violation of the provisions of this ordinance shall be deemed a misdemeanor punishable by a fine not exceeding ONE THOUSAND DOLLARS (\$1,000.00) or by imprisonment not exceeding thirty (30) days, or both such fine and imprisonment, for each offense.

**Section 4. Severability.** All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**Section 5. Effective Date.** This ordinance shall be in full force and effect upon its passage, approval and publication in one issue of the Coeur d'Alene Press, the official newspaper of the City of Fernan Lake Village, Idaho.

Passed under suspension of the rules of which a role call vote was taken at a regular meeting of the City Council of the City of Fernan Lake Village, Kootenai County, Idaho, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF FERNAN LAKE VILLAGE

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J. Patrick Acuff, Mayor

ATTEST:

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Sam Newman, City Clerk