

Founded 1876  
Incorporated 1899

# TOWN OF JEROME, ARIZONA

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Respect for the past — Looking to the future

**Celebrating Our 108th Anniversary March 1899-2007**

## ORDINANCE NO. 356

**AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF JEROME, ARIZONA, AMENDING THE JEROME, ARIZONA MUNICIPAL CODE, BY AMENDING CHAPTER 7 BUILDING, BY ADDING NEW ARTICLE 7-10 ENCROACHMENT PERMITS FOR PUBLIC RIGHTS-OF-WAY, RELATING TO THE ESTABLISHMENT OF A PERMIT PROCEDURE FOR ENCROACHMENTS INTO PUBLIC RIGHT-OF-WAY AND ESTABLISHING CRITERIA FOR THE ISSUANCE OF A PERMIT FOR ENCROACHMENTS INTO PUBLIC RIGHT-OF-WAY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES.**

**WHEREAS**, the Town Council finds it is in the best interest of the Town and its residents to adopt regulations related to encroachments into public rights-of-way.

**NOW THEREFORE, BE IT ORDAINED** by the Common Council of the Town of Jerome, Arizona, as follows:

### Section I. In General.

The Town Code of the Town of Jerome, Arizona is hereby amended by amending Chapter 7 Building, by adding new Article 7-10 Encroachment Permits for Public Rights-of-Way, to read as follows (deleted text appears in ~~strikeout~~; new text in ALL CAPS):

### **ARTICLE 7-10 ENCROACHMENT PERMITS FOR PUBLIC RIGHTS-OF-WAY**

#### **SECTION 7-10-1 DEFINITIONS.**

THE FOLLOWING WORDS, TERMS AND PHRASES, WHEN USED IN THIS ARTICLE, SHALL HAVE THE FOLLOWING MEANINGS, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:



For TTY Access, Call The Arizona Relay Service at 1-800-367-8939 And Ask For Town of Jerome at 634-7943



**Jerome Town Hall Located at 600 Clark Street, Jerome Civic Center**

A. *ENCROACHMENT* MEANS AN OBJECT, STRUCTURE OR OTHER THING IN THE PUBLIC RIGHT-OF-WAY OF THE TOWN OR THE USE OF THE PUBLIC RIGHT-OF-WAY FOR PURPOSES OTHER THAN ITS INTENDED USE. "ENCROACHMENT" DOES NOT INCLUDE (i) CONSTRUCTION, RECONSTRUCTION, REPAIR, ALTERATION, OR GRADING OF THE TRAVELED PORTION OF THE RIGHT-OF-WAY OR TO WIDEN OR IMPROVE THE TRAVELED PORTION, AND (ii) THE USE OF THE PUBLIC RIGHT-OF-WAY BY VEHICLES, BICYCLES OR OTHER MEANS OF TRANSPORT GOVERNED BY TITLE 28, ARIZONA REVISED STATUTES.

B. *TRAVELED PORTION OF THE PUBLIC RIGHT-OF-WAY* MEANS THAT PORTION OF A PUBLIC RIGHT-OF-WAY THAT IS INTENDED TO BE USED BY VEHICLES, BICYCLES OR OTHER MEANS OF TRANSPORTATION GOVERNED BY TITLE 28, ARIZONA REVISED STATUTES OR BY PEDESTRIANS. THE "TRAVELED PORTION OF THE PUBLIC RIGHT-OF-WAY" MAY BE DEFINED BY PAVEMENT, GRADED AREAS, OR CURBS ADJACENT TO EACH SIDE OF THE PAVEMENT IN THE PUBLIC RIGHT-OF-WAY.

C. *PUBLIC RIGHT-OF-WAY* MEANS LAND WHICH BY DEED, CONVEYANCE, AGREEMENT, EASEMENT, DEDICATION, USAGE OR PROCESS OF LAW IS RESERVED FOR OR DEDICATED TO THE GENERAL PUBLIC FOR STREET, HIGHWAY, ALLEY, PUBLIC UTILITY, PEDESTRIAN WALKWAY OR LANDSCAPE PURPOSES.

D. *ENCROACHMENT AREA* MEANS THAT PORTION OF THE RIGHT-OF-WAY THAT IS SUBJECT TO AN ENCROACHMENT PERMIT.

#### **SECTION 7-10-2 PERMIT REQUIRED**

ENCROACHMENTS IN A PUBLIC RIGHT-OF-WAY ARE UNLAWFUL WITHOUT FIRST OBTAINING A PERMIT FROM THE TOWN ZONING ADMINISTRATOR IN COMPLIANCE WITH THIS ARTICLE.

#### **SECTION 7-10-3 APPLICATION**

AN APPLICATION FOR A PERMIT SHALL BE FILED WITH THE TOWN ZONING ADMINISTRATOR ON A FORM PROVIDED BY THE TOWN. THE APPLICATION SHALL INCLUDE SUCH INFORMATION AS THE TOWN DEEMS NECESSARY TO

ESTABLISH THE EXACT LOCATION, NATURE, DIMENSIONS, DURATION AND PURPOSE OF THE PROPOSED ENCROACHMENT. THE APPLICATION SHALL INCLUDE:

- A. NAME AND ADDRESS OF THE APPLICANT.
- B. NARRATIVE ATTACHED TO THE APPLICATION SHOWING DETAILS OF THE PROPOSED ENCROACHMENT, INCLUDING THE PROPOSED USE AND LOCATION OF THE ENCROACHMENT AREA AND DESCRIBING THE PLACEMENT AND LOCATION OF OBJECTS AND LANDSCAPING TO BE PLACED IN THE ENCROACHMENT AREA.
- C. PLOT PLANS, MAPS, LEGAL DESCRIPTIONS, SKETCHES, DIAGRAMS OR SIMILAR EXHIBITS TO ILLUSTRATE THE LOCATION, DIMENSIONS, NATURE AND PURPOSE OF THE ENCROACHMENT AND ITS RELATION TO EXISTING AND PROPOSED FACILITIES IN THE RIGHT-OF-WAY.
- D. SUCH OTHER INFORMATION AS THE ZONING ADMINISTRATOR FINDS REASONABLY NECESSARY TO DETERMINE COMPLIANCE WITH TOWN CODES AND CRITERIA FOR ISSUANCE OF ENCROACHMENT PERMITS.
- E. AT LEAST 30 DAYS PRIOR TO ISSUANCE OF THE PERMIT, THE APPLICANT SHALL:
  - 1. POST A SIGN, AS DIRECTED BY THE ZONING ADMINISTRATOR, ON THE PROPOSED ENCROACHMENT AREA INDICATING THE NAME OF THE APPLICANT, PROPOSED ENCROACHMENT AREA, PURPOSE OF THE PROPOSED ENCROACHMENT AND HOW TO MAKE COMMENTS ON THE PROPOSAL.
  - 2. PROVIDE NOTICE OF THE APPLICATION BY FIRST CLASS MAIL, TO ALL OWNERS OF PROPERTY WITHIN A 300 FOOT RADIUS OF THE ENCROACHMENT AREA, AS LISTED IN THE RECORDS OF THE YAVAPAI COUNTY RECORDER.

**SECTION 7-10-4 FEES.**

- A. ENCROACHMENT PERMIT FEES ESTABLISHED BY RESOLUTION OF THE COUNCIL SHALL BE PAID PRIOR TO ISSUANCE OF A PERMIT.

B. THE COUNCIL MAY ESTABLISH AN ANNUAL FEE TO BE PAID IN ADDITION TO THE INITIAL FEE FOR ADMINISTRATION AND OTHER EXPENSES THAT MAY BE INCURRED DUE TO THE ENCROACHMENT.

**SECTION 7-10-5 CONDITIONS OF ENCROACHMENT PERMIT.**

ENCROACHMENT PERMITS SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, WHICH SHALL BE INCLUDED ON THE PERMIT:

A. THE WRITTEN AGREEMENT OF THE PERMITTEE TO MAINTAIN THE ENCROACHMENT AND ENCROACHMENT AREA IN GOOD CONDITION AND TO INDEMNIFY AND HOLD HARMLESS THE TOWN FOR ANY DAMAGES OR INJURIES THAT RESULT FROM OR ARE CAUSED BY THE ENCROACHMENT. THIS INDEMNIFICATION OBLIGATION IS NOT DIMINISHED BY THE FACT THAT THE TOWN ISSUED AN ENCROACHMENT PERMIT AND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE PERMIT.

B. IF A PERMITTEE DAMAGES OR DISTURBS THE TRAVELED PORTION OF ANY PUBLIC RIGHT-OF-WAY OR ANY EXISTING RETAINING WALL WITHOUT PRIOR PERMISSION IN WRITING FROM THE TOWN, THE PERMITTEE SHALL PROMPTLY, AT ITS OWN EXPENSE AND IN A MANNER ACCEPTABLE TO THE TOWN, RESTORE THE SURFACE OR SUBSURFACE OF THE PUBLIC RIGHT-OF-WAY IN AS GOOD A CONDITION AS BEFORE SUCH DAMAGE OR DISTURBANCE. IF SUCH RESTORATION, REPAIR OR REPLACEMENT OF THE SURFACE, SUBSURFACE, OR ANY STRUCTURE LOCATED THEREON, THEREIN, OR THEREUNDER IS NOT COMPLETED WITHIN A REASONABLE TIME, OR SUCH REPAIR OR REPLACEMENT DOES NOT MEET TOWN STANDARDS, THE TOWN SHALL HAVE THE RIGHT TO PERFORM THE NECESSARY RESTORATION, REPAIR, OR REPLACEMENT, EITHER THROUGH ITS OWN FORCES, OR THROUGH A CONTRACTOR, AND THE PERMITTEE AGREES TO REIMBURSE THE TOWN FOR ITS EXPENSE IN SO DOING WITHIN THIRTY DAYS AFTER RECEIPT OF THE INVOICE THEREFOR. PERMITTEE AGREES TO PAY SUCH COSTS WITHIN THIRTY DAYS FROM THE DATE OF ISSUANCE OF AN INVOICE FROM TOWN.

C. A CERTIFICATE OF INSURANCE SHALL BE SUBMITTED TO THE TOWN EVIDENCING INSURANCE COVERAGE IN THE POLICY AMOUNT OF \$1,000,000 EACH OCCURRENCE COMBINED SINGLE LIMIT FOR BODILY INJURY AND PROPERTY DAMAGE LIABILITIES AND \$2,000,000 AGGREGATE AND NAMING THE TOWN AS AN ADDITIONAL INSURED. THE CERTIFICATE ON INSURANCE SHALL BE SUBMITTED TO THE PLANNING DEPARTMENT PRIOR TO ISSUANCE OF THE ENCROACHMENT PERMIT.

D. NO CHANGES SHALL BE MADE IN THE LOCATION, DIMENSIONS, CHARACTER OR DURATION OF THE ENCROACHMENT OR USE SET FORTH IN THE PERMIT EXCEPT UPON WRITTEN AUTHORIZATION OF THE TOWN. ANY SUCH CHANGE MADE WITHOUT PRIOR WRITTEN AUTHORIZATION BY THE TOWN MAY RESULT IN IMMEDIATE REVOCATION OF THE PERMIT WITHOUT REIMBURSEMENT TO THE PERMITTEE OF ANY APPLICATION FEE, PERMIT FEE OR OTHER EXPENSES INCURRED RELATED TO THE ENCROACHMENT OR THE PERMIT.

E. COMPLIANCE WITH THE STANDARDS FOR ENCROACHMENTS SET FORTH IN SECTION 7-10-6.

F. SUCH OTHER CONDITIONS AS THE TOWN DEEMS NECESSARY FOR THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC AND FOR THE PROTECTION OF THE TOWN AND PRESERVATION OF THE TOWN'S RIGHTS-OF-WAY.

**SECTION 7-10-6 STANDARDS FOR ISSUANCE OF PERMIT.**

ALL ENCROACHMENTS SHALL COMPLY WITH THE FOLLOWING STANDARDS:

A. ENCROACHMENT PERMITS SHALL BE ISSUED FOR A ONE-YEAR TERM AND MAY BE RENEWED BY THE ZONING ADMINISTRATOR UPON A DETERMINATION THAT THE CONDITIONS OF THE PERMIT HAVE BEEN COMPLIED WITH, THE TOWN'S PROPERTY HAS NOT BEEN NEGATIVELY IMPACTED BY THE ENCROACHMENT, ALL FEES REQUIRED HAVE BEEN PAID, AND THE ENCROACHMENT AREA IS NOT REQUIRED TO BE USED BY THE TOWN FOR RIGHT-OF-WAY PURPOSES. IF THE ENCROACHMENT IS NOT REMOVED FROM THE RIGHT-OF-WAY WITHIN THE TIME SET FORTH IN THE ENCROACHMENT PERMIT OR ANY EXTENSION THEREOF, THE

TOWN MAY REMOVE THE ENCROACHMENT AND CHARGE THE COST TO THE PERMITTEE.

B. NO ENCROACHMENT SHALL BE PERMITTED OR MAINTAINED WHICH IMPEDES, OBSTRUCTS, OR DENIES THE VEHICULAR, BICYCLE OR PEDESTRIANS THE USE OF THE PUBLIC RIGHT-OF-WAY. NOR SHALL ANY ENCROACHMENT INTERFERE WITH ACCESS TO OR THE OPERATION, MAINTENANCE, REPAIR OF PUBLIC SEWER, WATER OR OTHER FACILITIES WHICH ARE LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY.

C. NO FENCES SHALL BE ALLOWED TO ENCROACH ON THE PUBLIC RIGHT-OF-WAY.

D. UPON REMOVAL OF THE ENCROACHMENT, THE ENCROACHMENT AREA SHALL BE RESTORED TO THE CONDITION IT WAS IN PRIOR TO THE PLACEMENT OF THE ENCROACHMENT IN THE PUBLIC RIGHT-OF-WAY. THE TOWN MAY ELECT TO HAVE THE ENCROACHMENT AREA NOT RETURNED TO ITS ORIGINAL CONDITION. IN SUCH CASE, THE TOWN COUNCIL MAY AUTHORIZE PARTIAL REIMBURSEMENT TO THE PERMITTEE FOR IMPROVEMENTS MADE TO THE ENCROACHMENT BY THE PERMITTEE, BUT ONLY IF THE PERMITTEE COMPLIED WITH ALL TOWN CODES AND OBTAINED ALL REQUIRED INSPECTIONS AND PERMITS BEFORE MAKING SAID IMPROVEMENTS.

E. NO STRUCTURE SHALL BE PERMITTED IN THE PUBLIC RIGHT-OF-WAY UNLESS SAID STRUCTURE IS TEMPORARY AND INTENDED TO BE USED FOR A LIMITED PERIOD OF TIME. ALL SUCH TEMPORARY STRUCTURES SHALL BE APPROVED BY THE TOWN ZONING ADMINISTRATOR AND SHALL CONFORM TO ALL RELEVANT PROVISIONS OF THE TOWN ZONING ORDINANCE AND BUILDING AND SAFETY CODES. AT THE DISCRETION OF THE ZONING ADMINISTRATOR, THE APPLICANT MAY BE REQUIRED TO OBTAIN APPROVAL FROM THE DESIGN REVIEW BOARD PRIOR TO CONSTRUCTION OF A TEMPORARY STRUCTURE OR LANDSCAPING INSTALLATION.

F. ANY MONUMENT OF GRANITE, CONCRETE, IRON OR OTHER LASTING MATERIAL SET FOR THE PURPOSE OF LOCATING OR PRESERVING THE LINES OR ELEVATION OF ANY PUBLIC STREET OR RIGHT-OF-WAY, PROPERTY SUBDIVISION, OR A PRECISE SURVEY POINT OR REFERENCE POINT SHALL NOT BE REMOVED OR DISTURBED WITHOUT FIRST OBTAINING

WRITTEN PERMISSION FROM THE TOWN. REPLACEMENT OF A REMOVED OR DISTURBED MONUMENT SHALL BE AT THE SOLE EXPENSE OF THE PERMITTEE.

**SECTION 7-10-7 ASSIGNMENT.**

ENCROACHMENT PERMITS SHALL BE ISSUED ONLY TO THE PERSON MAKING APPLICATION AND MAY NOT BE ASSIGNED TO ANOTHER PERSON BY THE PERMITTEE. IF ANY PERMITTEE ASSIGNS HIS PERMIT TO ANOTHER, THE PERMIT SHALL BE VOID.

**SECTION 7-10-8 REVOCATION.**

A. AN ENCROACHMENT PERMIT MAY BE REVOKED BY THE TOWN WHEN THE ENCROACHMENT AREA, OR ANY PORTION THEREOF IS NEEDED OR REQUIRED BY THE TOWN IN THE TOWN COUNCIL'S SOLE OPINION.

B. UPON WRITTEN NOTICE FROM THE TOWN, THE PERMITTEE SHALL PROMPTLY REMOVE ALL ENCROACHMENTS FROM THE ENCROACHMENT AREA AND CEASE USING THE ENCROACHMENT AREA FOR PRIVATE PURPOSES. IF THE PERMITTEE FAILS TO RESPOND TO SUCH A REQUEST WITHIN THIRTY DAYS OF THE DATE OF NOTICE, THE TOWN SHALL REMOVE THE ENCROACHMENT AND MAY DISPOSE OF IT AS IT SEES FIT. DESIGN REVIEW BOARD APPROVAL OF REMOVAL OF ENCROACHMENTS MAY BE REQUIRED AT THE DISCRETION OF THE ZONING ADMINISTRATOR.

C. AN ENCROACHMENT PERMIT MAY BE REVOKED IF AT ANY TIME THE TOWN FINDS THAT ENCROACHMENT DOES NOT COMPLY WITH THE TERMS AND CONDITIONS OF THE PERMIT.

**Section II. Providing for Repeal of Conflicting Ordinances.**

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

**Section III. Providing for Severability.**

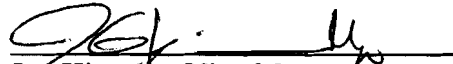
If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to

be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be guilty of a class 1 misdemeanor, punishable by a fine, imprisonment, probation and/or penalties, as set forth in Title 13 of the Arizona Revised Statutes. Each day that a violation continues shall be a separate offense and shall be punishable as an individual offense.

**PASSED AND ADOPTED** by the Common Council of the Town of Jerome, Arizona, this 9<sup>th</sup> day of December, 2008.

  
Jay Kinsella, Vice Mayor

**ATTEST:**

  
Brenda Man-Fletcher, Interim Town Clerk

**APPROVED AS TO FORM:**

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Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.  
Town Attorneys  
By Phyllis L.N. Smiley

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