

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE LIBBY CITY COUNCIL AMENDING LIBBY MUNICIPAL CODE TITLE 12 CHAPTER 32 ENTITLED “BUSINESS ENCROACHING ON PUBLIC WAY” TO ALLOW FOR BROADER CONTROL AND USE OF PUBLIC WAYS.**

**BE IT ORDAINED BY THE LIBBY CITY COUNCIL THAT MUNICIPAL CODE TITLE 12 CHAPTER 32, BE AMENDED AS FOLLOWS:**

**Chapter 12.32**

**BUSINESS ENCROACHING ON PUBLIC WAY**

**SECTION 1**

**12.32.010 Definitions**

- A. Public Way, for purposes of this chapter, refers to any roadway, alley, parking lane, boulevard or sidewalk located within the public right-of way.
- B. Exclusive Use Permit: Any use permitted under 12.32 that is physically barricaded or partitioned from the sidewalk by a fence or other similar means creates an exclusive use of the public right-of-way as defined under this article and requires an exclusive use permit.
- C. Special Event, for purposes of this chapter, refers to any organizational promotion, public celebration or other organized activity that is limited in duration to twenty-four hours or less and is approved by the City Council.

**SECTION 2**

**12.32.020 Prohibition**

- A. Except as provided in subsection C of this section, it is unlawful for any person or persons or corporations to erect, place, or locate, or cause to be erected, placed or located, any building, fence or obstruction of any kind whatsoever, in whole or in part, upon any street, avenue, alley or other public grounds within the City. Any person or persons or corporation who is convicted of a violation of any of the provisions of this chapter, shall be deemed guilty of a separate violation of this chapter for every twenty-four (24) hours the same remains un-removed.
- B. In the interest of the public health, welfare and safety, the City may remove such obstruction and assess the costs of removal to the property owner; or where circumstances permit and the public interest is not greatly jeopardized, notice may be given to the violator for removal of the obstruction.

1. Such notice shall provide the time allowed for removal, include the city administrator's or their designee's address and telephone number for information thereon, briefly describe the nature of the violation and the possible sanctions.

2. The City's costs of removal shall be assessed against the property.

C. Exceptions.

1. Temporary encroachments are allowed within the bounds of the area of the public way that has been closed during a special event, as defined in this section.

2. Pushcarts or any other non-motorized wheeled device may be moved or used on the City sidewalks under the following conditions:

a. No pushcart or other device shall exceed thirty-six (36) inches in width, five (5) feet in length and seven (7) feet in height.

b. No vendor selling from a pushcart or such device shall conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property owners or tenants or create or become a public nuisance, increase traffic or pedestrian congestion, or delay or constitute a hazard to traffic, pedestrians or property or obstruct adequate access for fire or police. These devices shall only operate between 6:00 a.m. and 9:00 p.m. or until sunset, whichever occurs first and may not remain overnight.

3. Statuary as approved by the City Council, located in accordance so as not to unduly interfere with vehicular or pedestrian traffic and access to utilities and abutting property in the immediate vicinity.

4. Public garbage receptacles, permitted sandwich-board signs, permanent public benches, and bicycle racks.

5. Handicap ramps, railing and related improvements which comply with Americans With Disabilities Act requirements. Such improvements shall be approved by the city administrator or their designee prior to construction. Reasonable efforts shall be made to locate handicap ramps outside of the boulevard prior to approval.

6. As permitted under Section 12.32.030, boulevard encroachment permit.

### **SECTION 3**

#### **12.32.030 Boulevard encroachment permit – Issuance conditions.**

A temporary and revocable permit to allow encroachments upon any inside boulevard area or other public grounds within any area of the City may be granted to the owner or lessee of the adjoining property by application to the City Council. Any such Boulevard Encroachment permit must comply with the following conditions:

A. The encroachment as proposed must not be detrimental to the health, safety, or welfare of the public as a whole. All items permitted pursuant to this article shall be placed not less than two feet from the curb, or not less than 18 inches from the curb when

located on side streets that have no adjacent on-street parking, and leave a minimum of five feet of sidewalk aisle clear. Additionally, all encroachments permitted under this article will be built, installed, and maintained in such a manner as to ensure the safety of the public.

B. Payment to the City of a one (1) time application fee to defray administrative costs. The fee shall be established by City Council resolution.

C. Payment to the City of an annual encroachment rental fee based upon the square footage of encroachment. The annual rental fee shall be established by City Council resolution.

D. The City Administrator or designee shall have authority to deny or immediately revoke any such permit wherever the public safety may be jeopardized or other traffic, utility or other concerns are paramount.

E. Tables and chairs. Tables used for the primary purpose of consuming food or beverages must be no more than four feet wide and set in a manner such that respective table and chair settings do not occupy more than five feet of total right-of-way width. Tables and chairs may be located building and/or curbside and shall maintain at all times upon the public sidewalk a minimum five-foot-wide clear aisle for pedestrian movement.

F. Smoking shall not be allowed on any permitted encroachment.

G. Food and alcohol service; exclusive use permit.

a. All sidewalk cafes and taverns having an alcoholic beverage license, including breweries, shall be required to have the staff of the establishments owning such sidewalk cafes serve all food, alcoholic beverages and non-alcoholic beverages in the permitted sidewalk cafe area only. Service of alcoholic beverages in all sidewalk cafes shall be limited to persons seated at tables in the sidewalk cafe site. The serving of alcohol shall be served in glasses and not in paper or plastic products. Any person serving alcohol must have received alcohol server training through a city-approved training program;

b. The alcoholic beverage license issued by the state must include, as part of the licensed premises floor plan, the sidewalk cafe area. The use and operation of the sidewalk cafe area shall occur in accordance with the state-approved alcoholic beverage license and a copy of the license shall be kept on file with the director of public works and city administrator;

c. Each sidewalk cafe serving alcoholic beverages shall be responsible for policing the area of the sidewalk cafe to be sure that customers are of legal drinking age and that alcoholic beverages are not removed from the premises;

d. There shall be no sale of alcohol for consumption at a sidewalk cafe after 9:30 p.m. until normal opening of business each day. In addition, all containers of intoxicating beverages shall be removed from the tables of the sidewalk cafe and the sidewalk cafe area by 10:00 p.m.;

e. The sidewalk cafe area must be adjacent to the licensed building and shall be enclosed, except for ingress and egress entry points, by a temporary fence approved by the city administrator or their designee. The fence shall be:

- (1) Black or of a color that matches the adjacent building;
- (2) At least four feet in height; and
- (3) Shall be of a design and quality that does not permit children or other persons to crawl under the fence;

f. All applications for exclusive use permits must include:

(1) A certificate of liability insurance which names the city and (if exclusive use occurring upon a state-designated primary or urban route) the state as additional insureds. The insurance must provide a minimum coverage of \$750,000.00 for each claim and \$1,500,000.00 for each occurrence. The insurance policy shall automatically renew during the permit period and a copy of the current proof of insurance coverage shall be kept on file with the city administrator at all times. Coverage limits may adjust with permit renewals;

(2) The permit holder shall agree in writing to indemnify, defend, and hold harmless the city and (if exclusive use occurring upon a state-designated primary or urban route) state department of transportation and their employees and agents against all claims, liability, loss, damage, or expense incurred by the city and/or state department of transportation due to any injury to or death of any person or any damage of property caused by or resulting from the activities for which the permit is granted;

(3) A valid city business license corresponding to the use requested.

H. Any violation of the terms of this permit shall be cause for immediate revocation at the time of the violation. If the permit holder chooses to reapply for a new permit, the entire permit process including any charges, must be repeated.

I. Upon notice of revocation of a Boulevard Encroachment permit, the permit holder shall remove or correct any encroachments affected by the revocation within ten (10) days. The City shall not be held liable for any costs as a result of the revocation, removal, or corrections.

J. Once a permit has been revoked, should the responsible party fail to remove or correct the situation, the City shall have the structure removed and the cost of the removal assessed to the permit holder.

## **SECTION 4**

### **12.32.040 Violation – penalty**

Any violation of the provisions of this chapter shall be considered a municipal infraction punishable under the general penalty section of the Libby Municipal Code.

## **SECTION 5**

### Statutory Interpretation and Repealer:

Repealing any and all resolutions, ordinances and sections of the Libby Municipal Code and parts thereof in conflict herewith are hereby repealed.

## **SECTION 6**

### Severability:

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court having competent jurisdiction, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

## **SECTION 7**

### Savings Provision:

This ordinance does not affect the rights or duties that mature, penalties and assessments that were incurred or proceedings that began before the effective date of this ordinance.

## **SECTION 8**

This ordinance will become effective 30 days after the second reading and final adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
LIBBY, MONTANA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014.

\_\_\_\_\_  
Doug Roll, Mayor

ATTEST:

\_\_\_\_\_  
Glena Hook, City Clerk