

RESOLUTION NO. 2013-25

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE "TOWN OF FOUNTAIN HILLS ENCROACHMENT REGULATIONS, APRIL 18, 2013."

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That certain document entitled the "Town of Fountain Hills Encroachment Regulations, April 18, 2013", of which three copies are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, April 18, 2013.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



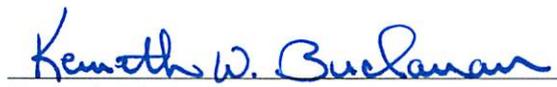
Linda M. Kavanagh, Mayor



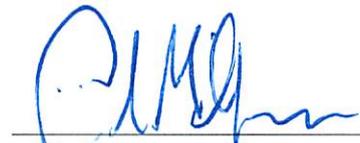
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Kenneth W. Buchanan, Town Manager



Andrew J. McGuire, Town Attorney

TOWN OF FOUNTAIN HILLS
ENCROACHMENT REGULATIONS

April 18, 2013

Chapter 16

STREETS AND SIDEWALKS

Articles:

16-1 ENCROACHMENTS

Article 16-1

ENCROACHMENTS

Sections:

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Section 16-1-1 Definitions

In this chapter unless the context otherwise requires:

- A. “ATSSA” means the American Traffic Safety Services Association.
- B. “Encroach” or “encroachment” means going over, upon or under or using any right-of-way or water course in such manner as to prevent, obstruct or interfere with its normal use, including but not limited to the performance of any of the following acts:
 - 1. Dig up, break, excavate, tunnel, undermine or in any manner break up or disturb the surface of any right-of-way or water course.
 - 2. Erect or maintain any flag, banner, decoration, post, sign, pole, fence, guardrail, wall, loading platform, pipe, conduit, wire or other structure on, over or under the surface of any right-of-way or water course.

3. Place or leave any rubbish, brush, earth or other material of any nature whatsoever in any right-of-way or water course.
 4. Construct, place, maintain on, over or under any right-of-way or water course any pipe, conduit, wire, cable or other fixture.
 5. Move or caused to be moved over the surface of any right-of-way, or over any bridge, viaduct or other structure maintained by the Town any vehicle or combination of vehicles or other object of dimension or weight prohibited by law or having other characteristics capable of damaging such right-of-way, bridge, viaduct or other structure.
 6. Lighting or building a fire in any right-of-way or water course.
 7. Construct, place, plant or maintain any structure, embankment, excavation, tree or other object adjacent to a right-of-way or water course which causes or will cause an encroachment.
 8. Apply paint or other marking materials to any pavement located in any right-of-way.
- C. “MCSO” means the Maricopa County Sheriff’s Office.
- D. “MUTCD” means the Manual on Uniform Traffic Control Devices, most recent edition, as published by the Federal Highway Administration.
- E. “Permittee” means any person who proposes to do work or encroach upon a right-of-way or water course as herein defined and who has been issued a permit for such encroachment by the Town.
- F. “Public street” means the full width of the right-of-way of any road, street, highway, lane or pedestrian walkway used by or for the general public, whether or not the road, street, highway, alley, lane or pedestrian right-of-way has been improved or accepted for maintenance by the Town. “Public street” does not include streets and highways forming part of the state highway system.
- G. “Right-of-way” means land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for, dedicated to or used by the general public or the Town for street, highway, alley or pedestrian walkway purposes.
- H. “Water course” means a channel for the carrying of storm water, including both natural and artificial water courses which have been by deed, conveyance, agreement, easement, dedication, usage or process of law dedicated to the Town or the general public for such purposes.

- I. “Urgent necessity” means damage to any pipe or conduit that poses an immediate threat to life, property, or loss of utility service, the repair of which may not be postponed until an encroachment permit is issued without injury to persons or substantial damage to property.

Section 16-1-2 Standards and Specifications

The Town Engineer may establish such standards and specifications necessary for the proper construction, use and maintenance of encroachments. Any work or use completed under a permit issued under provisions of this article shall conform to such standards and specifications. In instances where alteration or modification will be required, the Town Engineer may issue an advisement letter or a directive pertaining to standards and specifications required for a particular encroachment.

Section 16-1-3 Permit Required

- A. It is unlawful to encroach upon any right-of-way or water course as defined in Section 16-1-1 without first obtaining authorization pursuant to this Article. Any contractor, agency, utility, or any other person performing work within the right-of-way shall obtain an Encroachment Permit from the Town’s Development Services Department prior to entering the right-of-way. An Encroachment Permit will not be issued prior to approval by the Town’s Development Services Department of the required Traffic Control Plan set forth in subsection 16-1-7 below. The Traffic Control Plan shall be on-site and attached to the permit whenever activities are taking place in the right-of-way, and shall be produced upon request by Town staff or law enforcement.
- B. Any construction or work undertaken prior to applying for and securing the required permit shall be immediately terminated upon notification from the Town Engineer or his designee. The work shall not resume until such permit is obtained.

Section 16-1-4 Exceptions to Permit Requirements

- A. Mailboxes.
 - 1. No permit is required for the placement of mailboxes in the right-of-way provided such mailbox conforms to the requirements of this subsection.
 - 2. All mailboxes shall be mounted not more than 36 inches above grade on a pedestal or base measuring no more than 24 inches in width and 24 inches in depth and shall otherwise meet the standards as authorized by the United States Postal Service when installed in the Town right-of-way.
 - 3. The owner of a mailbox installed pursuant to this subsection shall hold harmless the Town from any and all losses of any kind or description that may result from the mailbox being placed in the Town right-of-way.

4. The mailbox shall be placed so as not to present a hazard to persons lawfully using the right-of-way. If, in the opinion of the Town Engineer, any such mailbox is potentially harmful to any public utility or other public improvement located in the right-of-way or constitutes a hazard to the public, the Town Engineer may order its removal.
- B. Landscaping.
1. No permit is required of any owner or tenant of a single family or two family residential structure abutting any right-of-way, and any contractor employed by such owner or tenant to conduct the following activities in that portion of the right-of-way abutting the property and lying between the property line and the curb or traveled portion of the right-of-way:
 - a. Plant shrubs, grass or other decorative plants.
 - b. Place decomposed granite or other, similar decorative rock materials.
 - c. Place decorative lighting.
 - d. Trench to a depth not exceeding 12 inches provided such trenching does not involve cutting any curb, sidewalk or pavement.
 2. All landscaping placed in the right-of-way pursuant to this subsection shall be placed in such a manner as not to present a hazard to the public. If, in the opinion of the Town Engineer, any such landscaping is potentially harmful to any public utility or other public improvement located in the right-of-way or constitutes a hazard to the public, the Town Engineer may order its removal.
- C. No permit or fee is required in order to paint a house number on a curb.
- D. No permit or fee under this article is required for work in any right-of-way in connection with the construction or reconstruction or alteration of any single family or two family residential structure, provided a building permit has been issued by the Town for such construction, reconstruction or alteration and the work in the right-of-way does not involve the cutting or construction of any curb, sidewalk or pavement.
- E. No permit or fee is required for properly permitted participants of the Adopt-A-Street program.
- F. The placement of traffic control markings on pavements and curbs by the Town and the marking of pavements, curbs and sidewalks by utility companies, engineers and surveyors to indicate the location of underground utility lines and monuments in connection with surveying, construction and maintenance work may be done without a permit; however, all other pavement, curb and sidewalk markings require a permit unless otherwise excepted by this article.

- G. No permit is required for a continuing use or maintenance of encroachments lawfully installed by public utilities, for changes therein or thereto where such continuing use, maintenance, changes or additions require no excavation of the right-of-way.

Section 16-1-5 Application for Permit

- A. The Town Engineer shall prescribe and provide a regular form of application for use by Applicants for permits required by this article. The application shall include such information and details as the Town Engineer deems necessary to establish the exact location, nature, dimensions, duration and purpose of the proposed encroachment. For encroachments in the right-of-way, the applicant shall submit a traffic control plan in accordance with Section 16-1-7 below.
- B. When required by the Town Engineer, the application shall be accompanied by maps, sketches, diagrams or similar exhibits. The accompanying materials shall be of the size and in the quantity prescribed by the Town Engineer and of sufficient clarity to illustrate the location, dimensions, nature and purpose of the proposed encroachment and its relation to existing and proposed facilities in the right-of-way or water course.
- C. The applicant shall enclose with, or attach to, the application the written order or consent to any work thereunder which may be required by law to be obtained. A permit shall not be issued until such order of consent is first obtained and evidence thereof is supplied to the Town.
- D. No changes shall be made in the location, dimensions, character or duration of the encroachment as granted by the permit except upon written authorization of the Town Engineer.
- E. Before issuing an encroachment permit that will affect any water line trench or sewer line trench, the Town Engineer may require the applicant to obtain the approval of the Chaparral City Water Company and the Fountain Hills Sanitary District, respectively.
- F. The applicant shall submit documentation with the application describing any potential conflicts identified by Arizona Blue Stake to identify any potential conflicts.
- G. The applicant shall submit the signed permit application, proof of liability insurance, two copies of detailed drawings and traffic control plans, and a certificate of quantities detailing and dimensioning the items being placed in the right-of-way.
- H. A completion date will be indicated on the permit. The contractor shall notify the Town Engineer 48 hours prior to start of construction. The permit may place restrictions on the time of day that work can be performed.

Section 16-1-6 Issuance of Permit

- A. Applications for encroachment permits may be approved, conditionally approved or denied. When the Town Engineer finds that the application is in accordance with the requirements of this article, he shall issue a permit for the encroachment, attaching such conditions as are necessary for the health, safety and welfare of the public and for the protection of the Town. If the Town Engineer finds the application is in conflict with the provisions of this article, the permit shall be denied and the applicant given written reason for the denial. No permit is valid unless signed by the Town Engineer or his designee. Encroachment permits shall be issued only to the person making application therefore and may not be assigned to another person by the permittee. If any permittee assigns his permit to another, the permit shall be void. The contractor directly responsible for the trench backfill and pavement replacement shall obtain and sign for the permit. General contractors may not apply for permits on behalf of subcontractors.
- B. A permit to work in the right-of-way is not authorization to remove pavement, unless the street cut is specified in the permit. Street cuts made without prior approval are subject to having the entire street overlaid to a length specified by the Town Engineer at the contractor's expense.

Section 16-1-7 Traffic Control

- A. Traffic Control Plans. A Traffic Control Plan shall be submitted with each Encroachment Permit application for any activities in the Town's right-of-way. The level of detail of such plan shall be determined by the work being performed and proximity to traffic. The Traffic Control Plan must be computer generated and designed and drawn by a person that is currently certified as a Traffic Control Supervisor by the ATSSA and shall be submitted at least three business days prior to the start of work. Traffic Control Plans shall be submitted directly to the Town, using the established procedure, by the individual or company providing the temporary traffic control services.
- B. Certified Persons. Placement of temporary traffic control devices within the right-of-way shall be completed under the direct, on-site supervision of a person who is currently certified as a Traffic Control Technician by the ATSSA. The Technician shall carry ATSSA-issued proof of certification on his/her person at all times when working within the right-of-way, and shall produce the certification, as well as state-issued photo identification, upon request by Town staff or law enforcement.
- C. Temporary Signing. All temporary signing in place due to the requirements of a Traffic Control Plan shall be a minimum of ASTM Type IV sheeting, a minimum of 36" x 36" (for Warning Series signs), and shall be mounted on spring type stands. All temporary speed limit reducing signs within the right-of-way of Shea Boulevard, Fountain Hills Boulevard, Palisades Boulevard and Saguaro Boulevard shall be a minimum of 36" x 48". All signing for projects considered to be Long-Term Stationary in nature by the MUTCD shall be post mounted.

- D. **Flaggers.** Any civilian flagger working within the Town's right-of-way shall hold current certification as a flagger by the ATSSA, or a pre-approved (by the Town) equivalent, and shall carry proof of certification at all times when working within the right-of-way. Certified flaggers may be required to provide proof of certification to the Town prior to working within the Town's right-of-way. Off-duty P.O.S.T. certified law enforcement officers may be used in lieu of certified flaggers. Civilian flaggers shall not be permitted to control traffic at an intersection at any time; intersection traffic control shall only be conducted by MCSO Deputies.

- E. **Street Closures.** Requests for street closures (excluding special events as determined by the Town) shall be made a minimum of 30 days prior to the date needed. Requests shall be made in writing and shall include a Traffic Control Plan that meets the requirements of the MUTCD and the Town Engineer. Requests will be reviewed and approved based upon need and potential life/safety issues. If a road closure request is granted, the contractor / Applicant will be held to the dates requested and approved by the Town. Should the contractor not complete its work in the agreed-upon time limits, a \$1,500.00 per day fine may be levied for each day the work is not completed and temporary signing remains within the right-of-way, which fine shall be separate from any penalties for violations of this Article. The contractor may be directed on the last day of authorized work to begin work to open the road. The Town reserves the option of taking the necessary steps to open the road should the need arise.

- F. **Off-Duty Law Enforcement Officer.** An uniformed law enforcement officer shall be present as required as a part of an approved traffic control plan or as directed by the Town Engineer or designee. Only MCSO deputies regularly assigned to the Town of Fountain Hills District Seven shall be permitted to be utilized within the Town of Fountain Hills. If a Town of Fountain Hills District Seven MCSO Deputy is not available, only the Town Engineer or designee may authorize the use of a post-certified peace officer from another jurisdiction.

Section 16-1-8 Fees

- A. Permit and inspection fees, in such amounts as approved by the Council by resolution or as part of the Town's annual budget, shall be charged and paid to the Town for each encroachment permit.

- B. If any construction or work is undertaken prior to applying for and securing the required permit and paying the appropriate fees therefor, the work shall be terminated until a permit is granted, and the fee shall be increased to one and one-half times the fees listed in the fee schedule adopted by the Council by resolution or as part of the Town's annual budget.

- C. Permit fees must be paid before the permit can be issued.

Section 16-1-9 Insurance; Holding Town Harmless

- A. The permittee shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to work performed by the permittee under the permit, or arising out of the failure on the permittee's part to perform his work under the permit. If any claim of such liability is made against the Town, its officers or employees, permittee shall defend, indemnify and hold them harmless from such claim, including claims alleging the negligence of the Town, its officers and employees.

- B. No applicant shall be entitled to an encroachment permit unless he shall have filed and maintained on file with the Town a certificate certifying that he or his company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the state, insuring the applicant and the Town and its agents, against loss by reason of injuries to, or death of persons, or damages to property arising out of or related to work performed by the applicant, its agents or employees while performing any work under the permit. Such insurance shall be primary and provide comprehensive general liability coverage, including completed operations coverage, for all liability assumed by the applicant under subsection A of this section, and shall be provided by the permittee in the following minimum amounts: (1) for work in the right-of-way, \$2,000,000.00 combined single limit and (2) for work in a wash, \$500,000.00 combined single limit. The Town Engineer may require higher insurance coverage for any particular encroachment permit when he deems it appropriate.

- C. Failure by the applicant to provide the Town with such a certificate, and failure by the Town to demand the filing by permittee of such a certificate before such a permit is issued, shall not be deemed to waive the permittee's obligation to provide the insurance. Such insurance certificate shall remain in effect and be kept on file with the Town until all work to be performed by the permittee under the permit has been completed. Where an encroachment involves a permanent obstruction, such insurance certificate requirements shall remain in effect until such obstruction is removed. The insurance certificate shall provide that coverage shall not be canceled or expire without providing 30 days' written notice of such action to the Town.

Section 16-1-10 Term of Permit

The permittee shall begin the work authorized by a permit issued pursuant to this article within 90 days from date of issuance, unless a different period is stated in the permit. If the work is not so begun, the permit shall be void. The permittee shall complete the work authorized by the permit within the time specified in the permit. Where an encroachment involves a permanent obstruction, the requirements of this article shall remain in effect until the obstruction is removed.

Section 16-1-11 Display

The permittee shall keep the permit at the site of work or in the cab of a vehicle when movement on a public street is involved. A permit issued for a continued use or maintenance of an encroachment may be kept at the place of business of the permittee or otherwise safeguarded during its term. In all cases the permit must be shown to any authorized representative of the Town on demand.

Section 16-1-12 Supervision and Inspection of Work

The Town Engineer or authorized designee may make inspections necessary in connection with the permits issued under this article to ensure conformance to this article and the terms of the permit. All work done under such permits shall be to the satisfaction of the Town Engineer. The permittee shall notify the Town Engineer 24 hours prior to starting work under a permit and shall also notify the Town Engineer 24 hours prior to any backfill being placed in connection with work under the permit. If the permittee fails to give such notification, the Town Engineer may order the work re-excavated, at the permittee's expense, in order to permit appropriate inspection.

Section 16-1-13 Revocation of Permit

- A. A right-of-way encroachment permit may be revoked by the Town when the right-of-way, or any portion thereof, occupied and used by the permittee is needed or required by the Town, and upon notice from the Town, the permittee shall promptly remove all property belonging to or controlled by him from the right-of-way.
- B. If at any time the Town Engineer finds, in writing, that the delay in the completion of the work authorized by the encroachment permit is due to lack of diligence on the part of the permittee, he may cancel the permit and restore the right-of-way or water course to its former condition. All costs and fees for any restoration plus an administrative fee in such amount as approved by the Council by resolution or as part of the Town's annual budget shall be charged to the permittee. If a permittee fails to pay any fees charged in connection with a permit under this article within 15 days of receipt of notice such payment is due, the Town Engineer may revoke all of the permittee's existing permits and may deny any further permits to the permittee until payment is received for all fees due. The determination of the Town Engineer shall be final.
- C. Unless specifically modified in the encroachment permit conditions, failure to perform the following shall constitute a lack of diligence on the part of the permittee:
 - 1. Stop the seep or flow of a liquid onto or upon a street within five days of receipt of notice from the Town.
 - 2. Provide and maintain required barricading and other necessary traffic control measures, as determined by the Town Engineer, for the entire period of the encroachment.

3. Close or backfill an excavated area where no work is occurring for a period of three consecutive days. The Town Engineer may require the permittee to backfill daily, install plates or take other such actions the engineer deems necessary for traffic safety, access, circulation or proper drainage.
4. Provide a temporary pavement surface (cold patch) within three days after backfilling, adequately maintain the temporary pavement surface and install the permanent pavement surface within 30 days after backfilling.
5. Restore improved landscape areas within seven days after backfilling.
6. Restore native desert areas by plantings, spriggings and seeding within 60 days after backfilling.
7. Remove steel plates within three days after placement on roadways with a posted speed limit of 35 mph or higher. Remove steel plates within 20 days for any other roadway unless such steel plates are installed flush with the top of the surrounding asphalt.

D. Any permit holder that has been determined by the Town Engineer to have shown a lack of diligence, as set forth in subsection C of this section, shall be in violation of this Code and shall be subject to the penalties set forth in Article 18.

Section 16-1-14 Manner of Giving Notice

All notices required by this article to be given by the permittees to the Town shall be given at the office of the Town Engineer. Any notice to be given to a permittee shall be deemed to have been received by him three days after mailing by certified mail to the address shown on the permit, or when it has been referred to in or attached to any permit received by him.

Section 16-1-15 Appeal

Any person aggrieved by the action of the Town Engineer under this article may appeal such decision to the Town Manager. The aggrieved person shall file a notice of appeal, in writing, with the Town Manager within seven days after final action by the Town Engineer. The Town Manager may affirm, modify or reverse the action of the Town Engineer from which the appeal is taken. Any person aggrieved by the decision of the Town Manager may further appeal such decision to the Town Council. The aggrieved person shall file a notice of appeal, in writing, with the Town Clerk within seven days after final decision by the Town Manager. The Town Council may affirm, modify or reverse the action of the Town Manager for which the appeal is taken.

Section 16-1-16 Emergency Work

This article does not prevent any person from making excavations necessary for a preservation of life or property when an urgent necessity arises while the Town offices are closed. A person making an emergency use or encroachment on a public street shall apply for a permit related to the urgent necessity within one calendar day after the Town offices are open. All emergency work taking place within the pavement section requiring lane restrictions or closures shall meet the requirements of the MUTCD.

Section 16-1-17 Excavations and Newly Paved Streets

- A. No excavation shall be permitted in a newly paved, resurfaced or sealed public street for the following period following completion of such paving, resurfacing or sealing:
 - 1. Construction or reconstruction of a structural section, four years.
 - 2. Surfacing, resurfacing or sealing of an existing structural section, two years.
- B. In the event of an emergency, the above periods may be waived by the Town Engineer.
- C. Any person who causes excavation in violation of subsection A of this Section shall be subject to a base fee per excavation plus a fee per lineal foot of pavement replacement. The base fee per excavation and fee per lineal foot of pavement replacement described in this subsection shall be in such amounts as approved by the Council by resolution or as part of the Town's annual budget.

Section 16-1-18 Backfill and Pavement Replacement Standards

- A. Pavement shall be removed such that the edge of the pavement cut is outside of the wheel path.
- B. Backfill shall be in accordance with Maricopa Association of Governments Standard Detail 200, or Town of Fountain Hills Detail FH 200-1 or as specified by the Town Engineer in the permit. Backfill shall begin immediately following completion and inspection of the utility work.
- C. Following completion of backfill, the trench shall be steel-plated or temporarily patched and the street opened to traffic. A permanent patch shall be placed within three working days.
- D. The final pavement replacement shall be flush with the existing edges of the trench. The grade from one end of the trench to the other shall be smooth and straight with no more than one-quarter of an inch plus or minus deviation, but not both, measured in the direction of traffic flow.

- E. Pavement replacement shall match the existing street. The permit may require an overlay if the existing pavement surface is less than one year old.
- F. Where concrete slurry is used for backfill it shall be a one sack mix and paving may not begin until the moisture in the slurry has dissipated.

Section 16-1-19 Inspection

All work must be inspected and approved by the Town Engineer. The applicant shall guarantee all permitted work against defects in materials and quality for two years from the date it is accepted by the Town Engineer.

Section 16-1-20 Compliance With Other Laws

A permittee shall keep himself adequately informed of all state and federal laws and local ordinances and regulations which in any manner affect the permit. The applicant shall at all times comply with and shall cause all his agents and employees to comply with all such laws, ordinances, regulations, decisions, court and similar authoritative orders.

Section 16-1-21 Cost of Work

All work authorized by an encroachment permit shall be done at the sole cost and expense of the permittee, and shall be done at such time and in such manner as to cause the least inconvenience to the traveling public and as directed by the Town Engineer.

Section 16-1-22 Article Not Applicable to Town Work

The provisions of this article shall not be applicable to any work done in any right-of-way or water course under the direction of competent Town authority by employees of the Town, or by any contractor of the Town performing work for and on behalf of the Town necessitating openings or excavations in streets.

Section 16-1-23 Liability of Town

This article shall not be construed as imposing upon the Town or any official or employee thereof any liability or responsibility for damages to any person injured by performance of any work done pursuant to an encroachment permit issued hereunder; nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any work done pursuant to such a permit.