

ORDINANCE 1284

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, REPEALING SECTIONS 12.04.210 AND 12.04.260, AND CREATING NEW CHAPTERS 12.05 AND 12.06 OF THE PAYETTE MUNICIPAL CODE TO PROVIDE PROCEDURES FOR ISSUING ENCROACHMENT PERMITS AND TO ISSUE A SPECIAL EVENTS PERMITS; SETTING AN EFFECTIVE DATE; ESTABLISHING SEVERABILITY; ESTABLISHING A REPEALER; ESTABLISHING A PENALTY.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF PAYETTE, IDAHO;

Section 1. Section 12.04.210 of the Payette Municipal Code is hereby repealed and a new Chapter 12.05 is created to read as follows:

~~12.04.210 Obstructions—Permission Required—Violation Declared
Misdemeanor—Process Of Obtaining A Permit:~~

~~A. Any person who obstructs or causes to be obstructed any of the streets, alleys or other City rights-of-way, without having first obtained a permit from the City, shall be guilty of a misdemeanor.~~

~~B. To obtain a temporary street closure permit, ninety (90) days before a street closure, a person shall file an application with the Director of the Department of Public Safety. The application shall contain the following information: 1) the reason for the request; 2) the date and time of closure; 3) the date and time of reopening; 4) the type of barricades or devices which will be used to effect the closure; 5) the exact location where barricades or other closing devices will be placed; 6) the location of the event requiring closure; 7) a diagram of the area of the requested closure; 8) a statement indicating if police services will be needed for the event.~~

~~C. Provide to the Director of the Department of Public Safety proof of liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) of coverage, which shows that the City is a named insured. This shall be provided no less than five (5) working days prior to the event.~~

~~D. Within thirty (30) days of submitting the application, the applicant shall provide copies of the application to all households within five hundred feet (500') of the proposed closure, shall inform those households in writing of their right to object within thirty (30) days to the closure and shall provide proof of notice to the Director that the required notice has been given. The Director shall give the persons entitled to notice thirty (30) days to file objections to the requested closure. In the event no objections are received, immediately after the thirty (30) days have lapsed, the Director shall determine if the request should be granted or denied. In the event objections are received by the department head, the Director shall schedule a public forum where proponents and opponents of the request may appear and present information regarding the application. Immediately after the public presentations, the Director shall make a decision regarding the closure. After the decision any effected party may file an appeal with the City Council. The Council shall set the matter for a hearing at its next regularly scheduled meeting. The Council shall make a decision either reversing or upholding the decision of~~

~~the Director. Either the Director or the Council may impose such conditions as it may deem appropriate to protect the interests of the applicant as well as the neighbors effected by the application.~~

~~E. Sidewalks shall remain so unobstructed that any pedestrian or disabled person shall be allowed to move freely through and beyond the activity~~

CHAPTER 12.05

12.05 Encroachment Permits

Sections:

- 12.05.010 Definitions.
- 12.05.020 Actions requiring permit.
- 12.05.030 Permit application.
- 12.05.040 Action on permit application.
- 12.05.050 City standards.
- 12.05.060 Fees.
- 12.05.070 Bonding required.
- 12.05.080 Appeals.
- 12.05.090 Prohibited acts.
- 12.05.100 Violation—Penalties and remedies.

12.05.010 Definitions. For purposes of this chapter, the words and phrases defined in this section apply:

“City engineer” means the individual designated by the City of Payette to perform engineering services for the City of Payette.

“City street superintendent” means the individual designated by the City of Payette to administer the Payette street department.

“Easements” means any right created by grant, reservation, agreement, prescription or necessary implication in favor of the City of Payette to use the land of another, including but not limited to an easement for vehicular access and utilities.

“Encroachment” means any excavation, digging, paving, landscaping, construction of an improvement or placement of personal property within an easement or right-of-way. Encroachments include but are not limited to fences, sidewalks, driveways, mailboxes, newspaper boxes, utility boxes and poles, trees, shrubs, grass, sprinklers and other landscaping improvements.

“Public works director” means the individual designated by the City of Payette to administer the public works department, including the Payette street department.

“Right-of-way” means any property owned by, or dedicated to, the City of Payette for the purposes of providing city services and general circulation to the public. Such rights-of-way include, but are not limited, the following: public streets, alleys and sidewalks.

12.05.020 Actions requiring encroachment permit.

It shall be unlawful for any person or entity other than the city or its contractors or agents, or that person's or entity's contractor, subcontractor, paving company, landscaper or agent, to excavate, dig, pave, landscape or construct improvements, within or on any right-of-way or easement or make any alterations thereto without first obtaining an encroachment permit from the City of Payette. The issuance of an encroachment permit does not establish any property or easement rights to the

permittee. An encroachment permit is merely a license and is revocable by the City of Payette at any time for any reason.

12.05.030 Encroachment permit application.

The party applying for a permit shall provide, at a minimum, the following information to the City of Payette at least three (3) business days prior to any action being taken on the permit application:

- A. Name, phone number and address of applicant;
- B. Location of proposed encroachment;
- C. Need or reason for encroachment;
- D. Description of activity within the right-of-way or easement, including a plan;
- E. Time period in which the proposed encroachment will take place;
- F. Contractor performing the work if other than the applicant;
- G. Appropriate application processing fee;
- H. Any additional information requested by the city.

12.05.040 Action on encroachment permit application.

The public works director or his or her designee may issue an encroachment permit only after determining the following:

- A. Granting the request will not contribute to the public expense;
- B. Granting the request will not jeopardize the public health, safety or welfare;
- C. Construction will be conducted in such a way that circulation needs can reasonably be met;
- D. Drainage systems will not be adversely affected;
- E. Following construction, the affected right-of-way or easement will be restored to its original condition.

The public works director or his or her designee may impose reasonable conditions to an approved encroachment permit.

12.04.350 City standards.

All encroachments shall be constructed in accordance with any applicable city standards.

12.05.060 Fees.

A. Any application for an encroachment permit shall be accompanied by a non-refundable application fee set by resolution by the Payette city council. A review of an application for an encroachment permit is not required until the appropriate application fee has been submitted.

B. The bonding requirements set forth in Section 12.05.080 shall also apply as set forth therein.

C. Upon approval of an application for an encroachment permit and at the time of the issuance of the encroachment permit, the applicant shall pay an inspection fee set by resolution by the Payette city council.

D. In the event a person or entity is required to file an application for an encroachment permit pursuant to Section 12.05.100(D), the applicant shall, at the time of the filing an application for an encroachment permit, pay a non-refundable discovery/notification fee set by resolution by the Payette city council.

12.05.070 Bonding required.

All commercial enterprises, including paving companies, general contractors, subcontractors and landscapers, submitting an application or performing work under the

provisions of this chapter shall also provide or have on file with the city clerk a current bond in the minimum amount of two thousand dollars (\$2,000.00). The minimum amount of the bond required in this section may be adjusted by the city engineer, depending upon the size and nature of the project. In lieu of a bond, cash may be substituted for a bond.

12.05.080 Appeals. Any applicant may appeal a decision or action made in connection with this chapter to the Payette city council within fifteen (15) days from the date of the decision or action. The appeal shall specifically state the decision appealed and the reasons for the appeal. If no appeal is filed within the fifteen (15) day period, the decision or action shall be deemed final.

12.05.090 Prohibited acts.

A. No person or entity shall water or irrigate property in such a manner that water is sprayed upon pavement within a right-of-way or easement.

B. Loading, unloading or operation of track-type vehicles on pavement areas in a right-of-way or easement is prohibited.

12.05.100 Violation—Penalties and remedies.

A. Any violation of this Ordinance shall be a misdemeanor punishable by fine and/or imprisonment up to but not exceeding the maximum penalties set forth in Idaho Code § 50-302, as amended. Each day during which a violation takes place or is allowed to continue shall constitute a separate violation of this chapter.

B. Civil remedies. In addition to any remedy available to the city, the city may maintain an action for an injunction and/or damages pursuant to Idaho law for any violation of this chapter. If the city is determined to be the prevailing party in any such action, the city shall be entitled to recover from the other party or parties all attorney's fees incurred in connection with such action.

C. Removal of encroachment. In addition to any remedy available to the city, the city may remove any encroachment with or without notice to the person or entity responsible for encroachment, and may seek damages for the reimbursement of costs of the removal of the encroachment.

D. Requirement of an encroachment permit for a previously installed encroachment. In the event a person or entity violates the provisions of this chapter by failing to obtain an encroachment permit, the City may, in addition to any other remedy available to the city, require the person or entity to file an application for an encroachment permit. In the event the city denies the encroachment permit application for such an encroachment, the city may then pursue any of its other remedies described in this Section. In the event an encroachment will require an inspection after an approval of an encroachment permit, the inspection fee shall be paid as required by Section 12.05.060(C). But if an encroachment will not require an inspection after an approval of an encroachment permit, the inspection fee established by Section 12.05.060(C) is not required to be paid.

Section 2. Section 12.04.260 of the Payette Municipal Code is hereby repealed and a new Chapter 12.06 is hereby created to read as follows:

~~12.04.260 Construction In City Streets: Any person, before cutting, scoring, damaging, boring under, crossing or performing any construction activity which impacts, affects, cuts or defaces a City street, curb, gutter or sidewalk, shall first notify the City~~

~~Clerk and obtain a permit from the Clerk authorizing such action.~~

~~A. There shall be a charge for the permit as established from time to time by resolution of the Council.~~

~~B. Any person who shall cut, damage, score or bore under or through a street or perform other construction activity which impacts, affects, cuts or defaces a City street shall restore the street in accordance with City specifications.~~

~~C. Any person who shall cut, damage, score or bore under the street or perform other construction activity which impacts, affects, cuts or defaces the street without the necessary permit shall be guilty of a misdemeanor and punished in accordance with misdemeanor statutes of the State.~~

Chapter 12.06 SPECIAL EVENTS

Sections:

12.06.010 Definitions.

12.06.020 Special events permit required.

12.06.030 Exceptions.

12.06.040 Standards for issuance of a special events permit.

12.06.050 Right of appeal.

12.06.060 Enforcement.

12.06.070 Definitions.

12.06.010 Definitions. For the purposes of this chapter, the words and phrases defined in this section apply:

"Applicant" means the person, or group of people, who is or are the organizer(s) and with whom the responsibility for conduct of the special event lies. The applicant signs the special event permit application and all other documents relevant to the special event.

"City clerk" means the city clerk of the City of Payette, Idaho, or his/her designee acting as the permitting officer.

"Fees" means charges assessed by the city for permitting, staffing, equipment use/rental, property use/rental, clean up, inspections involving the use of public property, public employees or public equipment assessed to a special event and established within the special event permitting process.

"Public street or place," as used in this chapter, means any sidewalk, street, alley, highway, public right-of-way, park, parking lot, or other place owned in fee by the city, or in, on or over which an easement exists in the name of or held by the city, or which exists for the benefit and use of the public.

"Special Event" as used in this chapter means any event held on public or private property to which the general public is invited with or without charge and which creates significant public impact through:

- (1) the attraction of crowds of over 200 people;
- (2) the necessity for street closures or use of other public property;
- (3) the required use of city equipment and/or services; or
- (4) could reasonably be interpreted to cause significant public impact via

disturbance, crowd, traffic/parking or disruption of the normal routine of the community or affected neighborhood.

"Street closure" means the deliberate or incidental blockage of all, or a portion of, a public street, a right of way or a city-owned parking facility to prohibit the flow of traffic or access of vehicles.

12.06.020 Special events permit required.

It shall be unlawful for any person to conduct a special event, with or without charge for admission, on public or private property, or to cause a street closure, without first applying for and being granted a special event permit for the specific special event or street closure. All permits issued pursuant to this chapter are nontransferable and expire at the completion of the given special event.

12.06.030 Exceptions.

Any governmental taxing district sponsoring or engaging in an activity or event upon its own property or the property of another governmental taxing district, which activity or event is customary and incidental to the primary purpose of that governmental entity is exempt from the requirements of this Chapter. The use of a governmental taxing district's property by a non-governmental entity does not qualify as an exception under this section.

12.06.040 Standards for issuance of a special events permit.

A. A special events permit shall be issued only to applicants when the following findings can be made:

1. The conduct of the special event will not substantially interrupt the safe and orderly movement of traffic contiguous to its venue;
2. The conduct of the special event will not require the diversion of so great a number of police officers to properly police the venue and the area contiguous thereto as to prevent normal police protection to the city;
3. The conduct of the special event will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than that to be occupied by the proposed special event and the area contiguous thereto;
4. The concentration of persons and vehicles at assembly points of the special event will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas;
5. The conduct of the special event will not interfere with the movement of firefighting equipment en route to a fire;
6. The conduct of the special event is not reasonably likely to cause injury to persons or property, or to provoke disorderly conduct or create a disturbance; and
7. The event is in the best interest of the public.

B. A special events permit shall be issued only to applicants who meet the following conditions:

1. The event shall not be of duration longer than four (4) days, and the organizer shall have applied for no more than eight (8) events in a calendar year. Any application for exception to these time limitations shall be submitted to the

city council. The city council shall consider materials provided by the applicant demonstrating that a significant public interest exists to warrant the extension of time. The city council shall make findings pertaining to the extension of time and to the findings set forth in 12.06.040 (A) and (B) of the Payette Municipal Code.

2. The city clerk shall, in his/her discretion, find that adequate steps are provided for protection of public property, including proof of the applicant having obtained general liability insurance coverage in the minimum amount of one million dollars (\$1,000,000.00) covering the city as an additional insured, and compliance with administratively adopted requirements for providing additional trash receptacles and/or dumpster, portable toilets, and security measures, which requirement shall depend upon the nature and size of the event;

3. The applicant has agreed to indemnify, defend and hold harmless the city and its officers and employees from any and all demands, claims or liability of any nature, caused by or arising out of, or connected with the special event;

4. The applicant has paid fees as set by resolution of the city council for special events, including per diem fees and security deposits;

5. The applicant has made no false statements or misrepresentations upon any present or former application for special events permit;

6. The applicant has not violated any provisions of city, state, or federal laws, including the provisions of this Chapter, in conducting any previous special event;

7. The special event is not for an unlawful purpose; and

8. The special event permit is subject to other applicable city, state, federal or other governmental rules, regulations or laws.

12.06.050 Right of appeal. An appeal from any decision of any city official or employee made in the administration or enforcement of this chapter may be made to the city council by filing a written appeal and fee with the city clerk within fifteen days following the date of the action or decision giving rise to the appeal. Upon hearing the appeal, the city council shall consider the record, the decision of the city officer, and the written appeal together with oral presentation by the appellant, the city officer or administrator, and the applicant. The city council may affirm, reverse, or modify the decision of the city clerk. The city council shall not substitute its judgment for that of the city clerk as to the weight of the evidence on questions of fact. The council shall affirm the city clerk's decision unless the city council finds the decision is a) clearly erroneous, b) arbitrary, capricious or an abuse of discretion, or c) not supported by substantial evidence in the record as a whole. The city clerk shall transmit a copy of the city council's decision and findings to the appellant, the applicant and any other who has requested a copy in writing. The fee for processing the appeal shall be set by resolution of the city council.

12.06.060 Enforcement.

A. Criminal liability. Any violation of this Ordinance shall be a misdemeanor punishable by fine and/or imprisonment up to but not exceeding the maximum penalties set forth in Idaho Code § 50-302, as amended. Each day

a violation continues shall be considered a separate offense, punishable as described in this section.

B. Civil liability. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of the provisions stated in this chapter, to prevent any violation of these regulations, to recover damages, to restrain, correct or abate a violation 12.06.060 and to prevent illegal occupancy of public property. These remedies shall be in addition to the penalties described above.

Section 3. This Ordinance may be published in summary form allowed by Idaho Code.

Section 4. This Ordinance shall be in full force and effect immediately upon passage and publication as required by the laws of the State of Idaho.

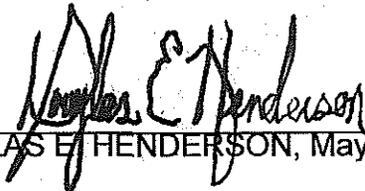
Section 5. Any ordinances or resolutions which are in conflict with this Ordinance are hereby repealed, but only insofar as the conflict exists.

Section 6. If any portion of this Ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the Ordinance shall be applied to effectuate the purposes of this Ordinance.

Section 7. Any violation of this Ordinance shall be a misdemeanor punishable by fine and/or imprisonment up to but not exceeding the maximum penalties set forth in Idaho Code § 50-302, as amended.

PASSED and APPROVED by the Mayor and City Council of the City of Payette, Idaho this 4th day of SEPTEMBER, 2007.

CITY OF PAYETTE, IDAHO

by 
DOUGLAS E. HENDERSON, Mayor

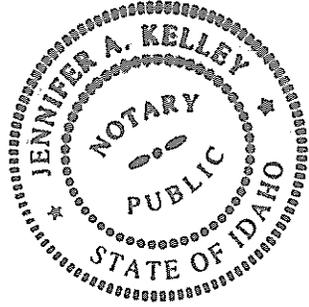
ATTEST:


Mary Cordova, City Clerk

State of Idaho)
) ss.
County of Payette)

On this 4th day of September, in the year of 2007, before me Jennifer A.

Kelley, a notary public, personally appeared MARY CORDOVA and DOUGLAS E. HENDERSON, personally known to me to be the persons whose name is subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the City of Payette in their official capacities as Mayor and City Clerk.



Jennifer A. Kelley
Notary Public for Idaho
Residing at: Payette Idaho
Commission expires: 12-11-2008

SUMMARY OF ORDINANCE 1284

Ordinance 1284 is an ordinance of the City Of Payette, Idaho, adopted September 4, 2007. The ordinance may be descriptively known as the encroachment permits and special events ordinance. Ordinance 1284 creates new chapters 12.05 and 12.06 of the Payette Municipal Code to provide procedures for issuing encroachment permits and to issue special events permits. The Ordinance repeals the existing sections 12.04.210 and 12.04.260. The ordinance sets out its purpose, applicability and defines the application process. The Ordinance provides a severability clause, provides for publication by summary, sets an effective date, establishes a repealer and establishes a penalty in the event of a violation.

I, Bert L. Osborn, City Attorney for the City of Payette Idaho, certify that I am familiar with Ordinance 1284 of the City of Payette, Idaho and with the foregoing summary. The summary is true and complete and provides adequate notice to the public. The full text is on file with the Payette City Clerk and shall promptly be made available to any citizen upon request.

Dated this 10th day of September, 2007.



Bert L. Osborn