

ORDINANCE NO. 1-77
AMENDED April 7, 2009

AN ORDINANCE DEFINING AND REGULATING ENCROACHMENTS UPON PUBLIC STREETS AND HIGHWAYS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

AN ORDINANCE AMENDING ORDINANCE NO. 1-77
BEAR RIVER CITY ENCROACHMENT ORDINANCE

WHEREAS, the City Council of Bear River City, Utah, finds it desirable to amend Ordinance No. 1-77 to clarify and expand its meaning; and

WHEREAS, the City Council also finds it desirable to clarify the civil and criminal penalties that may be imposed for violating this amended ordinance; and

WHEREAS, the City Council of Bear River City finds that enacting such an amended ordinance will be in the best interest of the City and will protect the health, safety, and welfare of the citizens of Bear River City;

NOW THEREFORE, be it ordained by the City Council of Bear River City as follows:

Section 1. Encroachments

If any city street or right-of-way is encroached upon by a fence or building, or otherwise obstructed or encroached upon continuously for a period greater than (10) ten days, the City may, in writing, require the encroachments to be removed. For the purposes of this section, such encroachments may include but not be limited to vehicles, permanent landscaping, farm equipment, farm products or other items of personal property left or constructed upon the street or street right of way for the above mentioned period of time. A violation of this Ordinance shall be punishable either: (a) as a class C misdemeanor, or (b) by imposing a civil penalty as provided in Section 4. Each day that a violation occurs shall constitute a separate offense for purposes of the penalties and remedies available to the city. Accumulation of the penalties for violations, but not the obligation for payment of penalties already accrued, shall stop on correction of the violation.

Section 2. Notice to remove encroachment.

The zoning administrator, upon direction of the city council, will serve the occupant or owner of the land or any other person determined to be causing or owning the encroachments, with written notice by mailing the written notice to his place of residence, if he resides in the city. If the person responsible for causing or owning the encroachments does not reside in the City, written notice will be posted on the encroachments. Such written notice shall include the place, nature, and extent of the encroachment, and require the person addressed to remove the encroachment within ten days of the mailing or posting of the written notice. The written notice shall further indicate the potential enforcement action and/or penalties to be imposed for failure to remove the encroachment within

the ten days.

If the encroachment is such as to effectually obstruct and prevent the use of the highway, street, or right-of-way for vehicle or pedestrian traffic, as reasonably determined by the zoning administrator, the City may immediately cause the encroachment to be removed at the expense of the person, firm or corporation who owns or controls the encroachment without prior written notice. In such case, the zoning administrator shall send written notice as set forth in this Ordinance simultaneously with the beginning of the enforcement action.

Section 3. Refusal to remove encroachment – Criminal penalty.

If any person fails to abide by the written notice and remove the encroachment or to diligently commence to remove the encroachment prior to the expiration of ten days from the service or posting of the written notice, a criminal citation may be issued to the property owner or other person determined to be responsible for the encroachment.

The criminal penalty for violations of this ordinance is a class C misdemeanor subject to such fines and incarceration as set forth by Utah law.

Section 4. Refusal to remove encroachment – Civil penalty.

If any violation of this ordinance remains uncured after the expiration of ten days from the service or posting or issuance of the written notice, a citation for civil penalties may be issued to the property owner or the person determined to be responsible for the encroachment(s) in accordance with the notice of violation. The civil penalty to be imposed for any given violation shall be in an amount not to exceed seven hundred fifty dollars (\$750.00). In addition, the City Council may cause the encroachment to be removed at such person's expense.

Any person aggrieved by the zoning administrator's determination regarding the imposition of a civil penalty for a violation of this ordinance may appeal such final administrative determination to the Board of Adjustment pursuant to the review process provided in Section 1.15 of the Land Management and development Code of Bear River City.

Section 5. Further Action by the City.

In addition to the criminal or civil actions provided for above, if the owner, occupant or person controlling the matter or thing encroaching onto the city street or right-of-way refuses either to remove or permit the removal thereof, the City Council may direct the city attorney to institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the encroachment.

Section 6. Effective date.

The City Council of Bear River City, Utah finds it necessary for the preservation of the peace,

welfare, health and safety of the inhabitants of Bear River City that this amended ordinance take effect immediately upon its passage and posting.

AMENDED, by the City Council of Bear River City in regular session, this 7th day of April, 2009.


Neil Nelson, Mayor

Attest:


Carol S. Andreasen, City Recorder

CERTIFICATE OF POSTING ORDINANCE

I, the duly appointed and acting recorder for the City of Bear River, hereby certify that copies of the foregoing amended Ordinance No 1-77 were posted at three public places within the municipality this 9th day of April 2009 which public places are:

1. Bear River City Civic Center
2. Bear River City Post Office
3. Bear River Town Hall

Dated this 9th day of April 2009


Carol S. Andreasen