

**DENALI BOROUGH, ALASKA  
ORDINANCE NO. 21-12**

**INTRODUCED BY: Mayor Clay Walker**

**AN ORDINANCE OF THE DENALI BOROUGH ASSEMBLY AMENDING THE DENALI BOROUGH CODE OF ORDINANCES TO CREATE A BOROUGH ENCROACHMENT PERMITTING PROGRAM BY ENACTING A NEW CHAPTER 4.12, ENTITLED ENCROACHMENT PERMITS.**

**WHEREAS**, the Denali Borough has enacted Chapter 4.11 of the Denali Borough Code, which prescribes the standards and procedures by which the Borough issues permits for the use of Borough lands and grants easements; and,

**WHEREAS**, the Denali Borough Code does not currently include any provisions that govern the ways in which the Borough may address encroachments upon Borough lands; and,

**WHEREAS**, the Denali Borough Assembly accordingly desires to amend the Denali Borough Code for the purpose of creating a system by which the Borough may meaningfully address encroachments upon Borough lands when they arise.

**NOW, THEREFORE, BE IT ENACTED** by the Assembly of the Denali Borough, Alaska as follows:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the Denali Borough Code.

**Section 2. Purpose.** The purpose of this ordinance is to amend the Denali Borough Code by enacting a new Chapter 4.12, titled Encroachment Permits.

**Section 3. Severability.** If any provision of this ordinance, or any application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application to any other person or circumstances shall not be affected thereby.

**Section 4. Enactment.** A new Chapter 4.12 of the Denali Borough Code is hereby enacted as follows:

**Chapter 4.12  
Encroachment Permits**

Sections:

- 4.12.010 Definitions.**
- 4.12.020 Encroachment permits.**
- 4.12.030 Unauthorized encroachments.**
- 4.12.040 Approval of existing encroachments.**

- 4.12.050 Approval criteria.**
- 4.12.060 Right to reconsideration.**
- 4.12.070 Completion of work.**
- 4.12.080 Repairs.**
- 4.12.090 Violations, enforcement and penalties.**

**4.12.010 Definitions.**

**A. "Encroachment" means:**

1. any structure, object, material, or physical disturbance of materials, including but not limited to, driveways, culverts, road repairs, wells, septic systems, drainage, and all types of structural improvements that are not authorized in writing by a Borough Land Use Permit, lease agreement, or easement, and which are situated within, or extend over or under:
  - a) a borough public right-of-way; or
  - b) a public easement; or
  - c) property dedicated to a public use which is operated or maintained by the borough; or
  - d) any other land owned by the borough.
  
2. any snow storage, soil removal, debris or any other obstruction, any road, ditch, drain, gutter, or culvert which hinders or restricts:
  - a) public traffic;
  - b) maintenance or the flow of water in or along any:
    - i. public right-of-way;
    - ii. public easement;
    - iii. public dedication; or
    - iv. other borough land.

**4.12.020 Encroachment permits.**

- A.** Any applicant who wishes to construct or cause an encroachment shall first apply for and obtain a borough encroachment permit by filing with the borough land planner a completed application packet on the forms prescribed by the borough for that purpose.
  
- B.** A public utility or person who is issued a permit for utility facilities pursuant to DBC 4.11.050 is not required to apply for an encroachment permit.
  
- C.** No encroachment permit is required for construction completed in accordance with a subdivision plan approved pursuant to DBC Chapter 9.10.
  
- D.** A permit fee shall be charged for encroachment permits as provided in the current approved fee schedule.

**4.12.030 Unauthorized encroachments.**

- A. Unauthorized encroachments shall be subject to immediate removal by the borough at the owner's expense. The borough may immediately remove any unauthorized encroachment that impedes traffic or maintenance, or which causes a public safety hazard, with no notice to the owner, at the discretion of the borough Mayor or mayor's designee.
  
- B. At the borough's option, the borough may require any person who causes an unauthorized encroachment, or the owner of the underlying property upon which the encroachment lies, to remove the unauthorized encroachment. The removal of the encroachment shall be done at the expense of the underlying property owner or the person causing the encroachment. Notice shall be given to the underlying property owner or the person causing the encroachment, that the encroachment must be removed at the expense of the underlying property owner or the person causing the encroachment. Notice shall consist of a written letter, sent by certified mail, return receipt requested, or personally delivered, which explains the violation and states the time period in which the encroachment must be removed. If the person who receives such notice does not remove the encroachment within the prescribed time period, the borough may proceed with removing the encroachment and the person receiving notice shall be liable to the borough for all costs incurred in removing the encroachment and attempting to have the encroachment removed.
  
- C. Unauthorized encroachments shall be deemed a public nuisance and are subject to all legal proceedings authorized by law.

**4.12.040 Approval of existing encroachments.**

- A. Any encroachment of a private nature without a permit may be removed in accordance with DBC 4.12.030 or may be granted a permit allowing the encroachment to remain if the encroachment meets the approval of the mayor or designee. The owner, upon signing the permit, agrees to defend and indemnify the borough against any and all claims to persons or property which may arise from the encroachment.
  
- B. A person may not be denied a reasonable means of access to the person's property solely by the requirements of this chapter. An encroachment permit shall not grant the permittee exclusive right to use the area encroached upon.

**4.12.050 Permit approval and conditions.**

- A. Encroachment permits shall be granted at the discretion of the borough mayor or the mayor's designee. In determining whether to approve an application for an encroachment permit, the mayor or designee shall consider a variety of factors including but not limited to:
  - 1. the extent to which the encroachment does or may interfere with road maintenance;
  - 2. the encroachment's actual or potential effects upon access to, or normal travel along, any impacted public land or right-of-way;

3. any impacts upon sight lines or distance;
4. whether the encroachment may create a safety hazard;
5. whether the encroachment involves the construction or placement of a structure of a permanent nature that requires footings, foundations, or pilings.

B. In granting any encroachment permit authorized by this chapter, the mayor or designee shall have discretion to impose conditions intended to mitigate the potential adverse effects of the encroachment upon the applicable public right-of way, public easement, public dedication, or other borough land.

#### **4.12.060 Appeals.**

An applicant may appeal any revocation, suspension, or denial of an encroachment permit to the borough planning commission by filing a written notice stating the grounds of appeal with the borough land office. The appeal notice must be filed within ten days after the effective date of the revocation, suspension, or denial from which the appeal is taken. The fee to appeal the denial of an encroachment permit shall be as provided in fee schedule approved by the Assembly.

#### **4.12.070 Completion of work.**

An encroachment permit for construction shall have an expiration date. The permittee shall file a written notice of completion with the land planner within ten days after completion of construction. No work shall be performed after the expiration date unless an extension is approved in writing by the borough land planner.

#### **4.12.080 Repairs.**

Any damage to a public right-of-way, dedication, easement or borough land, which is caused by an encroachment, whether authorized or unauthorized, is subject to immediate repair by the borough, at the owner's expense. The borough may require the owner to repair the damage if notice is given to the owner. Notice shall consist of a written letter sent by certified mail, return receipt requested, or posted on the encroachment in a conspicuous place explaining the damages and stating the time to repair the damages. If the owner does not repair the damages after being given proper notice, the borough may repair the damages and the owner shall be liable to the borough for all costs incurred by the borough from the repair, including overhead costs.

#### **4.12.090 Violations and Enforcement.**


- A. The mayor or designee may inspect the borough land at any time to ensure compliance with any conditions issued in connection with an encroachment permit authorized by this chapter.
- B. The mayor or designee may revoke an encroachment permit, for cause, if the permit holder fails to comply with the terms and conditions of the permit. Before a permit is revoked the permittee will be given notice and an opportunity to rectify the noncompliance in a manner consistent with the procedure set forth at DBC 4.12.030(B).


C. Except as otherwise specified in this chapter, violations of this chapter are infractions subject to penalties as set forth at DBC 1.05.060.

**Section 5. Effective Date.** This ordinance becomes effective upon adoption of the Denali Borough Assembly and signature of the Denali Borough Mayor.

DATE INTRODUCED: August 11, 2021  
FIRST READING: September 8, 2021  
PUBLIC HEARING: September 8, 2021

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this 8<sup>th</sup> day of September, 2021.

  
\_\_\_\_\_  
Mayor Clay Walker

ATTEST:   
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Amber Renshaw, Borough Clerk

VOTE: UNANIMOUS

