

RESOLUTION NO. R17-35

A RESOLUTION APPROVING AN ENCROACHMENT PERMIT FOR SOUTH MONTANA AVENUE FOR C-STORE PROPERTIES LLC AND INNOVATIVE PROPERTIES LLC AND AUTHORIZING THE MAYOR TO EXECUTE THE PERMIT ON BEHALF OF THE CITY OF LAUREL.

WHEREAS, C-Store Properties LLC and Innovative Properties LLC (“Property Owners”) who operate businesses located at 411 South First Avenue and 401 South First Avenue in the City of Laurel; and

WHEREAS, Property Owners advised the City of their desire to pave their respective gravel lots located behind their businesses in order to create customer parking and better access to their businesses for their customers; and

WHEREAS, the unimproved lots have created numerous dust complaints from nearby property owners since the public was utilizing the unimproved lots for parking as well as access; and

WHEREAS, the Property Owners’ lots are adjacent to South Montana Avenue which is a platted but unimproved gravel public right-of-way and the City currently has no resources or plans to update and improve South Montana Avenue into a functional City Street; and

WHEREAS, the Property Owners have requested the use of South Montana Avenue for purposes of customer parking and access to their respective businesses; and

WHEREAS, in return for the use of South Montana Avenue, the Property Owners have agreed to pave South Montana Avenue along with their lots to completely alleviate the dirt and dust problem that has been an ongoing issue for the City; and

WHEREAS, the City is not interested in vacating the right-of-way since the street may be used for vehicle access and travel in the future, and therefore has agreed to allow Property Owners to use the 60’ public right of way pursuant to an Encroachment Permit which shall govern the use of the City’s right of way as well as the duties, rights and responsibilities of Property Owners and the City; and

WHEREAS, City Staff reviewed and recommends the City Council approve the Encroachment Permit since the City Council possesses authority to issue an Encroachment Permit under Chapter 12.16.040, LMC; and

WHEREAS, upon review of this situation and the special facts and circumstances surrounding this situation, the City Council has determined issuance of an Encroachment Permit is appropriate and in the City’s best interest.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Laurel that the attached Encroachment Permit is hereby approved for an initial ten (10) year term which shall

automatically renew for an additional ten (10) year term if not terminated by either party as provided in the Encroachment Permit; and

BE IT FURTHER RESOLVED, the Mayor is authorized to execute and record the attached Encroachment Permit on behalf of the City of Laurel.

INTRODUCED at a regular meeting of the City Council on July 5, 2017 by Council Member Nelson.

PASSED and APPROVED by the City Council of the City of Laurel this 5th day of July, 2017.

APPROVED by the Mayor this 5th day of July 2017.

CITY OF LAUREL

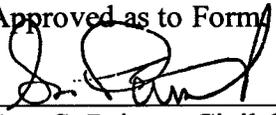


Mark A. Mace, Mayor

ATTEST:



Bethany Keeler, Clerk/Treasurer

Approved as to Form


Sam S. Painter, Civil City Attorney

When Recorded Return to:

City of Laurel
P.O. Box 10
Laurel, Montana 59044

ENCROACHMENT PERMIT

This Encroachment Permit ("Permit") is approved and issued by the City of Laurel, Montana ("City") pursuant to City Council Resolution, for the benefit of C-Store Properties, LLC and Innovative Properties, LLC hereinafter ("Property Owners"). The City and Property Owners are referred to herein jointly as "Parties." The Permit is specific to that portion of South Montana Avenue shown on the attached map ("Permit Area") that is labeled Exhibit A and attached hereto and incorporated herein by this reference. At all times relevant during and after this Permit, South Montana Avenue shall remain a dedicated public right-of-way. The City of Laurel has no intention to vacate the right-of-way and is providing Property Owners the authority to improve and use the South Montana Avenue right-of-way until this permit expires, terminates or is revoked.

Recitals

1. Whereas, the City currently owns and controls a 60' right-of-way constituting a dedicated public street known as South Montana Avenue. South Montana Avenue, in this location, is gravel and not developed and will likely remain undeveloped for the foreseeable future.
2. Whereas, the Property Owners currently own two unimproved lots which are immediately adjacent to the South Montana Avenue right-of-way as shown on Exhibit A. Property Owners intend to improve their lots by paving them for purposes of providing customer parking as well as access for the rear of their existing business properties.
3. Whereas, the City has received a number of complaints from nearby property owners regarding excessive dust from the public's use of Property Owners' unimproved lots as well as the unimproved South Montana Avenue for parking and access. As a result of the complaints, the City contemplated closing and fencing off South Montana Avenue to the public by erecting a fence to keep traffic off the right-of-way until it is improved at some time in the future.
4. Whereas, Property Owners approached the City with a plan to resolve the ongoing

dust issue by improving their lots. Property Owners plan to improve the lots by designing and constructing a paved parking lot. Since the City currently lacks resources to improve the public right-of-way, Property Owners requested permission to include the right-of-way as part of their intended paved parking lot.

5. Whereas, the City possesses the authority to regulate the use of its rights-of-way in the best interest of the public, and at this time allowing Property Owners to improve and use the right-of-way pursuant to the terms and conditions contained in this Permit.
6. The City Council is authorized to approve an Encroachment Permit to regulate the use of streets, sidewalks, and public rights-of-way pursuant to Chapter 12.16.040 of the Laurel Municipal Code, §7-14-4102 MCA, and the City's self-governing powers provided through its Charter.
7. Upon review of this situation and the special facts and circumstances surrounding this situation, the City Council has determined issuance of this Encroachment Permit is appropriate and in the City and Public's best interest.

Encroachment Permit Terms and Conditions

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals herein are incorporated into this Permit by this reference.
2. **Grant of Encroachment Permit.** Under the terms and conditions of this Permit, and pursuant to the Resolution of the City Council, the City hereby permits Property Owners or their successors in title, to utilize the Permit Area for the existing planned improvements.
3. **Forebearance.** As long as Property Owners and their successors in title comply with the terms and conditions of this Permit, the City shall forbear, any act or action to interfere with the permitted use of the Permit Area described herein
4. **Conditions on Use.**
 - A. The Permit remains valid so long as Property Owners, or their successors in interest, use of the Permit Area remains in compliance with the terms and conditions of this permit and, the use and/or size of the Permit Area is not expanded, and no hazardous materials or substances may be stored upon or buried within the Permit Area. Subject to the foregoing provisions, nothing herein shall be deemed or considered to prohibit or prevent Property Owners or their

successors in title from using the Permit Area as a paved parking lot. Property Owners shall not allow parking on the Permit Area which shall be utilized for ingress and egress purposes.

- B. Property Owners acknowledge that the Permit Area contains underground public and private utilities including but not limited to water, sewer, power, and gas. Property Owners shall not deny access to a utility owner requiring access to his/her utility line. The Parties agree that any excavation or work within the Permit Area must comply with Chapter 12.12 of the Laurel Municipal Code.

5. Design, Construction and Maintenance.

- A. Property Owners shall obtain a professionally engineered design for their proposed parking lot that addresses storm water drainage, ingress and egress control, striped parking spaces compliant with ADA requirements, and constructed to current City standards. Property Owners shall obtain City approval of the design and construction plan as well as a building permit. At all times during this Permit, Property Owners are responsible for snow removal and weed control.
- B. Payment. Property Owners shall pay the cost of the project not covered by grants obtained for the project.
- C. Reimbursement of Costs. If any future property owner desires use of the Permit Area, he/she must pay Property Owners a proportionate share of their "out of pocket" project costs before the City issues him/her permission to additionally use the permit area.

6. Termination or Revocation.

- A. Definition of Default. A Party's failure to comply with any term or condition contained in this Permit, shall constitute a default under this Permit.
- B. Remedies for Default:
 - i. If a Party defaults under this Permit, the other Party may immediately give written notice of such default.
 - ii. If the breaching Party cures the default within thirty (30) days from the date of service of notice, the Permit shall remain valid.
 - iii. If the breaching Party fails to cure the breach within thirty (30) days, the other Party may pursue any appropriate remedy available by law including but not limited to termination or revocation of the Permit.

- C. If the use of the Permit Area changes, or if future development requires the use of the Permit Area as a City Street, the City may immediately terminate or revoke the Permit and require the Property Owners to surrender the Permit Area to the City. Property Owners shall not remove or disturb any improvement prior to vacating the Permit Area.
7. Indemnification. Property Owners shall indemnify and hold harmless the City, including, without limitation, City's agents, elected officials, and its employees, from any claim, right, or cause of action, arising out of or in any way connected with the negligence or willful act of Property Owners that results in the injury or death of any person or damage to real or personal property arising out of the use of the Permit Area under this Permit. Property Owners shall maintain insurance for the parking lot and Permit Area to cover potential claims or injuries that may occur.
8. Miscellaneous. The following additional conditions apply to this Permit:
- A. **Transfer**. This Permit and the rights and obligations hereunder may be transferred to a successor in title to the Property Owners so long as the use of the property remains as permitted.
- B. **Severability**. If one or more of the provisions contained herein are declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be impaired thereby.
- C. **Waiver**. The failure of either Party to insist in any one or more instances upon strict performance of any of the requirements of this Permit shall not be construed as a waiver or relinquishment for the future of such requirement, but the same shall continue and remain in full force and effect.
- D. **Headings**. The headings and captions of various paragraphs of this Permit are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions therein.
- E. **Amendment**. All modifications or changes to this Permit shall be effective only when reduced to writing and signed by Parties hereto, and approved by Resolution of the City Council.
- F. **Applicable Law**. This Permit shall be interpreted according to the laws of the State of Montana.
- G. **Entire Agreement**. Except as explicitly stated herein, this Permit, attachments,

and the Council Resolution constitute the entire agreement between the Parties and subsume and incorporate all prior written and oral statements and understandings.

H. Recording. This Permit shall be recorded in the Office of the Clerk and Recorder in and for Yellowstone County, Montana.

I. This Permit shall be effective upon authorization and/or approval by City Council Resolution and Signature by the Mayor of the City of Laurel. The Permit shall be effective for successive terms of ten (10) years unless terminated or revoked by either Party on one of the grounds set forth herein.

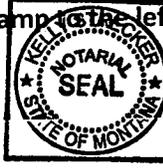
IN WITNESS WHEREOF, each Party has caused this Permit to be executed in duplicate.

Property Owners:

By: [Signature]
Dennis Whitmore
C-Store Properties, LLC

State of Montana
County of Yellowstone
I certify this to be a true and exact copy of the Encroachment Permit
made by me, a notary public, on 7/10/2017.
[Signature]
(Notary Signature)

By: [Signature]
Steven Barkley
Innovative Properties, LLC

[Affix seal/stamp to the left or below]

KELLY STRECKER
NOTARY PUBLIC for the
State of Montana
Residing at Bighorn, Montana
My Commission Expires
February 3, 2020

City of Laurel:

By: [Signature]
Mayor

State of Montana
County of Yellowstone
I certify this to be a true and exact copy of the Encroachment Permit
made by me, a notary public, on 7/10/17.
[Signature]
(Notary Signature)

By: [Signature]
City Clerk

[Affix seal/stamp to the left or below]


KELLY STRECKER
NOTARY PUBLIC for the
State of Montana
Residing at Bighorn, Montana
My Commission Expires
February 3, 2020

B00452

B00451A
.119

B03044

B03045

.205

B03050

SE 4TH ST

60ft ROW

Permit Area
S MONTANA AVE
Permit Area
Permit Area

.2A

.401

.4B

B00221

.4C

B00222

.411

B00457A

.415

B00458

.202

B00454

B00454C

ITALIAN DITCH

Exhibit
A

ETC

CERTIFICATE

Office of the City Clerk-Treasurer
Laurel, Montana

State of Montana)
County of Yellowstone) ss.
Laurel, Montana

I, Bethany Keeler, duly appointed and qualified City Clerk/Treasurer of the City of Laurel, Yellowstone County, do hereby certify that the foregoing is a true and correct copy of the original Resolution No. R17-35, passed by the City Council of the City of Laurel, and approved by the Mayor on the 5th day of July, 2017, which said Resolution is on file in the office of the Laurel City Clerk-Treasurer.



City Clerk-Treasurer

(SEAL)

