

TOWN OF RICO  
ORDINANCE NO. 2019-02

AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF RICO, COLORADO ADDING A NEW ARTICLE X TO THE RICO LAND USE CODE CONCERNING PUBLIC PROPERTY AND ESTABLISHING REGULATIONS CONCERNING FIXED AND TEMPORARY ENCROACHMENT, INCLUDING WORK THEREON, LOCATED ON PUBLIC PROPERTY.

WHEREAS, the Board of Trustees of the Town of Rico (Board) is authorized under Sections 1.2 and 2.5 of the Town of Rico Home Rule Charter and C.R.S. § 31-15-103, as may be amended from time to time, to adopt regulations as are necessary to protect the health, welfare, and safety of the public; and

WHEREAS, the Board desires to establish regulations concerning encroachments on public property.

NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO, ORDAINS:

**SECTION 1:** That the Municipal Code of the Town of Rico, Colorado, is hereby amended by adding new Article as follows:

ARTICLE X  
PUBLIC PROPERTY

1000 ENCROACHMENTS PROHIBITED

No encroachment, construction, excavation in, work in, or obstruction shall be made or placed upon any street, alley, sidewalk, curb, gutter, walk, or other public property, place, or way within the Town, unless a permit is approved by the Town as provided for in this Article.

1001 DEFINITIONS

1001.1 Fixed Encroachment: means any encroachment upon any public way that cannot be moved by a person without the assistance of tools, machinery and/or equipment.

1001.2 Temporary Encroachment: means any encroachment upon any public way that can be easily moved, changed, or removed by a person without the assistance of tools, machinery and/or equipment.

1001.3 Public Right-Of-Way, Right-Of-Way or Public Way: means any public street, way, place, alley, sidewalk, utility, easement, or any public property owned or controlled by the Town.

1001.4 Work: means any labor performed on, or any use or storage of equipment or materials, including but not limited to, construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights, and traffic signal devices. It shall also mean construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar structure located below surface, and installation of overhead poles and wires or conductors, used for any purpose.

## 1002 PERMIT PROCESS

Upon an application to the Town, a permit may issue with terms and conditions as necessary and appropriate to implement this Article in the Town's sole discretion to protect Town property, and to protect the public health, safety and welfare, by including provisions in the permit process as are necessary, including but not limited to, insurance, performance bond, indemnification, and a hold harmless and damage release for the Town.

## 1003 TEMPORARY ENCROACHMENT PERMIT APPLICATION

Any temporary encroachments on any public way, including but not limited to, barricades, construction debris, seasonal benches, seasonal flower pots, construction-related dumpsters, outdoor display of merchandise, and seasonal tables and chairs, located in the public right-of-way shall be governed by this Article and may be approved by the town manager, upon submission of a written application on the approved form provided by the Town, payment of all fees prescribed under this Article, and a permit may be granted for a specified time by the Town.

## 1004 FIXED ENCROACHMENT PERMIT APPLICATION

Any fixed encroachments on any public way or work to be performed on any fixed encroachment shall be governed by this Article and approved by the Town Board of Trustees, upon submission of a written application on a form provided by the Town and payment of all fees prescribed under this Article. The Town may withhold issuance of the permit until all costs are paid. The encroachment or work associated with the encroachment may not begin until the permit has been issued by the Town.

## 1005 WORK ENCROACHMENT PERMIT APPLICATION

An applicant for a permit allowing work in the public right-of-way shall apply for a temporary easement permit, even if a fixed encroachment permit has issued, under this Article as follows:

1005.1 Submit a written application furnished by the Town, which will include information necessary or convenient for the administration and enforcement of this Article, including statement that the applicant or its contractor is not delinquent in payments due to the Town on prior work.

1005.2 Attach copies of all permits or licenses (including required insurance, deposits, bonds, and warranties) required to do the proposed work, and to work in the public rights-of-way, if licenses or permits are required under the laws of the United States, the State of Colorado, or other ordinances or regulations of the Town.

1005.3 Provide a satisfactory plan of work showing:

1005.3.1 Protection of the subject property and adjacent properties when the Town determines such protection is necessary;

1005.3.2 Protection of trees, plants, landscaping and the restoration of turf when the Town determines that damage may occur to any plant life;

1005.3.3 The proposed construction, excavation; and

1005.3.4 A satisfactory traffic control and erosion protection plan for the proposed construction, excavation, or work.

1005.4 Include statement that all orders issued by the Town to the applicant requiring the applicant to correct deficiencies under previous permits issued under this section have been made.

1005.5 Pay the fees prescribed by this Article.

1005.6 List of anticipated subcontractors.

1005.7 All permits for construction, excavation or work may be granted only for a specific period of time to complete the work. The applicant is required to renew the permit prior to the expiration of the permit.

## 1006 REVOCATION

Any permit issued under this Article may be revoked by the Town after notice to the permittee for:

1006.1 Violation of any condition of the permit or of any provision of this Article.

1006.2 Existence of any condition or performance of any act which the Town determines does constitute or cause a condition endangering life or damage to property.

**1006.3 Fixed encroachment deterioration, demolition, or if the encroachment ceases to exist or if a material change in condition occurs.**

1006.4 Notice of revocation of an encroachment permit shall be sent by the Town to the permittee at the address provided in the application or any renewal. Revocation of the permit shall be effective 5 days after the date of the notice.

1006.5 Any revocation of any permit may be appealed by the permittee to the Town Manager by filing a written notice of appeal within 10 days of the date of the notice.

## **1007 POLICE POWERS**

The permittee's rights under this Article are subject to the police powers of the Town, which include the power to adopt and enforce ordinances, including amendments to this section, necessary to the safety, health, and welfare of the public. The permittee shall comply with all applicable laws and ordinances enacted, or hereafter enacted, by the Town or any other legally constituted government unit having lawful jurisdiction over the subject matter hereof. The Town reserves the right to exercise its police powers, notwithstanding anything in this Article, any permit issued hereunder, any franchise, or any other permit to the contrary. Any conflict between the provisions of this Article, any franchise or any permit and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the Town.

## **1008 PENALTIES, ADMINISTRATION AND ENFORCEMENT**

It shall be unlawful to violate any of the provisions of this Article, or of a permit issued hereunder. In addition to any general penalties applicable under Rico Land Use Code 740, continuing violations of this Article or of any permit issued pursuant hereto are hereby declared to be a nuisance, which may be abated in any lawful manner. It shall be unlawful to maintain an encroachment once the encroachment permit has been revoked by the Town pursuant to this Article. Failure to remove an encroachment is declared to be a nuisance that may be abated by the Town in any lawful manner. The Town may maintain an action in a court of competent jurisdiction to enjoin any violation of this Article, or of any permit issued pursuant hereto. If the Town brings any action brought to abate a nuisance or to enjoin any violation of this Article in any court of competent jurisdiction and the Town is the prevailing party, the defendant in such a nuisance or injunction proceeding shall be responsible for the Town's attorney fees and costs.

### **SECTION 2: EFFECTIVE DATE**

The provisions of this Ordinance shall become effective immediately upon final passage as defined in Rico Home Rule Charter, Section 3.5.

### **SECTION 3: SAVINGS CLAUSE**

If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

**INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED** on first reading by the Board of Trustees for the Town of Rico this 20th day of March, 2019.

**READ, APPROVED AND ADOPTED BY FINAL READING** by the Board of Trustees for the Town of Rico this 17 day of ~~April~~, 2019

TOWN OF RICO, COLORADO

  
Zachary McManus, Mayor

5/17/19  
Date

Attest:

  
Linda Yellowman, Town Clerk

5/17/2019  
Date