

## RESOLUTION 23-11149

### **A RESOLUTION REVISING FEES TO BE CHARGED FOR ENCROACHMENT RENTALS AND LEVYING RELATED ANNUAL ASSESSMENTS TO BE PAID BY PERSONS, FIRMS, AND CORPORATIONS WHO ARE MAINTAINING THE ENCROACHMENTS ON, OVER, ACROSS, OR ABOVE THE STREETS, AVENUES, SIDEWALKS, OR ALLEYS OF THE CITY OF BILLINGS.**

WHEREAS, Section 13-301, Billings, Montana City Code provides that every person that has or maintains any structure, encumbrance, obstruction, or encroachment in or upon or extending or projecting on, over, across, or above and within seven (7) feet of the grade of any public property, public street, avenue, sidewalk, or alley shall obtain an encroachment permit and shall pay an annual encroachment rental fee; and

WHEREAS, Section 13-302 Billings, Montana City Code provides that the City Council shall establish the amount of the annual encroachment rental fee to be paid to the City for each structure, encumbrance, obstruction or encroachment; and

WHEREAS, Section 13-303 Billings, Montana City Code provides that the City Council shall annually, by resolution, make a special assessment for such annual encroachment rental upon lots abutting on that part of the street, avenue, sidewalk, or alley upon which a structure, encumbrance, obstruction or encroachment is situated on the owner of such abutting lots; and

WHEREAS, the encroachment rental fees should reflect payment for encroachments based on the impact of the encroachment to the right-of-way; and

WHEREAS, the City Council has duly considered the matter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. ENCROACHMENT RENTAL FEES. The City Administrator or his or her designee may determine in his or her discretion the boundaries of the encroachment area which may be larger than the physical dimensions of an item placed in the right-of-way. The encroachment rental fees to be charged by the City of Billings are hereby established as follows:
  - A. Tier 1 encroachments shall be determined by the Public Works Department as those encroachments that have minimal impact to the right-of-way, including, but not limited to awnings, hanging signs, landscaping, and conduit.
    - i. Annual rate per square foot of the encroachment area: \$2.10
    - ii. Annual rate per linear foot of the encroachment \$2.10
    - iii. Minimum annual fee per encroachment \$25.00

B. Tier 2 encroachments shall be determined by the Public Works Department as those encroachments that have a major impact to the right-of-way, making the encroached upon right-of-way unusable to the public. Tier 2 encroachments include, but are not limited to signs on the ground, fences, restaurant patios, and buildings/structures in the right-of-way.

- i. Annual rate per square foot of the encroachment area: \$5.15
- ii. Annual rate per linear foot of the encroachment \$5.15
- iii. Minimum annual fee per encroachment \$25.00

2. TERM OF FEES. The above fees shall continue in full force and effect until changed by the City Council by subsequent resolution.
3. ANNUAL ASSESSMENT FOR RENTAL. That for the purposes of collecting said rents for the fiscal year 2024 for said structures, encumbrances, obstructions, and encroachments on, over, across, or above the streets, avenues, alleys, and sidewalks of the City of Billings, there is hereby fixed, levied and assessed a special assessment upon the lots or parcels of land provided in the schedule attached, described as EXHIBIT "A" and by this reference made a part hereof.
4. DISPOSITION OF COLLECTIONS. All monies collected from said assessment shall be paid to the Public Works Engineering Fund of the City of Billings, Montana.
5. NOTICE OF HEARING. On Monday, September 11, 2023, at 5:30 p.m. or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the Yellowstone County News.
6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 11<sup>th</sup> day of September, 2023.



CITY OF BILLINGS

By: William A. Cole  
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohlman Deputy for  
Denise R. Bohlman, City Clerk

## EXHIBIT A

TAX CODE	PROPERTY OWNER	AMOUNT
A00028	Atwood, Lisa & Jay	\$ 51.50
A00029	APEX Billings LLC	\$ 515.00
A00123	Trail Creek Properties	\$ 257.50
A00139	Carrol Bros LLC	\$ 84.00
A00140	Shipton Supply Co	\$ 168.00
A00143	DLB/JMS LLC	\$ 42.00
A00146	McDonnel Family Trust	\$ 168.00
A00243	Blngs U S Employees FED CR Union	\$ 252.00
A00260	313N Broadway LLC	\$ 1,601.65
A00262	City of Billings/In Care of: Fox Theatre Group	\$ 189.00
A00264	Yellowstone County	\$ 262.50
A00349	Roman Catholic Bishop	\$ 705.55
A00363	Cormier Properties/Daisy Dukes	\$ 2,575.00
A00364	Michael Gray	\$ 1,720.10
A00374	Lo, Chia Wei	\$ 247.20
A00495	Carrol Bros LLC	\$ 84.00
A00510	SK Properties LLC	\$ 4,944.00
A00604	Mountrail Properties	\$ 36.05
A00618	Clock Tower Inn	\$ 1,864.30
A00624	WFC I LLC	\$ 66.95
A00636	Robertson, Jeff & Donna	\$ 1,807.65
A00637	Acme Historic Hotel	\$ 1,998.20
A00642A	City of Billings	\$ 342.06
A00642B	WSR LLC	\$ 1,299.55
A00642C	CJM LLC	\$ 16.69
A00644	Royer Property LLC	\$ 793.10
A00656	Swank Properties LLC	\$ 125.12
A00708	Marks, Steve	\$ 12.50
A00710	Marks, Steve	\$ 12.50
A00737	Rider, Theodore & Etal	\$ 25.00
A00765	Mignone, Francis	\$ 471.11
A00774	Neal LaFever Trust	\$ 8,858.00
A00776	Sturm & Drake Development LLC	\$ 565.75
A00778	Glacier Bank	\$ 1,264.20
A00781	Nelson, Bert & Andrew	\$ 648.90
A00783	Neal LaFever Trust	\$ 556.20
A00796A	Securities Building LLC	\$ 23.18
A00796B	Securities Building LLC	\$ 16.33
A00796C	Securities Building LLC	\$ 6.85
A00796D	Securities Building LLC	\$ 12.31
A00796E	Securities Building LLC	\$ 6.95

A00796F	WEBHEN LLC	\$	13.18
A00796G	WEBHEN LLC	\$	6.18
A00796H	Securities Building LLC	\$	3.55
A00796I	Securities Building LLC	\$	3.45
A00796J	Securities Building LLC	\$	3.61
A00796K	Securities Building LLC	\$	2.32
A00796L	Securities Building LLC	\$	3.24
A00796N	Securities Building LLC	\$	3.14
A00796O	Securities Building LLC	\$	3.55
A00796P	Securities Building LLC	\$	3.45
A00796Q	Securities Building LLC	\$	3.61
A00796R	Securities Building LLC	\$	2.32
A00796S	Securities Building LLC	\$	3.24
A00796T	Securities Building LLC	\$	3.14
A00804	Makenna Hotel Investments LLC	\$	669.50
A00806	Computers Unlimited	\$	6,494.15
A00807	Tristar Communications II LLC	\$	272.95
A00817	Larson Family Properties LLC	\$	401.70
A00822	Nelson, Andy & Bert	\$	587.10
A00823	Computers Unlimited	\$	128.75
A00832	D B Squared LLC	\$	3,128.63
A00833	Computers Unlimited	\$	2,276.30
A00838	2223 Montana LLC	\$	3,311.45
A00939	Dean Dairy Fluid LLC	\$	648.90
A00949	Yellowstone Health Partnership	\$	51.50
A00964	Roma Capital LLC	\$	84.00
A01010	Phillips 66 Company	\$	168.00
A01251	ConocoPhillips Company	\$	42.00
A01264	Interfaith Hospitality Network	\$	216.30
A01273	Plath, Russell & Susan	\$	695.25
A01285	Halsten Holdings LLC	\$	96.60
A01293	Yellowstone Paper Company	\$	154.50
A01298	MRM Unified Campus LLP	\$	643.75
A01699	State of MT Department of Admin	\$	128.75
A01809	Koinonia Management Co LLC	\$	105.00
A01963A	Yellowstone Art Museum	\$	462.00
A02434A	Midtown Realty LLC	\$	77.25
A02920	Coffman, Stephen & Victoria	\$	25.00
A03492	Chamberlain, Janel R	\$	51.50
A04983A	Wilgus, Mark & Josi	\$	52.50
A05968	Deaconess Medical Center of Billings INC	\$	638.40
A06751	Glynn, Andrew	\$	33.48
A07017	Jacobson, Richard Lee	\$	77.25
A07120	Billings Clinic	\$	210.00
A07131	Billings Clinic	\$	2,358.30

A07153	Billings Clinic	\$	672.00
A07192	Billings Clinic	\$	42.00
A07279	Billings Clinic	\$	42.00
A07370	KARLSEN, VIRGINIA G	\$	35.70
A08646	Bryson, Jeffery	\$	128.75
A09085	Short, Daniel & Elizabeth	\$	25.00
A09171	Main Street Partners	\$	257.50
A10202	Lutheran Church of the Good Shepherd	\$	14,486.95
A10613	Stoughton, Alice	\$	525.30
A11091	Berry, Gale & Amy	\$	257.50
A11193	Robertson, Matthew	\$	25.00
A11354	State of Montana Dept of Institutions	\$	25.00
A11550	Billings Clinic	\$	831.26
A11592	Sisters of Charity of Lvnwrth Hlth	\$	31.50
A11630	Deaconess Medical Center of Billings INC	\$	168.00
A12102	Deaconess Medical Center of Billings INC	\$	468.30
A12194	Billings Clinic	\$	119.99
A12226	Sisters of Charity of Leavenworth Health Services Corporation	\$	3,708.00
A12584	Lavinder, Lisa	\$	927.00
A12971A	Popp, Gregory & Shelly	\$	128.75
A13885	Thomas Family Living Trust, THE	\$	25.00
A13999	Duenow, Jake R & Chelsey N	\$	128.75
A14554	Staley, Paul Thomas	\$	298.70
A16557	Rimrock Hospitality LLC	\$	31.50
A17196	Bergman, Samuel & Catherine	\$	103.00
A17571	Grand Lanes INC	\$	247.20
A17942	Emerick, Richard	\$	46.35
A17949	Ballou, Carolyn	\$	61.80
A19326	ACI Real Estate SPE 103 LLC	\$	25.00
A19570	Billings 9 RE2 LLC	\$	117.60
A19680	Cozzens, Jeannine	\$	105.00
A20220	Pust, Noah & Mary	\$	175.10
A20357	Jones Family Holdings LLC	\$	63.00
A20610	Von Wagoner, Jeremy	\$	504.70
A20713	JB Squared LLC	\$	25.00
A20842	Teichert, Lyle & Valerie	\$	51.50
A22975	Moffett, Dave	\$	257.50
A23158A	Baxter, Shawn & Ashley	\$	21.00
A23158B	Echart, Bryn	\$	21.00
A23158C	Brien, Yuki	\$	21.00
A23158D	Fagg, Shelly & Gertrude	\$	21.00
A23158E	Cavazos, Francis & Cora	\$	21.00
A23158F	Derke, Craig	\$	21.00
A23158G	Heggem, Conner	\$	21.00

A23158H	Webster, Diane	\$	21.00
A23703	Valkenburg, Corneluis & Linda	\$	301.28
A24268	Collett, Gordon & Siv	\$	52.50
A24843	Schneider, Jason & Summer	\$	257.50
A28233A	Grand West Property LLC	\$	99.60
A28233B	Grand Ave Investor LLC	\$	333.21
A28233C	Grand Ave Investor LLC	\$	59.64
A28233D	Grand Ave Investor LLC	\$	58.09
A28233E	Grand Avenue Investors LLC	\$	67.47
A28994	BK RE 11036 LLC	\$	128.75
A29218	Bottrell Family Investments LP	\$	252.00
A30109	Wood, Alvin & Stacey	\$	273.00
A31092	Hanser Capital Holdings LLC 49.9% INT	\$	1,050.00
A31495	Hunters Pointe Apartments LLC	\$	154.50
A33004	Sermon, Edward & Regina	\$	25.00
A36143	Corp of Presiding Bishop of Chur of Jesus Christ of Latter Day Saints	\$	1,102.50
C01755	Parker, Patrick A	\$	25.00
C06176	Zimny, Gerard & Michele	\$	579.38
C07319	Magga LLC	\$	1,482.60
C08660	Eggebrecht Family Limited Ptnrshp	\$	25.00
D00527	RMR I LLC	\$	5,150.00
D01389	Hanser Automotive Co INC	\$	3,538.05
D04718	Ellis, Shelley M	\$	103.00
D05641	Brignoni, Jorge	\$	25.00
D05900	B WHO U R, LLC	\$	7,416.00
D05903	Gem Fitness Properties	\$	515.00
E00004A	Northwestern Energy	\$	865.20

**City Council Regular**

**Date:** 09/11/2023  
**Title:** Public Hearing & Resolution Revising and Assessing Encroachment Rental Fees  
**Presented by:** Jennifer Duray  
**Department:** Public Works  
**Presentation:** Yes  
**Legal Review:** Yes  
**Project Number:** N/A

**RECOMMENDATION**

Staff recommends Council conduct a public hearing and approve the resolution setting and assessing the fees for encroachment rentals for FY24.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The City charges an annual rental fee for approved encroachments in the right-of-way. Some examples of encroachments are fences, restaurant patios, signs, and conduit. The City needs to assure safety and accessibility of the right-of-way, and for this reason, it requires an encroachment permit any time a property owner requests to use part of the right-of-way. Encroachment permit applications are processed and approved by the Public Works Department. A fee is collected with the permit application to cover the administrative costs of processing the application. If the encroachment is approved, annual assessments of the encroachment fee for the rental of the right-of-way will begin. The assessments will continue until the permit is revoked. Awning and canopies in the Central Business District are not charged an annual rental fee in accordance with Resolution 86-15316.

The annual encroachment rental fee had been set at \$1.00 per square foot of the surface area of the encroachment from 1988 until FY21 when Council adopted new fees and methodology. The current methodology is a tier structure consisting of two tiers. Tier 1 encroachments have minimal impact to the right-of-way and include awnings, overhanging signs, conduit, and other encroachments that minimally impact accessibility of the right-of-way. Tier 1 encroachments will be set at \$2.10 per square foot in FY24, an increase of \$.10 per square foot.

Tier 2 encroachments have a major impact to the right-of-way and cause the part of the right-of-way that is encroached on to be unusable. Some types of Tier 2 encroachments are restaurant patios on the sidewalk, fences, stairs, and sheds. The City began increasing Tier 2 encroachments in FY21 utilizing a five-year plan to gradually increase rates to 50% of the average taxable value of the adjacent properties, approximately \$8.40 per square foot. For FY24, Staff is proposing to increase Tier 2 encroachments from \$3.80 to \$5.15 per square foot. Staff is also recommending to increase the minimum fee from \$20 per year to \$25 per year to cover administrative costs. This additional revenue is recommended to be utilized in the beautification of the right-of-way.

Included in the resolution is the list of property owners and assessments at the proposed FY24 encroachment rental fee amounts.

**ALTERNATIVES**

City Council may:

- Approve the Resolution to revise the encroachment rental fees; or,
- Approve an amended resolution to revise and assess the fees at another specified rate, or;
- Not approve the Resolution. If not approved, Council will need to approve a resolution at the September 25, 2023, Council meeting or no encroachment fees will be assessed for FY24.

**FISCAL EFFECTS**

The proposed FY24 encroachment rental fee will generate \$108,324.66 for FY24. This is an increase of \$25,382.47 over the FY23 revenues.

**Attachments**

FY24 Encroachment Fee Resolution

