

18-0312. Outdoor seating on public right-of-way.

(1) *Purpose.* The purpose of this section is to maintain aesthetically pleasing, accessible and vibrant sidewalks, and, through responsible encroachment practices, to balance the needs of citizens to use sidewalks with opportunities for businesses. It is further intended to assist with the enhancement of economic vitality of the city and to encourage the safe and orderly use of public property within the city. This chapter pertains specifically to the use of sidewalks by adjacent businesses for outdoor seating, merchandising and related purposes and does not remove from the city its authority to regulate other sorts of encroachments on the public right of way.

(2) *Definitions.*

(A) *Clear straight pathway.* An unobstructed straight walkway with a minimum width of forty-eight (48) inches.

(B) *Encroachment.* Any private or public temporary or longterm use of a sidewalk for purposes other than movement of pedestrians and other ambulatory citizens or other use by the City of Grand Forks in conducting its business.

(C) *Obstruction.* Any object on the sidewalk including, but not limited to, street lights and their bases, sign posts, trees, tree and garden plots, tree grates, landscaping, fire hydrants and street furniture.

(D) *Outdoor seating.* Seating outside of an established place of business whose primary or secondary business is the sale of food, or whose business desires to place outdoor seating for the convenience of their customers and the general public use and whose business location is immediately adjacent to the sidewalk space requested for use for said outdoor seating.

(E) *Permittee.* The person or entity that receives a permit to encroach under the terms of this chapter.

(F) *Sidewalk.* Any public walkway or pedestrian corridor within the central business district.

(3) *Standards for temporary encroachment.* Temporary sidewalk encroachments for outdoor seating must be in full compliance with the following standards:

(A) A clear straight pathway at least forty-eight (48) inches wide must be maintained along blocks.

(B) The outermost (street side) edge of the clear pathway shall be at least one (1) foot from the edge of the adjacent curb and shall be a straight line parallel to the curb.

(C) Encroachment may only extend along sidewalk directly adjacent to permittee's business (may not extend in front of any other property) unless agreed upon by all parties involved, with proof of agreement presented to the downtown design review board and with approval of the downtown design review board.

(D) Objects or items within the encroachment area shall not be placed in such a way that obstructs access to utility meters, hydrants, doors, fire escapes, stairways, entrances, or exits.

(E) In order to allow for adequate maintenance of the sidewalks in general and of the clear straight path in particular during winter months, encroachments shall be granted

only for the period between April 1 and November 1. All elements of the encroachment including, but not limited to, chairs, tables, fences, dividers, screens, display racks, etc., must be removed by November 1 of each year.

(4) *Applications for encroachments.* Any person or entity complying with the provisions of this section may receive a permit allowing an outdoor seating or merchandising encroachment. Applications for the initial encroachment permit shall be submitted to the downtown design review board using the prescribed form. In any calendar year encroachments may not begin before April 1.

Application requirements include:

(A) Eligible sidewalks shall be all sidewalks where a minimum of forty-eight (48) inches of clear straight pathway can be maintained.

(B) Businesses eligible for outdoor seating encroachment permits shall be all businesses who sell retail food items as a primary or secondary part of their daily operations or whose business desires to place outdoor seating for the convenience of their customer and the general public use and whose businesses are housed adjacent to the area of sidewalk requested for outdoor seating use.

(C) Businesses eligible for a merchandising encroachment permit shall be all businesses conducting retail sales as the major part of their daily operations and whose businesses are housed immediately adjacent to the area of sidewalk requested for merchandising use.

(D) All applications for encroachment must contain the following information:

1. Name, street address and phone number of applicant.
2. Street address of the property where the encroachment is requested.
3. A drawing to scale of the proposed encroachment.
4. Length of time requested for the encroachment.
5. Name and street address of property owner if property owner is not applicant.

(E) Along with the application, the applicant is required to submit a detailed site plan including, but not limited to, the following:

1. The proposed use, materials, colors and design.
2. The relationship of the outdoor seating to the adjacent existing building with identified uses and entrances.
3. The spatial relationship of the proposed outdoor seating to the existing sidewalk and to any existing public improvements, including, but not limited to, benches, lights, light poles, telephone/power poles, fire hydrants, planters, tree plots, tree grates, landscaping, sign posts, newspaper boxes, etc.
4. The dimensions of the proposed outdoor seating area or merchandising area.
5. The existing and proposed circulation pattern for pedestrians and other ambulatory citizens with exact dimensions of the clear straight pathway.
6. Evidence that abutting property owners and/or lessees have been notified of the proposed encroachment.

7. Plans for the operation of the outdoor seating, including, but not limited to, hours of operation, services to be provided, maintenance and cleaning.

8. The downtown design review board may require any other information as part of the application that it deems useful in evaluating the application.

(F) The initial application fee and each renewal application fee shall be one hundred dollars (\$100.00) payable upon submission of the initial or renewal application.

(5) *Permit issuance and conditions.* Once an application has been reviewed and approved by the downtown design review board and payment of the application fee required has been confirmed, a permit shall be issued conditioned on the following:

(A) In order to obtain an encroachment permit, applicants must provide the city with proof of general commercial liability insurance (certificate of liability insurance). The insurance policy must name the City of Grand Forks as one of the insured to the extent of at least five hundred thousand dollars (\$500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, which shall be in effect during the term of this authorization. The permit application must also include a signed hold harmless agreement that specifies that the permittee will defend, indemnify, and hold the city harmless for any loss, injuries, damage, claims or lawsuit, including attorney's fees that arise from the encroachment.

(B) Each permit shall be effective for the period between April 1 and November 1 of the year in which it is issued and is subject to annual renewal.

(C) The permit issued is personal to the permittee only and is not transferable.

(D) The city may require the removal, temporary or permanent, of the outdoor seating or merchandising encroachment when redevelopment of the street or sidewalk or utility repairs necessitates such action, or when the permittee fails to comply with any provisions of this ordinance.

(E) The permittee shall be responsible for expenses incurred in removing the outdoor seating or merchandising encroachment.

(F) The city's officers, employees or agents may immediately remove without notice all or parts of the outdoor seating or merchandising encroachments in an emergency situation. The city, its officers, employees, or agents shall not be responsible for outdoor seating or merchandising components relocated or damaged during emergencies.

(G) The permit covers only the area specifically described in the application.

(H) All signage must be in compliance with the Grand Forks City Code.

(I) The outdoor seating and merchandising area must be maintained and kept clean.

(J) Any other conditions which the downtown design review board deems appropriate for the safety and well being of pedestrians, patrons and the general public.

(K) Denial of an application by the downtown design review board may be appealed to the city council, within thirty (30) days from denial.

(6) *Revocation of permit.* The downtown design review board may revoke a permit at any time for any outdoor seating or merchandising encroachment if:

(A) Changing conditions of pedestrian or vehicular traffic necessitate the removal of the outdoor seating or merchandising encroachment.

(B) Proposed public improvements necessitate the removal of the outdoor seating or merchandising encroachment.

(C) Outdoor seating or merchandising encroachment no longer serves the public interest or,

(D) Such other reasonable cause as determined by the city to prevent or eliminate hazard to the public health, safety and welfare.

(E) Upon determining that cause exists for revocation of a permit, the downtown design review board shall give written notice of such action to the permittee stating the action taken and the reason.

(F) Upon official revocation by the downtown design review board the permittee shall have fourteen (14) days to remove the outdoor seating or merchandising encroachment and make any repairs to the sidewalk, if necessary, unless otherwise granted by the downtown design review board. Failure to remove the encroachment in the time allowed by the downtown design review board will result in removal of the encroachment by the city.

(G) Revocation approval by the downtown design review board may be appealed to the city council.

(7) *Permit renewal.*

(A) The permittee may file an application for permit renewal, accompanied by the renewal fee. Applications for renewal shall be submitted to the downtown design review board using the prescribed form. In any calendar year the encroachment renewal may not begin before April 1.

(B) Denial of an applicant's renewal request by the downtown design review board may be appealed to the city council.

(8) *Duty to maintain.* Permittee agrees to operate and maintain outdoor seating or merchandising encroachment in a safe, secure and sanitary manner, and in full compliance with the provisions of this ordinance and any conditions of approval set by the downtown design review board.

(9) *Application fees.*

(A) No fee shall be charged for processing applications for encroachments that will be limited to four (4) days or less in a calendar year.

(B) No refund shall be made where a permit is revoked or suspended for any reason.

(10) *Enforcement procedures.*

(A) If the downtown design review board finds that any provision of this section is being, or has been, violated or that any condition of approval of a permit issued pursuant to this section has not been met, the downtown design review board shall issue a notice of violation to the permittee.

(B) If the city determines that the condition of the site causes danger to the health, safety, or welfare of the public, the city may enter upon the site to remedy the dangerous condition without notice to the responsible party or landowner, and the permittee shall be liable for all costs of removal and disposal of said encroachment and the city shall incur no liability for damages associated with removal of the encroachment.

(11) *Authorized remedies and penalties for violations.*

(A) No fine shall be assessed for a violation of this section or a violation of a condition of approval that is remedied within twenty-four (24) hours after issuance of a notice of violation, provided that no notice of violation has been issued to the permittee within the prior twelve-month period. A fine of one hundred dollars (\$100.00) per day until remediation shall be assessed for any violation that continues after the twenty-four-hour remediation period, or for any violation where a notice of violation has been issued to the permittee in the prior twelve-month period. Each enumerated item of noncompliance shall be considered to be separate violation, and each day the violation continues shall be considered to be a separate violation. In addition, the city may seek one or more of the following remedies:

1. Removal of the encroachment at the expense of the permittee, with the permittee liable for all costs of removal and disposal of said encroachment and no liability on the part of the city for damages associated with removal of the encroachment.
2. A temporary restraining order, preliminary injunction or permanent injunction to restrain a person from violating the provisions of this chapter or a condition of approval, requirement or commitment imposed or made thereunder.
3. An injunction directing a person to perform a condition, requirement or condition imposed or made under this ordinance or to remove a structure erected in violation of this ordinance.
4. Suspend and withhold other approvals, certificates and/or permits relevant to use of the site on which the violation has occurred.

(B) The remedies provided for in these regulations shall be cumulative, and not exclusive, and shall be in addition to any other remedies provided by law.

(Ord. No. 3935, § I, 7-22-02)