

Ordinance 0008-19 - Right-of-Way Encroachments

An ordinance to amend Chapter 82, Article III of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Redesignate Chapter 82, Article III, Division 3 of the Municipal Code of the City of Racine, Wisconsin, as Chapter 82, Article III, Division 4.

Part 2: Recreate Chapter 82, Article III, Division 3 of the Municipal Code of the City of Racine, Wisconsin, as follows:

DIVISION 3. - Merchandise Displays, Amenities, and Encroachments
Sec. 82-140. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings given in this section, except where the context clearly indicates a different meaning.

Pedestrian oriented business district, for the purposes of this Chapter, shall mean a public sidewalk that is directly adjacent to the building, or portion of the building, where the licensee's business is located in B-2 and B-4 zoning districts. [e.g., Downtown, Uptown, West Racine, portions of Douglas Avenue]

Initial application means the first Temporary Encroachment License applied for by an establishment's owner or licensee.

Renewal license means a license, issued for the renewal of a Temporary Encroachment License.

Sidewalk has the meaning given in Wis. Stat. § 340.01(58).

Sec. 82-141. - Location.

(a) Except sidewalk cafés permitted pursuant to Chapter 82, Article III, Division 3, no person, firm, or corporation shall encroach upon or in any way obstruct or encumber, erect, place, maintain, or operate on any public sidewalk, a limited range of temporary obstructions including, but not limited to, works of art, benches, potted plants, merchandise, flags, and other similar types of objects, within a pedestrian oriented business district, without first having obtained a Temporary Encroachment License from the Director of City Development or their designee.

(1) The placement of permitted items under this Section shall be subject to review and approval by the Director of City Development or their designee prior to placement. In determining if a license shall be authorized, all of the following requirements must be met:

- a. The property shall be located within a pedestrian oriented zoning district with a zoning classification of B-2 or B-4.
- b. The building shall be adjacent to the public sidewalk and not separated by a parking lot, landscaping or similar features.
- c. The fixture(s) shall not be physically attached or anchored into the sidewalk, or any street fixture, and shall be of a temporary nature.
- d. The placement of the fixture shall not impede the flow of pedestrian traffic on the sidewalk. In no event shall the fixture reduce the unobstructed sidewalk path of travel to less than five feet at any point.
- e. The property owner shall provide the City with proof of liability insurance coverage per 82-145.

Sec. 82-142. - Permit required.

Except sidewalk cafés permitted pursuant to Chapter 82, Article III, Division 3, no person shall place any object on a public sidewalk unless a Temporary Encroachment License has been issued under this division.

Sec. 82-143. - Application.

(a) A complete application and the fee for a Temporary Encroachment License shall be submitted to the Director of City Development or their designee upon such form as shall be provided by the department. The application shall be signed by the applicant. The initial application shall be accompanied by a drawing of the site requested to be used, legible and approximate as to scale, showing the location of furniture, planters and other items that will be located on the sidewalk.

(b) Licenses issued by the Director of City Development or their designee shall be issued annually, commencing March 1 or thereafter when the license is issued, and shall expire on December 31 following its issuance.

(1) The fee for a Temporary Encroachment License shall be submitted for the initial license for non-sidewalk cafe related encroachments. Annual renewals without changes, shall not require a fee.

(2) Licenses shall not be prorated for a partial year and are not transferrable.

(3) Renewal of licenses with changes from the previously approved license will be processed as initial licenses with applicable reviews and fees required.

(b) Appeals to any decision of the Director of City Development or their designee, whether made by the business owner, adjoining property owner, or other aggrieved party, shall be filed with the City Clerk and submitted to the Public Works and Services Committee accompanied by a recommendation from City Staff. Action by the Public Works and Services Committee shall be final.

(c) Any license granted under this section shall be deemed a privilege granted pursuant to § 66.0425, Wis. Stats. By adopting this ordinance, the City expressly intends that the provisions of § 66.0425(1), (2), (3), (4), (5), (6), and (8), Wis. Stats., and as amended, shall apply to the encroachment license and licensee.

Sec. 82-144. - Revocation, suspension, nonrenewal.

If a violation of a Temporary Encroachment License occurs, the Director of City Development or their designee may revoke or suspend the license. In addition to any other penalty provided under this section, any Temporary Encroachment License issued hereunder may be suspended for a specific period of time, or not renewed or revoked, for violation of any provisions of this division or of any other law, ordinance or regulation which is substantially related to the licensed activity.

Sec. 82-145. - Insurance.

No applicant shall be issued a license hereunder unless providing proof of the following insurance in amounts not less than stated, with an admitted carrier in the State of Wisconsin that has an A.M. Best rating of "A-VII" or better, covering the area licensed hereunder:

Commercial general liability: \$1,000,000 per occurrence/general aggregate.

Worker's compensation: statutory.

Employer's liability: \$300,000 disease policy limit; \$100,000 per employee.

The licensee shall also provide, upon request, policies and endorsements. The policies shall be endorsed to name the city, its officers, department, employees, and authorized volunteers as additional insureds, and shall provide that the policies of insurance shall not be canceled or altered without thirty days prior written notice to the city. The insurance requirements are not intended to waive any immunity or statutory procedures that the city may have or be entitled to under provisions of law.

Sec. 82-146. - Standards for Temporary Encroachments and Obstructions

(a) Upon issuance of a Temporary Encroachment License, the following permitted items may be temporarily placed upon or over public sidewalks adjacent to buildings within pedestrian oriented zoning districts having B-2 or B-4 zoning classifications, where the sidewalk width allows for safe access and movement for pedestrians consistent with the Americans with Disabilities Act:

- (1) Sidewalk furniture such as tables, chairs, benches, and planters, all of which must be movable.
- (2) Display of goods and merchandise sold at the adjacent business.
- (3) Ornamentations and amenities such as statues, seasonal decorations, decorative artwork, and similar items.
- (4) Flags, when ornamental in design, made of a durable fabric and containing no signage text, logos, or advertising, on a pole affixed to the adjacent business at an upward angle whereby the point of attachment is no less than five feet above the sidewalk and where no portion of the pole or flag exists, protrudes, or hangs below seven feet above the required unobstructed 60 inch path of travel.

(b) Requirements - Placement of any permitted item identified above shall be subject to the following general requirements:

- (1) Authorization to place objects on sidewalk. Only the owner of a building, or the business occupying said building, fronting upon a public sidewalk within pedestrian oriented zoning districts having B-2 or B-4 zoning classifications, shall be authorized to place a permitted item upon such sidewalks.
- (2) ADA Compliance. The placement of all items shall provide clearances and pathways in conformance with the American Disabilities Act (ADA) and any amendments, guidelines, and regulations adopted pursuant thereto. In particular, the following standards shall apply: There shall be not less than a five-foot wide unobstructed accessible path of travel, excluding curb dimensions. A vertical clearance of not less than 80 inches shall be maintained at all times. The path of travel shall be reasonable in location and continuous between adjacent properties.
- (3) Location of obstructions. All obstructions permitted hereunder shall be located within 36 inches of the wall of the building and shall not reduce the passable sidewalk width below 60 inches in any case.
- (4) Clearance from public improvements. No placement shall be located within 60 inches of, or obstruct any parking space(s), landscaped area, utility or light pole, fire lane, fire hydrant, bus shelter, handicapped access ramp, or handicapped access route.

(5) Maintain visibility. The placement of permitted items shall always maintain safe visibility of vehicular traffic and pedestrians and clear visibility and access to all traffic signs, control devices, and other safety installations.

(6) Trash removal and maintenance. Permitted items placed on the sidewalk shall be maintained in a state of cleanliness and good repair. The licensee shall keep the sidewalk area in a clean, orderly, litter-free, and hazard-free condition.

(7) Boundaries. Permitted items shall only be placed within the boundaries of the storefront of the business listed on the license. Merchandise shall only be displayed during hours the business is open.

(8) Use of public property. No licensee may use any public property such as light poles or other utility poles, street signs, parking meters, planters, trees, or other amenities as a point of attachment for anything, including ropes, posters, flags, or signs.

Sec. 82-147. - Penalty.

Any person who violates this division shall, upon conviction, forfeit not less than \$50.00 nor more than \$1,000.00. Each day of a violation is a separate offense.

Part 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A