

## CITY OF BURLINGTON - ENCROACHMENT POLICY

### I. INTRODUCTION

1. This policy establishes the City of Burlington's position with regard to proposed encroachments and private use of the public right of way within the corporate limits of Burlington, Iowa. In the context of this policy "public right of way" refers to the area on, below, and above all public sidewalks, street right of way, and alley right of way. For the purposes of this policy, all parkland and all other property owned or controlled by the City of Burlington shall be defined as public right of way, and shall be in compliance with the requirements of this policy.
2. This Encroachment Policy solely covers encroaching on the public right of way and by no means covers permits or licenses required by individuals or businesses to bring or have merchandise to sell within the corporate limits of the City of Burlington.

### II. GOALS AND OBJECTIVES

1. To ensure the public continues to have aesthetically pleasing views as well as safe areas to walk and drive.
2. To protect and preserve the sidewalks, streets, and all other property owned or controlled by the City of Burlington.
3. To promote a consistent policy of reducing and minimizing encroachments on the public right of way.
4. To establish consistent and objective criteria for assessing each existing encroachment as well as future encroachments, and to accept these encroachments where exceptional circumstances apply.
5. To encourage appropriate outdoor activity in the public right of way, to ensure future private uses of public right of way are for the better of the community, and to guarantee adequate space for pedestrians and motorists for safe travel.
6. To establish a uniform application process and solution for all encroachment on the public right of way.

### III. DEFINITIONS

For use in this policy, the following terms are defined:

1. Encroachment
  - A. Webster's Definition – To intrude or infringe upon the property of another.
  - B. An individual or business setting anything on, below, or above the public right of way as defined in section 1.0 (Goals and Objectives). Encroachments can be temporary, permanent, and vertical in nature.
2. Public Right of Way

- A. Webster's Definition – Land owned or controlled by a government usually over which facilities such as roads, highways, railroads, or power lines are built.
  - B. An example would be in most cases the area between the street and the furthest edge of the sidewalk.
3. Temporary Encroachment
- A. Any item placed on the public right of way that is not permanent or fixed in nature and can be moved from one location to another.
  - B. Examples include but are not limited to tables, chairs, grills, furniture, clothing racks, signs, planters, and benches that can be moved.
4. Permanent Encroachment
- A. Any item permanently attached to the ground or buried underneath the ground on the public right of way. The item is considered permanent if it cannot be relocated without special equipment or large expense due to the item's size or weight or if it is not the intent of the applicant to move the item after it is in place.
  - B. Examples would include but are not limited to benches, planters, railings, ramps, steps, or stairs that are permanently attached to the ground, and pipes or cables that can be buried underneath the ground.
5. Vertical Encroachment
- A. Any item that projects over the public right of way and is located eight feet (8') above grade or higher.
  - B. Examples would include, but are not limited to signs, banners, flags, and awnings.
6. Sidewalk Café
- A. An outdoor area of an adjacent business that may be located upon City right-of-way and allows tables and chairs for dining and seating.
7. Special Event
- A. Webster's Definition - Something designed for a particular occasion.
  - B. Examples would include but are not limited to Steamboat Days, Taste of Burlington, Snake Alley Criterium, and Heritage Days.

#### IV. APPLICATION PROCEDURE AND FEES

1. Temporary Public Right of Way Encroachment Permit
- A. An application can be obtained in the Development Department Office.
  - B. Permit Fee
    - (i) \$25.00 three (3) day permit fee.
    - (ii) \$50.00 one (1) week permit fee.
    - (iii) \$125.00 three (3) month permit fee.
    - (iv) \$200.00 six (6) month permit fee.

- C. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical devices, signs, tables, chairs, grills, furniture, clothing racks, planters, benches, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
  - D. A copy of a current Health Department Certificate, if selling food or drink.
  - E. If applicable, a written statement from all adjacent property owners who are giving permission for the applicant to place the encroachment in front of their property.
  - F. A temporary encroachment permit application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.
2. Permanent Public Right of Way Encroachment Permit
- A. An application can be obtained in the Development Department Office.
  - B. \$25.00 non-refundable administrative fee is required.
  - C. Permit Fee
    - (i) Commercial/Industrial - \$275.00 permit fee.
    - (ii) Residential - \$ 55.00 permit fee.

In addition to the fees stated above, any fixed features stated in subsection (e.) shall be moved or replaced at the property owners expense when required as part of approving the encroachment contract.
  - D. No renewal fee will be required.
  - E. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature, and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical device, benches, planters, railings, ramps, steps or stairs, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
  - F. The Applicant must provide the Development Department with a list of all adjacent property owners. The department will then notify these property owners of the proposed encroachment and the date of public hearing.
  - G. A permanent encroachment permit application will go to the City Council for approval by public hearing, which will take approximately forty five (45) to sixty (60) days.
3. Vertical Public Right of Way Encroachment Permit
- A. An application can be obtained in the Development Department Office.

- B. \$25.00 non-refundable administrative fee is required.
- C. \$75.00 permit fee is required.
- D. No renewal fee will be required.
- E. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature, and extent of all proposed objects or improvements within the encroachment area. This includes any signs, banners, flags, awnings, etc. that are attached to the side of the building and are located vertically between the item and the ground. The site plan should also include all existing fixed features on the ground such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of where the item would project over the public right of way.
- F. The application shall be accompanied by all sign and building permits and all other permit applications that are required by Municipal Code.
- G. A vertical encroachment permit application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.

4. Sidewalk Café:

- A. An application can be obtained in the Development Department Office.
- B. Permit Fee: \$25.00 fee is required
- C. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately shows the location, height, nature and extent of all proposed objects or improvements within the encroachment area. This includes any mechanical devices, signs, tables, chairs, grills, furniture, clothing racks, planters, benches, etc. The site plan should also include all existing fixed features such as tree wells, sign posts, parking meters, fire hydrants, etc. within twenty-feet (20') of the encroachment area.
- D. A copy of a current Health Department Certificate, if selling food or drink.
- E. If applicable, a written statement from all adjacent property owners who are giving permission for the applicant to place the encroachment in front of their property.
- F. A Sidewalk Cafe application will go to the Development Department for review and will then be forwarded to the City Manager for approval; this process will take approximately five (5) to ten (10) days.

V. PERMIT CONDITIONS

1. Permit Required

- A. A permit shall be required for any type of encroachment in the public right of way, except for those encroachments that are identified as exempt by section 8.0 (Prohibited and Exempt Encroachments), item 2. (Exempt.) of this policy.

2. Conditions
  - A. The City of Burlington City Manager, Development Department, or Council shall have the authority to apply any other conditions not found in this policy to the approval of a permit seen as needed to ensure compliance with the intent of this policy.
3. Zoning
  - A. Permits shall only be granted for encroachments that are used for purposes allowed in the zoning district where the encroachment will be located. See Municipal Code Chapter 17.20 (District Regulations) for a list of allowed uses in each zoning district.
4. Allowable Uses
  - A. Encroachments shall only be allowed in public right of way provided they can meet all city standards, codes, and policies.
5. Historic Circumstances
  - A. Encroachments may be permitted where older properties were built across the public right of way or right up to the public right of way and prohibiting the encroachment would impair use, privacy, or security of the structure.
6. Special Events
  - A. Any temporary encroachment occurring at the time slated for the special event shall be made a part of the special event application to the City Manager's Office. No individual encroachments shall be granted during an approved Special Event (as herein defined).
7. Permit Transfer for Change of Property Ownership.
  - A. No temporary encroachment permits shall be transferred.
  - B. Permanent encroachment permits may be transferred if the existing owner notifies the City of his/her intent to transfer or sell property for which an encroachment permit has been issued. The city must be notified of this according to the termination procedures stated in the encroachment contract thirty (30) days before the date of sale or transfer of the property.
    - (i) The proposed permit transfer will be reviewed by the Development Department and will be forwarded to the City Manager for approval. Approval or modification of the permit is based on compliance with this policy and the overall goals, objectives, and interests of the city. This process will take approximately ten (10) to fifteen (15) days.
    - (ii) If approved or modified, the new owner shall have thirty (30) days after the date of sale or transfer of ownership to sign the contract and submit a copy of Certificate of Insurance that is in compliance with item 9. (Insurance.) of this section. The copy shall be submitted to the Development Department.

(iii) There is no fee associated with a permit transfer that is completed within the time frames set above, however; failure to transfer the encroachment permit within the time allotted will cause the permit fee to be paid.

(iv) If the new owner does not sign a contract, the terms and conditions of the existing contract will still apply to the original owner of the property.

8. Indemnification

A. The permit holder shall defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of an encroachment or improvement authorized under this permit.

9. Insurance

A. The permit holder shall be required to provide insurance and have named on a Special Endorsement Form, the City, its elected boards, officers, agents, and employees as additional insured's; the minimum insurance requirement is \$500,000. Proof of insurance is required prior to constructing or placing an approved encroachment.

B. The Certificate of Insurance shall also contain provisions that prohibit cancellations, modifications, or lapse without thirty (30) days written notice to the City.

VI. LOCATION REQUIREMENTS

1. Horizontal Clearance

A. When encroachments are on pedestrian paths, the following development standards shall apply; however, these requirements may be modified at the discretion of the City in locations where unusual circumstances exist and where public safety would be jeopardized.

B. As used herein, pedestrian pathways means a continuous obstruction free sidewalk area, paved to City standards, between the outside boundary of the encroachment and any obstruction, including but not limited to parking meters, streets, trees, landscaping, street lights, bus benches, public art, and curb lines.

(i) Encroachments shall not interfere with the view of pedestrians or motorists on or adjacent to the public right of way and shall not create a traffic hazard.

(ii) Encroachments shall maintain a minimum of four feet (4') in unobstructed sidewalk width to maintain pedestrian circulation.

(iii) Encroachments shall maintain a minimum of six feet (6') in unobstructed sidewalk width to maintain heavy pedestrian traffic.

2. Vertical Clearance

A. When encroachments are located above/over the public right of way the following development standards shall apply; however, these requirements may be modified

at the discretion of the City in locations where unusual circumstances exist and where public safety would be jeopardized.

(i) Vertical encroachments shall be located eight feet (8') or more above the public right of way, measured from grade to the lowest point of the encroaching item.

(ii) Vertical encroachments shall be no closer than two (2') feet from a curb line measured horizontally.

3. Extension to Adjacent Properties.

A. No temporary permit holder will be allowed to extend onto the property of an adjacent home or business without the written consent of that business or resident, the property owner, and by obtaining City approval.

B. Any permit holder wishing to extend outside of the adjacent property, see sections of City Code on Solicitor, Transient Merchant, Peddler or Special Event Permits.

4. Street Intersection Setbacks.

A. Encroachments shall not be placed within twenty-five feet (25'), measured back in either direction, from the corner of a street intersection in order to preserve a clear vision zone for pedestrians and motorists. (No item shall also exceed a height of two and a half feet (2 and 1/2') to eight feet (8') above grade, measured from the point of intersection of the public right of way.) See Municipal Code Chapter 170.10 (General Provisions and Definitions), Chart B, for a diagram of the clear zone.)

B. See Municipal Code Chapter 170.30.20 (Bulk Regulations) for additional setback requirements.

5. Alley Right of Way Setbacks.

A. Permanent encroachments into alley right of ways shall be limited to alleys that are sixteen feet (16') or greater in width.

B. Permanent encroachments shall be limited to secondary exit ways and shall not encroach into the alley right of way more than three feet (3'), provided that structures, such as fire escapes, utility lines, and balconies placed at or above a height of sixteen feet (16') above grade shall be exempt from the three foot (3') width requirement.

C. A twenty-five foot (25') setback shall be required from the entrance or exit of the alley right of way onto a public street.

## VII. DESIGN STANDARDS

1. Barriers

A. No barriers shall be required if the applicant proposes to limit the encroachment area and no alcohol will be served.

- B. Encroachments that serve alcoholic beverages must provide a physical barrier that meets the requirements of this policy and all other requirements of the Iowa Alcoholic Beverage Division.
  - (i) Barriers should complement the building façade as well as any street furniture, be somewhat transparent and shall be able to withstand inclement weather.
  - (ii) Barriers shall be capable of being removed through the use of recessed sleeves and posts, wheels that can be locked into place, or weighted bases.
  - (iii) The height of any barrier shall be a minimum of three feet (3’).
- 2. Awnings and Umbrellas
  - A. The use of awnings over an encroachment may be permitted per the Municipal Code. Removable umbrellas may be permitted per the Municipal Code, provided they do not interfere with street trees, signs, or the view from inside a structure. No freestanding awning will be allowed unless it will meet required setbacks and will not distract from or obstruct the view of motorists and pedestrians.
- 3. Lighting
  - A. Outdoor lighting fixtures may be permitted for permit holders, provided they are not glaring to pedestrians or motorists on the adjacent right of way. Outdoor lighting may be installed on the façade of the building with an electrical permit per the Municipal Code and completed by a licensed electrician. Freestanding electrical fixtures shall not be permitted in the public right of way. Battery operated lamps or candles will be permitted.
- 4. Design
  - A. The design, material, and colors used for any part of an encroachment should complement the architectural style of the building façade and street furniture.
- 5. Signs
  - A. All signs must meet the regulations of this policy and all other regulations of the City, including the Municipal Sign Code, Chapter 17.75 (Signs).
- 6. Sidewalk Café
  - A. Sidewalk Cafes must be part of an existing business and must be used for purposes allowed in the zoning district where the encroachment will be located.
  - B. Sidewalk café areas must be contiguous with a side of a building wherein the establishment is located
  - C. Sidewalk café hours of operation are limited, typically between 7 AM and 11 PM, or whenever the kitchen of the adjoining business closes.
  - D. If permanent improvements are proposed as part of the sidewalk café, the City may require a bond or some other form of guarantee to ensure the restoration of the sidewalk as a condition of lease and/or may require a permanent encroachment.



- E. The café owner is responsible for trash removal and shall maintain the area and surrounding five feet in a clean and litter free manner during all hours of operation.
- F. Sidewalk cafes may not extend beyond the building line and may not be located on street corners as defined by building lines extending to the street.
- G. No blockage of building entrances or exists is permitted in a sidewalk café area.
- H. A minimum 5-foot unobstructed sidewalk clearance shall be maintained adjacent to any approved sidewalk café area for public pedestrian use.
- I. Occupancy limits are determined as set forth in the City building codes.
- J. The city retains the right to terminate any sidewalk café agreement after written notice is given to the property owner for reasons including but not limited to: violations of state and liquor control laws, violations of any agreements, creating a safety hazard, creating a health hazard, or creating a nuisance
- K. Other Encroachment conditions, requirements, and standards apply as applicable.

#### VIII. CONDITIONS OF USE

##### 1. Daily and Seasonal Maintenance

- A. All encroachment permit holders shall keep the area surrounding the encroachment clear of liter. At the end of each day the encroachment area shall be picked up, cleaned, and swept. No debris shall be swept, washed or blown into the sidewalk, gutter, street, or alley.
- B. All encroachment permit holders shall maintain the area around the encroachment during all weather conditions including but not limited to snow and ice removal.
- C. If the permit holder will be providing food or drink, the permit holder must provide private trash receptacles. Private trash receptacles shall be emptied daily. Receptacles shall be placed immediately adjacent to the encroachment, but not in the path of pedestrians.
- D. City trash receptacles may not be substituted for private receptacles.

##### 2. Prohibited Locations and Times.

- A. None of the above defined will be allowed to set up or move about for the purpose of sales, storage, etc. in the public right of way without meeting all requirements of this policy and the Municipal Code.
- B. Permit holders shall not encroach on public right of way during City scheduled clean up and maintenance days.
- C. Temporary permit holders will only be allowed to operate during the hours of dawn to dusk unless stated otherwise on the permit.

##### 3. Removal

- A. All temporary encroachments shall be removed at the end of each business day unless permission has been granted with the approval of the application.

- B. Removal of encroachment will be enforced year-round.
- 4. Displaying Contracts
  - A. All temporary permit holders must have on hand the signed encroachment contract as well as all required licenses, certificates, and permits while encroaching on the designated public right of way. All permanent and vertical encroachment permit holders must have readily available the signed encroachment contract as well as all required licenses, certificates, and permits.
- 5. Inspection.
  - A. Any City Official may inspect an encroachment or improvement in a public right of way, to ensure compliance with this policy and all other Municipal policies and codes, at any time without notice to the holder.

#### IX. PROHIBITED AND EXEMPT ENCROACHMENTS

- 1. Prohibited
  - A. Encroachments that violate any section of this policy or the Municipal Code unless stated otherwise herein.
  - B. Encroachments will be prohibited where there is an issue of safety. Instances include, but are not limited to soil erosion, protected areas, fenced land, steep slopes, emergency vehicle access areas, and motor vehicle or pedestrian safety areas.
- 2. Exempt
  - A. Encroachments of the following nature will be exempt from this policy.
    - (i) Government required breakaway mailboxes approved by the U.S. Postal Service that are supported by a wood post no greater in cross section than four inches square or by a post with strength no greater than a two-inch diameter standard steel pipe. Two posts may be used to support a cluster of four or more mailboxes.
    - (ii) Traffic signs, traffic signals, streetlights, barricades for street and sidewalk repair, all public utility infrastructure, all seasonal lights and decorations, and all other infrastructure owned by the federal government; any governmental agency, organization, and institution created by the federal government; the State of Iowa; and all political subdivisions of the state, including the City of Burlington.
    - (iii) Official newspaper machines when all adjacent property owners have given permission for the machine owner to place the encroachment in front of their property.
    - (iv) Fire escapes and balconies placed at or above eight feet (8') measured from grade to the lowest point of the item.

X. TERM OF PERMIT

1. Pre-existing Encroachments

- A. All pre-existing permanent, temporary, and vertical encroachments shall be, upon adoption of this policy, allowed, subject to any previous agreement and conditions made between the City of Burlington and the Responsible Party.
- B. If no agreement was ever made between the City of Burlington and the Responsible Party prior to February 2000, the property owner must submit an application according to this policy within two (2) weeks of being notified by city staff of the violation.
- C. Failure to submit an encroachment application with the city two (2) weeks after being notified shall cause the removal of the encroachment. City staff shall have the authority to remove said encroachments and charge all costs to the property owner.
- D. Valid permits shall remain in effect until modified, expired, or revoked.

XI. VIOLATION/REMEDY

- 1. In the event that a permit holder fails to abide by the provisions of this policy or the terms and conditions of the permit, the City Manager may revoke or abate any permit upon proper notice.
- 2. The permit holder or property owner shall pay all costs incurred by the City in abating any encroachment or improvement.