

Chapter 12.36 - RESTAURANT ENCROACHMENT PERMITS

Sections:

12.36.010 - Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings respectively prescribed to them:

- A. "Building frontage" means the length of a side of a building which faces directly upon a public street or park. For purposes of this chapter, "faces directly upon a public street or park" means that the area formed by extending lines to the street or park from the two building sides which intersect the subject side of the building will not intersect in any portion of an existing structure.
- B. "Permittee" means an applicant issued an encroachment permit pursuant to this chapter.
- C. "Restaurant" means a commercial business establishment engaged in the selling of food or drink for consumption on the premises.

(Ord. 1941 § 1 (part), 1996).

12.36.020 - Permit required.

- A. It is unlawful for any restaurant owner or operator to construct, erect, place, keep or maintain any sign, showcase, rack, frame, table, chair or other device for the storage, display or sale of any food or merchandise of any kind, or to construct any structure or obstruction of any type along, under, over or above any public sidewalk or park without first obtaining an encroachment permit from the city manager or his designee. Notwithstanding Section 12.08.020, encroachment permits shall be issued if all the requirements of this chapter are met and the city manager or his designee finds that the granting of such encroachment permit will not unduly interfere with the rights of the public or significantly contribute to any traffic or other safety hazards.
- B. All encroachment permits shall expire on December 31st of each year and are revocable at any time by the city council. Encroachment permits do not constitute the granting of an easement by the city and are only transferable or assignable with the permission of the city manager or his designee. Encroachment permits may be renewed on an annual basis.

(Ord. 1941 § 1 (part), 1996).

12.36.030 - Application for encroachment permit.

Applications for encroachment permits pursuant to this chapter shall be submitted to the city manager. Every application shall contain the following information:

- A. The name, address, social security number and driver's license number of every owner of the business. This information must be kept current;
- B. A description of the tables, chairs and other equipment intended to be used and their desired location;
- C. Such additional information as may be required by the city manager or his designee.

(Ord. 1941 § 1 (part), 1996).

12.36.040 - Insurance.

Every permittee shall be required to furnish the city with a certificate of insurance with coverage of at least \$500,000 for property damage and \$500,000 for personal injury or a minimum combined single limit coverage of \$500,000 naming the city, its officers, agents and employees as additional insureds. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the city.

(Ord. 1941 § 1 (part), 1996).

12.36.050 - Hold harmless agreement.

Every permittee shall sign an agreement to indemnify and hold harmless the city, its officers, agents and employees from any and all liability, costs, damages or injuries to persons or damage to property which may arise out of or in any way be connected with the use of the encroachment permit.

(Ord. 1941 § 1 (part), 1996).

12.36.060 - Public property use fee.

For the privilege of using public property for a commercial enterprise, an annual public property use fee shall be paid by a permittee in advance in the sum of one hundred fifty dollars (\$150) for each encroachment permit.

(Ord. 1941 § 1 (part), 1996).

12.36.070 - Designated location.

- A. A permittee shall only use such sidewalk or park as is designated and approved by the city manager or his designee. The use shall not be conducted in such a manner as to obstruct the free passage of any sidewalk or parkway nor shall it obstruct the free passage into or from any business office or other establishment.
- B. Public safety shall be the principal factor considered when determining allowable locations. In addition, a designated location shall not:
 - 1. Obstruct a five (5) foot area for pedestrian travel along the sidewalk. The five-foot clearance shall be maintained at all times.
 - 2. Extend beyond the extended line of the building frontage of the restaurant.
 - 3. Extend to a depth of more than ten (10) feet from the property line.
 - 4. Be located along more than one building frontage.
 - 5. Be located closer than ten (10) feet of any driveway or alley approach.

(Ord. 1941 § 1 (part), 1996).

12.36.080 - Products sold.

Permittees shall only sell food and beverages. The sale of goods and/or merchandise is prohibited.

(Ord. 1941 § 1 (part), 1996).

12.36.090 - Additional prohibitions.

- A. Permittee shall erect no permanent structure within the encroachment area.
- B. No signs shall be placed within the encroachment area.
- C. All tables, chairs and other equipment shall be removed from the encroachment area during non-business hours.

(Ord. 1941 § 1 (part), 1996).

12.36.100 - Sale of alcoholic beverages.

Notwithstanding Section 9.12.020, the sale and consumption of alcoholic beverages shall be permitted within the encroachment area if permittee complies with all other laws relating to the sale of alcoholic beverages.

12.36.110 - Smoking optional.

At the option of the business owners, smoking shall be prohibited within the encroachment area. Any person who smokes in an area so designated as non-smoking is guilty of an infraction.

(Ord. 1941 § 1 (part), 1996).

12.36.120 - Revocation of encroachment permit.

- A. Violation of any provision of this chapter, or any federal, state, county or local health regulations shall be grounds for revocation of the encroachment permit. In addition, any conduct of any permittee which is a threat to public health and safety shall be grounds for immediate revocation of the encroachment permit. Violation shall also be grounds for denial of any subsequent application by the permittee.
- B. Notice of revocation hearing before the city manager shall be given to the permittee by mail at least five (5) days before the date of the hearing. At the hearing, the permittee may show cause why such permit should not be revoked or should not have been revoked. The city manager shall mail his determination of the revocation to the permittee within five (5) days after the hearing.

(Ord. 1941 § 1 (part), 1996).

12.36.130 - Appeal.

Any decision of the city manager to issue, revoke, or deny an encroachment permit may be appealed to the city council by filing a written appeal with the city manager within ten (10) days of mailing of the city manager's decision. The city council shall hear the appeal at the next regularly scheduled meeting provided that the appeal is received at least seven (7) days before the meeting date. The city council's decision shall be final.

(Ord. 1941 § 1 (part), 1996).