

ARTICLE __: LICENSE AND ENCUMBRANCE PERMITS FOR USE OF PUBLIC PROPERTY

Section __.101: STATEMENT OF PURPOSE

The purpose of this ordinance is to establish a comprehensive framework for the licensing and encumbering of public property within the City and aims to ensure the responsible use and management of public assets, create an efficient and transparent approval process and safeguard the interests of the community while promoting economic development. By regulating the use of public property, the City seeks to:

1. **Enhance Efficiency and Transparency:** Establish efficient and transparent procedures for issuing licenses and encumbrance permits for use of public property.
2. **Promote Fair Access:** Provide the public with equitable access to public property.
3. **Preserve Public Assets:** Maintain and preserve the integrity of public property.
4. **Facilitate Economic Development:** Support local businesses and economic activities by providing clear guidelines for the use of public property.
5. **Maintain Public Safety:** Ensure that public property is used in a manner that protects the health, safety, and welfare of residents and visitors.

Section __.102: AUTHORITY

The City Council regulates the use of public property through the creation of ordinances and policies in its administration of municipal affairs. The City Manager carries out the policy decisions of the City Council and manages City property.

Public property includes but is not limited to public ways, roads, rights-of-way, streets, lanes, alleys, sidewalks, parking spaces, loading zones and other City property public spaces, including intrusions into the airspace over public property ("Public Property"). Public forum areas are governed by a separate City Council policy and are excluded from the definition of Public Property in this Chapter.

The regulation of Public Property includes the issuance of permits and licenses for the temporary placement, installation, location or use of any obstruction on, in or over Public Property, including but not limited to structures, fixtures, objects, equipment or other encroachments ("Encumbrance").

The City Manager is responsible for establishing and publishing rules, regulations, and the forms necessary for the issuance and management of encumbrance permits and licenses under this Chapter. All rules, regulations and procedures associated with these licenses and permits shall be published on the City's website.

The City Manager shall provide monthly updates to the City Council regarding the issuance of encumbrance permits and licenses under this Chapter.

Section ____ 103: ENCUMBRANCE PERMITS, LICENSES AND USE OF PUBLIC PROPERTY

No person shall place or erect an Encumbrance that projects over the airspace of Public Property unless the City has issued a permit or license.

No license or permit will be issued for an Encumbrance that endangers public safety, impedes the free path of travel for the public, including pedestrian and vehicular traffic, or impedes egress or access to driveways, entrances, hydrants, poles, utilities, traffic signs or other government use.

Permits and licenses for Encumbrances may be temporarily or permanently suspended in an emergency or if the public interest requires such termination.

Permits and Licenses may be issued for the following Encumbrances that are in compliance with the provisions set forth above, the published rules, regulations and procedures for permits and licenses and the specific provisions set forth [in this Chapter](#):

A. Projecting Signs and Awnings

Dimensional requirements for permanently affixed signs and awnings that project over the airspace of Public Property shall comply with the height, setback and dimensional standards set forth in the City's Zoning Ordinance.

B. Flags

An annual permit may be issued for one flag per business over Public Property that does not exceed 12 square feet in area and has at least 7 feet of clearance above Public Property. A flag may be either an "open" flag or a flag that advertises the name of the business. The limitation of one flag per business does not apply to the American Flag [or the New Hampshire State Flag](#). Flags defined in this Section are not considered signs under the City's Zoning Ordinance.

C. Arts and Culture Banners

[An annual permit may be issued for temporary Arts and Culture Banners that project over the airspace of Public Property. Banners may be affixed to City light posts and erected along heavy traffic corridors in the City. The location and manner of how the banners may be erected, the height, setback and dimensional standards of the banners, and the process for selecting the cultural \(educational or civic\) institutions eligible to apply for the banner permit is more fully set forth in City Council policy \(number here\).](#)

D. A- Frame Signs

[An annual permit may be issued for one A-Frame sign located in Public Property on the sidewalk within the frontage where the business entrance is located. The A-Frame sign may not exceed 8 square feet in area on each side. If a business does not have sufficient frontage to place an A-Frame sign, it may place an A-Frame sign within the frontage of an abutting business with the express written permission of the abutter. If a business is located in an alley, a wayfinding A-Frame sign may be located within the](#)

frontage of another business with the express written permission of the other business owner.

E. Tables, Chairs and Benches

Annual permits may be issued for tables, chairs and benches for use by the general public on Public Property if, among other things, the number, size and location of the tables, chairs and benches do not impede the free path of travel for the public.

F. Planters

Annual permits may be issued for planters on Public Property if, among other things, the size and location of the planters do not impede the free path of travel for the public. Permits will be revoked if the plants in the planters are not maintained.

G. Mannequins and Clothing Racks

An annual permit may be issued for one mannequin and one clothing rack on Public Property in front of a business that sells clothing if, among other things, the size and location of the mannequin or clothing rack does not impede the free path of travel for the public. Permits will be revoked if the mannequin or clothing rack is placed in front of or impedes access to the Public Property in front of an abutter.

H. Short-Term Encumbrance Permits

Encumbrances of Public Property may be permitted through the issuance of either a Short-Term Encumbrance Permit or revocable License. Permits and revocable Licenses may be granted for construction project Encumbrances that may include but not be limited to scaffolding, fencing and laydown areas for construction materials. Permits and revocable Licenses may also be issued for non-construction related Encumbrances that may include but not be limited to moving trucks, equipment and vehicles associated with window washing and landscaping. All other permits required for construction projects, such as Excavation, Flagging and Driveway Permits, are issued after administrative review by the Department of Public Works and are not subject to this ordinance. (1)

1. Short-Term Encumbrance Permits

Encumbrance Permits for up to 30 calendar days will be administered and issued by the Department of Public Works.

2. Short-Term Encumbrance Permit Extensions

Short-Term Encumbrance Permits issued for 30 calendar days may be extended at the discretion of the Department of Public Works for up to an additional 30 calendar days (60 days total) after administrative review by the Department of Public Works. If there is a request for an additional 30 day extension (90 days total) an extension may only be granted by the City Manager for good cause. All extensions may require new conditions and fees.

3. The City Manager will provide the City Council with monthly reports on active Encumbrance Permits.

I. Long Term Encumbrances Requiring License

1. Construction Licenses

Requests for construction-related Encumbrance Permits for use of Public Property over 90 calendar days will be granted only after approval by the City Council.

2. Revocable Licenses Requiring Recording

When the City identifies encroachments in the City right-of-way or other Public Property, the City Council may require the Owner to record a revocable License at the Rockingham County Registry of Deeds that sets forth the City and Owner's rights and responsibilities and memorializes the location of the encroachment. Revocable Licenses for recording may include but not be limited to Encumbrances for steps, walls, fences, pipes and underground monitoring wells.

3. Licenses for Public Utilities

City Council approval is required for all revocable Licenses for utility Encumbrances that include but are not limited to poles, wires and conduits that are in, on, over or within the City right-of-way or other Public Property.

4. Licenses for Use of Public Property

City Council approval is required for all Licenses for the use of Public Property as defined in this Chapter and licenses for the use of City Parks and Parking Lots that are further defined in City Ordinance Chapters 7 and 8.

5. Valet Agreements

Valet Agreements for the use of City parking spaces to valet cars must be approved by the City Council after being reviewed and recommended by the Parking and Traffic Safety Committee.

J. Permits and Licenses for Commercial Use of City Property

Under limited circumstances, some commercial use of Public Property is permitted and regulated by City Ordinance and Council Policy. These commercial uses include the following:

1. **Outdoor Dining.** See Chapter 6, License, Article XVII, Outdoor Dining Encumbrance Permit, Sections 6.1701-1707.
2. **Taxis.** See Chapter 7, Vehicles, Traffic and Parking, Article II, Taxis, Section 7.201-217.
3. **Vendor Parking Space.** See Chapter 6 License, Article XIII, Hawkers and Peddlers, Section 6.1307.
4. **Hawkers and Peddlers.** See Chapter 6 License, Article XIII, Hawkers and Peddlers, Section 6.1301-1306 and Hawkers and Peddlers Policy 2009-04.

Hawkers and Peddlers shall not encumber Public Property with carts, stand, nonmotorized vehicle or tables for the sale or display of food or goods without first obtaining a Hawkers and Peddlers permit pursuant to the ordinance and policy set forth above.

K. **Special Events Permits**

The City has a strong commitment to foster support for local nonprofits and the arts and culture community through granting special event permits that allow these organizations to host diverse events on Public Property because they add vitality and support the economy of our community. Because these events take place on Public Property, they require significant municipal service support, that may include but not be limited to: Police details; inspections from Fire and Building Inspections Departments; street closure, barriers and logistical support from the Department of Public Works; food vending review by the Health Department; and review of alcohol service, if applicable, by the City's Liquor Review Committee, which is a prerequisite for the issuance of a liquor license from the New Hampshire Liquor Commission. Use of municipal services for special event permits require timely application and payment of associated fees for other permits that may be required for the event, that include but are not limited to:

- A. Temporary Event Food Permit (Health Department)
- B. Building Permit for Tents (Inspections Department)
- C. Temporary Permit to Operate a Place of Assembly (Fire Department)
- D. Liquor Review Committee Approval
- E. New Hampshire Liquor Commission Liquor License

City Council approval is required for Special Events generally, but not for the issuance of the Special Event Permit and other associated permits for the events.

FOLLOWING OUTLINE WILL BE AMENDED AND REVIEWED AT NEXT MEETING

Section _____: REQUIRED AND PROHIBITED CONDUCT OF APPLICANT

Every Applicant that is issued an encumbrance permit or license shall:

- A. Agree to permit the City to conduct all reasonable inspections of the encumbrance area;
- B. Comply with all applicable governing laws, codes, City ordinances, State statutes, and City rules, regulations and policies;
- C. Maintain the encumbrance area in a safe, clean and appropriate manner and take all action necessary to protect public safety;
- D. Refrain from damaging the encumbrance area and restore it to its original condition upon termination of the permit or license except as may be otherwise approved;
- E. Refrain from occupying the encumbrance area after the expiration of the permit or license or at any time during periods of revocation or suspension;
- F. Remove all structures, fixtures, object, equipment or other encroachments ("Encroachments") from the encumbrance area after the term of the permit or license has expired. If not removed, the City may remove and store all Encroachments and assess a \$250 removal and storage fee. If the fee is not paid, or the Encroachments are not retrieved, ownership of the Encroachments may be forfeited to the City; and
- G. Comply with all terms, conditions and other additional requirements set forth in the encumbrance permit or license, when applicable, agree to indemnify the City, to name the City as an additional insured in the amount prescribed and to pay all permit and license fees and fees for extensions.

Section _____: DENIAL, SUSPENSION, REVOCATION AND PENALTIES

A. Denial and Temporary Suspension:

The City may deny or temporarily suspend any encumbrance permit or license if it interferes with special events or for any maintenance or construction which requires closure or encumbrance of any public road, right-of-way, sidewalk, parking space, loading zone or other City property.

B. Suspension and Revocation:

Encumbrance permits and licenses will be suspended or revoked for breach of the terms and conditions of the permit or license and for failure to comply with

this Chapter. The encumbrance permit or license will be suspended 48 hours after receipt of written notice from the City. No 48 hours' notice is required if it is an emergency.

C. Penalties:

Any person who violates this ordinance or the terms and conditions of the encumbrance permit or license issued pursuant to this Chapter, including those who fail to obtain permits and licenses, shall be subject to all penalties set forth in City Ordinance, Chapter 1, Article XIII and all other additional remedies permitted by law.

Section___: APPEALS TO CITY COUNCIL [New Section for discussion purposes](#)

Any person aggrieved by the denial or issuance of certain permits or license under this Chapter (list) may appeal to the City Council for a de novo review within 30 days of the issuance of the permit or license. Such appeal shall be submitted to the City Clerk and shall state the date of the issuance or denial of the permit or license being appealed, a brief description of the basis for appeal and the issue presented. The City Clerk will docket the appeal and will put all timely filed appeals on the next available City Council Agenda.

Section___: CITY MANAGER REPORT [New Section for discussion purposes](#)

The City Manager or designee shall, on a monthly basis, keep the City Council informed of permits and licenses issued pursuant to this Chapter.