

## DOWNTOWN SIDEWALK PERMITS

Permits for seating or merchandising on downtown sidewalks (sidewalk permits) are necessary, as these amenities' location extends beyond private property limits and falls within the City's public right-of-way. The City requires those businesses wishing to utilize public right-of-way for amenities such as chairs, benches, and/or tables as well as any merchandise sold on the sidewalk adjacent to your business to obtain annual permits.

Sidewalk permits are now allowed throughout the calendar year, the process for which requires completion of an annual application and proof of liability insurance coverage.

Special events wishing to use sidewalks for one-time events should contact the Public Information Center at 701-746-4636.

### **What to Submit for a Permit:**

- **Complete & Signed Application** submitted to the Planning Department (enclosed).
- **Application fee** of \$100 for new applicants or \$25 for renewal applications.
- **Site Plan** (picture, site layout, etc.) of where the seating and/or merchandising will be located in relation to your building and business, with relevant dimensions shown on plan.
- **Proof of liability insurance** (required annually with application, see example form for required information).
  - o Insurance policies must name the City as additional insured, and the policy must carry \$1,000,000 bodily injury coverage and \$100,000 property damage coverage.

### **Timeline for Approvals:**

For **businesses located on DeMers Ave & N 5<sup>th</sup> Street – 2 months** for City & State approval. (DeMers & 5<sup>th</sup> Street are State-regulated corridors. Additional time is needed to process through State channels.)

For **businesses not on Demers or N 5<sup>th</sup> Street – 1-2 weeks** for City approval.

### ***Additional Information regarding sidewalk permits:***

If a business obtains a sidewalk permit and has the appropriate liquor licenses, alcoholic beverages must remain on premise and within the area specified by the permit. Any alcohol taken out of the permitted sidewalk area is subject to a fine by law enforcement and/or permit revocation by the City Inspections Department.

Any business participating in outdoor seating and/or merchandising without a permit is subject to the penalties outlined in ordinance 18-0312 (11) of the Grand Forks City Code.

Seating shall be placed so as to maintain ADA accesses on the sidewalk. The ADA path may be directly next to business wall if the roadway has been recently reconstructed.

Seating and merchandise shall be removed or physically secured after close of business or in the event of inclement weather.

255 N. 4<sup>th</sup> St.  
PO Box 5200  
Grand Forks, ND 58206-5200



Planning Department  
(701) 746-2661

## SIDEWALK PERMIT APPLICATION FOR OUTDOOR SEATING AND MERCHANDISING

(Located in City right-of-way)

### **APPLICANT INFORMATION**

Applicant Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

email: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business City/State/Zip: \_\_\_\_\_

Business Phone: \_\_\_\_\_

Name of Manager: \_\_\_\_\_

### **CORPORATION INFORMATION**

If corporation, please complete the following:

Name of corporation: \_\_\_\_\_

Address of principal office: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

Name of registered agent: \_\_\_\_\_

Address of registered agent: \_\_\_\_\_

### **NAME AND ADDRESS OF PROPERTY OWNER IF PROPERTY OWNER IS NOT APPLICANT:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Please complete & sign back side of application.**

**ADDITIONAL ATTACHMENTS REQUIRED**

The following supplements must be attached to application:

- 1. **Application fee of \$100.00 payable upon submission of initial application or \$25.00 for a renewal application.**
- 2. **Proof of general commercial liability insurance (Certificate of Liability Insurance) naming City of Grand Forks as one of the insured to the extent of at least \$1,000,000.00 bodily injury and \$100,000.00 property Damage.**

**Demers Avenue businesses are required to submit TWO commercial liability insurance (Certificate of Liability Insurance) policies: 1) naming City of Grand Forks and 2) naming State of North Dakota as additional insured. Both policies should reflect coverage of at least \$1,000,000.00 bodily injury and \$100,000.00 property damage.**

Insurance Policy Number: \_\_\_\_\_

Insurer Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code : \_\_\_\_\_

Insurer email: \_\_\_\_\_

- 3. **A Site Plan drawing (to scale) and Operations Plan of the proposed café location and layout plan that includes, but not limited to, the following:**

- 1) Proposed use, materials, colors and design.
- 2) Relationship of outdoor seating to adjacent existing building (identify uses and entrances).
- 3) Spatial relationship of proposed outdoor seating to 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) Dimensions of proposed outdoor seating area or merchandising area.
- 5) Total square footage to be occupied by sidewalk café:
- 6) Seating capacity of proposed café:
- 7) Existing and proposed circulation pattern for pedestrians and other ambulatory citizens with exact dimensions of clear straight pathway.
- 8) Evidence that abutting property owners and/or lessees have been notified of the proposed encroachment.
- 9) Plans for the operation of outdoor seating, including, but not limited to:
- 10) dates, days and hours of operation (including Saturdays, Sundays and holidays);
- 11) services to be provided;
- 12) maintenance and cleaning;

**EFFECTIVE DATE:**

This license/permit shall be effective for the calendar year for which it is issued and subject to annual renewal.

**HOLD HARMLESS/INDEMNIFICATION PROVISION**

Applicant hereby agrees to hold the City of Grand Forks, North Dakota, and its officers, employees and agents harmless and to defend and indemnify the same from all losses, claims, suits, actions or other demands for personal injuries and/or property damage resulting from the approval, placement, use and/or maintenance of the public right-of-way for outdoor seating or café purposes.

**Signature of applicant or authorized agent:** \_\_\_\_\_

**Date:** \_\_\_\_\_



Ave Businesses

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) XX-XX-XXXX

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER insurance provider
CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:
INSURER(S) AFFORDING COVERAGE
NAIC #
INSURED business
INSURER A:
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSD, WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liab, Excess Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The State of North Dakota and its agencies, officers, and employees (state) are included on the General Liability Policy as additional insureds, policy includes a waiver of subrogation in favor of the State of ND.

Location of Business: \_\_\_\_\_

CERTIFICATE HOLDER: NDDOT, 608 East Boulevard Ave, Bismarck, ND 58505-0700
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

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## 18-0312. Use of public right-of-way in the B-4 central business district.

- (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 within the B-4 Central Business District. 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, beautification, 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 that complies with Americans with Disability Act (ADA) regulations.
  - (B) *Encroachment.* Any private or public temporary or long-term 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.*
    1. *Public obstruction/improvement.* Any publicly owned utility or structure located on the sidewalk, to include fire hydrants, street lights and their bases, sign posts, trees, tree and garden plots, tree grates, bike racks, newspaper boxes and street furniture.
    2. *Private obstruction—Amenities.* Any privately owned amenities placed on the sidewalk to enhance the convenience, charm and character of a business, to include planters and/or other decorative items. Does not require a permit.
    3. *Private obstruction—Outdoor seating.* Seating, including chairs, benches and/or tables outside of an established place of business.
    4. *Private obstruction—Outdoor merchandising.* Businesses conducting retail sales on the sidewalk immediately adjacent to their business.
  - (D) *Permittee.* The person or entity that receives a permit to encroach under the terms of this chapter.
  - (E) *Parklet.* A parklet reimagines part of the street into a public space. Parklets are intended as aesthetic enhancements to the streetscape as extension of the sidewalk, providing an economical solution to the need for increased public open space. Parklets provide amenities like seating, planting, bike parking, and art.
  - (F) *Public right-of-way.* A publicly controlled strip of land containing at least one (1) of the following: Streets, alleys, sidewalks, or public utilities.
  - (G) *Sidewalk.* Any public walkway or pedestrian corridor within the central business district.
- (3) *Standards for temporary encroachment.* Temporary sidewalk encroachments must be in full compliance with the following standards:
  - (A) Private obstructions within the encroachment area shall not be placed in such a way that obstructs American with Disabilities Act (ADA) pathway, access to utility meters, hydrants, doors, fire escapes, stairways, entrances, or exits.
  - (B) Private obstructions for outdoor seating or merchandising within the encroachment area shall be removed from the sidewalk or physically secured at business closure, or in the event of inclement weather.

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- (C) Property owners of private obstructions and amenities are responsible for adequately maintaining sidewalks and must always provide a clear straight pathway. Owners are responsible for securing all elements of their obstructions and amenities in the event of inclement weather.
  - (D) All obstructions and parklets must comply with the Americans with Disabilities Act (ADA) and be accessible to all users, including people with physical disabilities, wheelchair users and those with impaired vision.
  - (E) Outdoor seating and merchandising shall be allowed throughout the calendar year subject to permit approvals based on the terms set forth in this section and subject to annual renewals.
  - (F) Parklets may be placed from May 1 to November 1. Approved Parklets shall be permitted for installation from May 1 to November 1 due to street maintenance needs and must be designed for easy deinstallation. All approved parklets are temporary installations and are subject to removal per the encroachment permit.
- (4) *Applications for encroachments—Initial submittal.*
- (A) Any person or entity must receive a permit allowing an outdoor seating or merchandising encroachment. Applications for the initial encroachment permit shall be submitted to the planning department using the prescribed form.
  - (B) Any person or entity desiring to provide sidewalk amenities, as provided herein, is not required to obtain a permit so long as the provisions of this section are adhered to.
- (5) Outdoor seating and merchandising 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 and merchandising encroachment permits shall be all businesses with storefront access directly to the sidewalk in which the seating will be placed.
  - (C) All outdoor seating, merchandising, and amenities along DeMers Avenue/Business US-2 are subject to review and approval by the North Dakota Department of Transportation.
  - (D) All initial 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. Name and street address of property owner if property owner is not applicant.
  - (E) Along with the initial application, the applicant is required to submit a scaled drawing to include, 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 and/or private obstructions, 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.

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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 planning department may require any other information as part of the application that it deems useful in evaluating the application.
- (F) The initial application fee shall be one hundred dollars (\$100.00) payable to the city planning department upon submission of the initial application.
- (6) *Parklet application requirements include:*
- (A) *Design professional.* A licensed architect, licensed contractor or engineer must seal proposed plans and supervise the installation.
  - (B) Completed City of Grand Forks temporary encroachment permit application must contain the following information:
    1. Name, street address, email and phone number of applicant.
    2. Street address of the property where the encroachment is requested.
    3. Name and street address of property owner if property owner is not applicant.
  - (C) *Required maintenance and construction bond.* Applicants shall be required to present construction bond, surety, or letter of credit to be approved by the city for the purpose of ensuring the costs of maintaining and/or removing the parklet are covered. The amounts to be covered shall include five thousand dollars (\$5,000.00) for construction and one thousand dollars (\$1,000.00) for maintenance.
  - (D) *Parklet site plan.* Illustrates the parklet in relation to the surrounding streetscape context and should include:
    1. Building and/or place of business, adjacent properties, and their building entrances.
    2. Existing sidewalk widths.
    3. Existing curb cuts and/or driveways with dimensions labeled.
    4. Adjacent bike lane or auto traffic lane.
    5. Existing parking spaces with dimensions labeled.
    6. Other existing sidewalk features near the proposed parklet area (fire hydrants, fire department connections, streetlights, utility access panels, bike racks, etc.).
    7. Existing street trees and tree pits with dimensions labeled.
    8. Proposed parklet footprint and dimensions including setback dimensions.
  - (E) *Detailed parklet design plan and elevations* from all sides to include:
    1. *Integrated amenities.* Bike racks, landscaped areas and/or art.
    2. *Moveable seating.* If you choose to use moveable tables and chairs, they should be durable and comfortable for individuals and groups of all ages and abilities.
    3. *Planting.* Integrated and/or associated planting is strongly encouraged.
    4. *Lighting.* Elements are permitted but must be self-contained and low voltage. Parklets may not be powered by extension cords.

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5. *Incorporate bicycle parking.* Integrated bicycle parking is encouraged. Bike racks can be integrated into the parklet structure or installed adjacent to the parklet as a bike corral on the street.
  6. *Advertising.* Except for a small plaque (four (4) inches by six (6) inches) recognizing donors. Advertising is prohibited.
  7. *Eligible materials.* Materials used in the construction of the parklet:
    - a. Materials that are easy to maintain and must be high quality, durable, and capable of withstanding heavy use and exposure to the elements.
    - b. Have a strategy for removing graffiti and replacing or repairing damaged parklet features such as plants, railings, or other elements.
    - c. Surface materials. Loose particles, such as sand or loose stone, are not permitted.
  8. *Parklet buffer areas.*
    - a. *Buffer from adjacent parking spaces.* In the case where there are adjacent parking spaces, parklets shall be required to have soft hit posts, wheel stops, or some other buffer to prevent conflicts with parking cars.
    - b. *Buffers on the edge.* All parklets shall have an edge to buffer the street. This can take the form of planters, railing, cabling, or some other appropriate buffer. The height and scale of the buffer required will vary depending on the context of the site.
    - c. *Maintain a visual connection to the street.* Parklet designs must maintain a visual connection to the street and not obstruct sight lines existing businesses or roadway signage. They can include columns, overhangs, and other vertical elements with approval by the City of Grand Forks Planning and Community Development Department.
    - d. *Extend the sidewalk.* Parklets should be designed as an extension of the sidewalk, with multiple points of entry along the curbside edge.
    - e. *Street side of the parklet.* While not visible from the sidewalk, the parklet's back is highly visible from across the street. Large blank walls are not permitted.
  9. Must meet accessibility requirements as set forth in American Disabilities Act.
    - a. *Platform surface.* The top of the parklet platform must be flush with the sidewalk with a maximum gap of one-half-inch.
    - b. *Platform cross slope.* Parklet platform rest areas cannot exceed two (2) percent cross slope. The final construction drawings will need to show spot elevations for both the sidewalk and the platform areas.
  10. *Construction and disassembly details.* Submit drawings that indicate how the parklet will be assembled and constructed as well as disassembled. Additional elements to be shown include:
    - a. Any hardware such as fasteners to be used in the construction or disassembly process.
    - b. Detail how positive drainage flow will be maintained along the curb line and how a blockage will be corrected if necessary, to maintain proper drainage.
- (F) *Site selection.*
1. *Speed limit.* The proposed location shall have a posted speed limit of twenty-five (25) mph or less. Streets with higher speed limits may be considered on a case-by-case basis.

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2. *DOT controlled Streets.* Due to DOT regulations business/property owners are not eligible to apply for parklets along DeMers Avenue and North 5th> Street.
  3. *Corner locations.* The proposed parklet site shall be located at least one parking space from an intersection (approximately twenty (20) feet).
  4. *Parklet placement.* Parklets can be sited along the curb line on streets where on-street parking spaces exist for on street parallel, angled, or perpendicular parking. Parklets must be located directly in front of the applicant's place of business. Other proposed locations will be considered on a case-by-case basis.
  5. *Utilities.* Parklets shall not be allowed in front of fire department connections and fire hydrants, over manhole covers, public utilities, or catch basins. Curb and roadside drainage shall not be impeded by the parklet.
  6. *City projects.* As part of its initial screening process, the city will review proposed parklet locations for potential conflicts with future programmed projects. Proposed locations may be rejected if there is pending streetscape improvement work planned.
  7. *Transit.* Parklets are not permitted in bus zones.
  8. *Buffer from adjacent parking spaces.* In the case where there are adjacent parking spaces, parklets shall be required to have soft hit posts, wheel stops, or some other buffer to prevent conflicts with parking cars.
- (G) *Platform guidelines:*
1. *Platform surface.* The top of the parklet platform must be flush with the sidewalk with maximum gap of one-half-inch.
  2. *Surface materials.* Loose particles, such as sand or loose stone are not permitted on the parklet.
  3. *Drainage.* The parklet cannot impede the flow of curbside drainage. The platform must be designed in a manner to accommodate the drainage patterns on the street. Designers are required to cover openings at either end of the parklet with screens to prevent collection of debris under the parklet.
  4. *Platform cross slope.* Parklet platform rest areas cannot exceed two (2) percent cross slopes. Final construction drawings will need to show spot elevations for both the sidewalk and the platform areas.
- (H) Documentation of letters of support from adjacent property owners and businesses.
- (I) *Building permit.* A building permit is required for the deck, including built-in planters and/or railings and for any other structures, such as raised platform for roof.
- (J) *Service and consumption of alcoholic beverages.* The applicant must obtain approval by the city council if the service and consumption of alcohol is a part of the operation of a parklet.
- (7) *Permit issuance and conditions.* Once an application has been reviewed and approved by the planning department 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) and shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty (30) days advanced notice to the city. The insurance policy must name the City of Grand Forks as one (1) of the additional insured to the extent of at least one million dollars (\$1,000,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, which shall be in effect during the term of this authorization.

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- 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 calendar year for which it is issued pursuant to this section, subject to annual renewal.
  - (C) Permits are not transferable.
  - (D) The city may require the removal, temporary or permanent, of the outdoor seating, parklet 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 section.
  - (E) The permittee shall be responsible for expenses incurred in removing the outdoor seating, parklet, or merchandising encroachment.
  - (F) The city's officers, employees or agents may immediately remove without notice all or parts of the outdoor seating, parklet or merchandising encroachments in an emergency situation. The city, its officers, employees, or agents shall not be responsible for outdoor seating, parklet 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, parklet, and merchandising area must be maintained and kept clean.
  - (J) Any other conditions which the planning department deems appropriate for the safety and well-being of pedestrians, patrons and the general public.
  - (K) Denial of an application by the planning department may be appealed to the downtown design review board, subject to the appeal process set forth in sections 18-0217A(19)(L) and (M).
- (8) *Revocation of permit.* The planning department may revoke a permit at any time for any outdoor seating, parklet, or merchandising encroachment if:
- (A) Changing conditions of pedestrian or vehicular traffic necessitate the removal of the encroachment.
  - (B) Proposed public improvements necessitate the removal of the encroachment.
  - (C) Encroachment no longer serves the public interest.
  - (D) Such other reasonable cause as determined by the city to prevent or eliminate hazard to the public health, safety and welfare or for non-compliance with the terms of the permit.
  - (E) Upon determining that cause exists for revocation of a permit, the planning department shall give written notice of such action to the permittee stating the action taken and the reason.
  - (F) Upon official revocation by the planning department the permittee shall have fourteen (14) days to remove the outdoor seating, parklet or merchandising encroachment and make any repairs to the sidewalk, if necessary, unless otherwise granted by the planning department. Failure to remove the encroachment in the time allowed by the planning department will result in removal of the encroachment by the city.
  - (G) Revocation approval by the planning department may be appealed to the downtown design review board, subject to the appeal process set forth in sections 18-0217A(19)(L) and (M).
- (9) *Permit renewal—Application required.*
- (A) Each renewal application fee shall be twenty-five dollars (\$25.00) payable to the city planning department upon submission.

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- (B) Any business requesting renewal of an outdoor seating, merchandising, or parklet permit shall complete the renewal application. Plans must be consistent with the original plan and shall be subject to administrative approval by the planning director. In any calendar year the encroachment renewal may begin January 1.
  - (C) If it is determined by the planning director that a substantial change has been made to the original plan a new application shall be required. The new application and plan are subject to review by the downtown design review board and the initial application fee of one hundred dollars (\$100.00).
  - (D) Denial of an applicant's renewal request by the planning department may be appealed to the downtown design review board, subject to the appeal process set forth in sections 18-0217A(19)(L) and (M).
- (10) *Duty to maintain.* Permittee agrees to operate and maintain all encroachments in a safe, secure and sanitary manner, and in full compliance with the provisions of this section and any conditions of approval set by the planning department.
- (11) *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.
- (12) *Enforcement procedures.*
- (A) If the planning department 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 city code enforcement officer shall be notified. In such an event, the city code enforcement officer shall, upon a finding of probable cause, issue a notice of violation to the violating permittee, applicant, or owner.
  - (B) If the city code enforcement officer determines that the condition of the site causes danger to the health, safety, or welfare of the public, the city code enforcement officer 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 neither the city code enforcement officer nor the city shall incur any liability for damages associated with removal of the encroachment.
- (13) *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.

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3. An injunction directing a person to perform a condition, requirement or condition imposed or made under this section or to remove a structure erected in violation of this section.
  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; Ord. No. 4292, § 2, 4-19-10; Ord. No. 4798, § IV[V], 6-21-21)

Editor's note(s)—Ord. No. 4798, § IV[V], adopted June 21, 2021, amended the title of § 18-0312 to read as herein set out. The former § 18-0312 title pertained to outdoor seating on public right-of-way.