

18-0312 Outdoor Seating on 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 downtown area. 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 longterm 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, chairs, benches, tables and/or other decorative items. Does not require a permit.
 3. *Private obstruction—Outdoor seating.* Seating outside of an established place of business for the purpose of consuming food and/or beverages.
 4. *Private obstruction—Outdoor merchandising.* Businesses conducting retail sales on the sidewalk immediately adjacent to their business.
- (D) Authority. Any obstruction along Demers Avenue/Business US 2 or any State regulated roadway are subject to review and approval by the North Dakota Department of Transportation via state encroachment agreements.
- ~~(E)~~ *Permittee.* The person or entity that receives a permit to encroach under the terms of this chapter.
- (F) Parklet.
- (G) Public Right of Way. A publicly controlled strip of land containing at least one of the following: streets, alleys, sidewalks, or public utilities.
- ~~(H)~~ *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:
- ~~(D)~~ *Private obstructions within the encroachment area shall not be placed in such a way that obstructs American with Disabilities Act (ADA) path, 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 between the hours of 1:00 a.m. and 7:00 a.m. daily, at business closure, or in the event of inclement weather.*

(F) ~~In order to allow for adequate maintenance of the sidewalks in general and of the clear straight path in particular during winter months, encroachments shall be granted only for the period between April 1 and November 1. All elements of the encroachment including, but not limited to, chairs, tables, fences, dividers, screens, display racks, etc., must be removed by November 1 of each year.~~

(C) Private obstructions and amenities are permitted year round but subject to renewal each year on January 1 of the new year. Property owners are responsible for adequately maintaining their sidewalks and must always provide a clear straight path. Owners are responsible for securing all elements of their outdoor seating in the event of inclement weather.

1. Property Owners must maintain sidewalks as described in Chapter 16 Article 3 Use and Care of Streets and sidewalks.

(D) All 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) Parklets may be placed from May 1 to November 1. Approved Paklets 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 temporary encroachments—Initial submittal.*

(A) Any person or entity complying with the provisions of this section must receive a permit allowing an outdoor seating or merchandising encroachment. Applications for the initial encroachment permit shall be submitted to the Planning Department downtown design review board using the prescribed form. ~~In any calendar year encroachments may not begin before April 1.~~

(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 & 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 encroachment permits shall be all businesses who sell retail food and/or beverages items as a primary or secondary part of their daily operations whose businesses are housed adjacent to the area of sidewalk requested for outdoor seating use.

(C) Businesses eligible for a merchandising encroachment permit shall be all businesses conducting retail sales as the major part of their daily operations and whose businesses are housed immediately adjacent to the area of sidewalk requested for merchandising use.

(D) All outdoor seating, and merchandising, and amenities along DeMers Avenue/Business US-2 are subject to review and approval by the North Dakota Department of Transportation.

(E) All initial applications for temporary 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. Length of time requested for the encroachment.~~

4. Name and street address of property owner if property owner is not applicant.

(F) 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.
 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 downtown design review board](#) may require any other information as part of the application that it deems useful in evaluating the application.
- (G) The initial application fee shall be one hundred dollars (\$100.00) payable to the city planning department upon submission of the initial application.

Parklet Application Requirements Include:

Design Professional – A licensed architect, licensed contractor or engineer must seal proposed plans and supervise the installation.

(A) Completed City of Grand Forks temporary encroachment permit application 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.
4. Name and street address of property owner if property owner is not applicant.

(B) 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 \$5,000 for construction and \$1,000 for maintenance.

(C) Parklet Site Plan:

1. Building, adjacent properties labeled and their building entrances, with dimensions labeled.
2. Existing sidewalk widths
3. Existing curb cuts and/or driveways with dimensions labeled.
4. Adjacent bikelane 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, street lights, 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.

(D) Detailed Parklet Plan and Elevations from all sides:

1. The various elements of the design

2. The materials proposed to be used in the [construction of the parklet design](#)
3. Dimensions of Parklet and Parklet elements including buffer areas
4. [Must meet accessibility requirements as set forth in American Disabilities Act.](#)

5. Construction and disassembly details – [Submit drawings that indicate how 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.](#)

(E) Site Selection

1. Speed limit – [The proposed location shall have a posted speed limit of 25mph or less. Streets with higher speed limits may be considered on a case by case basis.](#)

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 \(approximately 20 feet\).](#)

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.](#)

(F) Platform Guidelines:

1. Platform Surface – [The top of the Parklet platform must be flush with the sidewalk with maximum gap of one-half inch \(1/2"\).](#)

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 percent cross slopes. Your final construction drawings will need to show spot elevations for both the sidewalk and the platform areas.](#)

(G) Enclosure Guidelines:

1. 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 context of the site.

2. Maintain a visual connection to the street – Parklet designs must maintain a visual connection to the street and not obstruct sight lines to existing businesses or roadway signage. You are allowed to include columns, overhangs, and other vertical elements with approval by the City of Grand Forks Planning Department.

3. Extend the sidewalk – Parklets should be designed as an extension of the sidewalk, with multiple points of entry along the curbside edge.

4. 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.

5. Materials – All materials must be high quality, durable, and capable of withstanding heavy use and exposure to the elements.

(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.

(5) *Permit issuance and conditions.* Once an application has been reviewed and approved by the Planning Department downtown design review board 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 30 days advanced notices to the city. The insurance policy must name the City of Grand Forks as one of the insured to the extent of at least five hundred thousand dollars (\$1,000,500,000.00) bodily injury and one hundred thousand dollars (\$100,000.00) property damage, which shall be in effect during the term of this authorization. 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 period as allowed in a calendar year as specified in this section.
between April 1 and November 1 of the year in which it is issued and is subject to annual renewal. Except for a Parklet which follows May 1 to November 1.
- (C) The permits are issued is personal to the permittee only and is not transferable.
- (D) The city may require the removal, temporary or permanent, of the outdoor seating 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 ordinance.
- (E) The permittee shall be responsible for expenses incurred in removing the outdoor seating or merchandising encroachment.
- (F) The city's officers, employees or agents may immediately remove without notice all or parts of the outdoor seating or merchandising encroachments in an emergency situation. The city, its officers, employees, or agents shall not be responsible for outdoor seating 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 and merchandising area must be maintained and kept clean.

- (J) Any other conditions which the ~~downtown design review board~~ [Planning Department](#) deems appropriate for the safety and well being of pedestrians, patrons and the general public.
- (K) Denial of an application by the ~~downtown design review board~~ [Planning Department](#) may be appealed to the city council, within thirty (30) days from denial.
- (6) *Revocation of permit.* The ~~downtown design review board~~ [Planning Department](#) may revoke a permit at any time for any outdoor seating or merchandising encroachment if:
 - (A) Changing conditions of pedestrian or vehicular traffic necessitate the removal of the outdoor seating or merchandising encroachment.
 - (B) Proposed public improvements necessitate the removal of the outdoor seating or merchandising encroachment.
 - (C) Outdoor seating or merchandising encroachment no longer serves the public interest ~~or,~~
 - (D) Such other reasonable cause as determined by the city to prevent or eliminate hazard to the public health, safety and welfare.
 - (E) Upon determining that cause exists for revocation of a permit, the ~~downtown design review board~~ [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 ~~downtown design review board~~ [Planning Department](#) the permittee shall have fourteen (14) days to remove the outdoor seating or merchandising encroachment and make any repairs to the sidewalk, if necessary, unless otherwise granted by the downtown design review board. Failure to remove the encroachment in the time allowed by the downtown design review board will result in removal of the encroachment by the city.
 - (G) Revocation approval by the ~~downtown design review board~~ [Planning Department](#) may be appealed to the city council.
- (7) *Permit renewal—Application required.*
 - (A) Each renewal application fee shall be twenty-five dollars (\$25.00) payable to the city planning department upon submission.
 - (B) Any business requesting renewal of an outdoor seating/merchandising permit shall complete the application renewal checklist. Plans must be consistent with the original outdoor seating/merchandising plan and shall be subject to administrative approval by the planning director. ~~In any calendar year the encroachment renewal may not begin before April 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 ~~downtown design review board~~ [planning department](#) may be appealed to the city council.
- (8) *Duty to maintain.* Permittee agrees to operate and maintain outdoor seating or merchandising encroachment in a safe, secure and sanitary manner, and in full compliance with the provisions of this ordinance and any conditions of approval set by ~~the downtown design review board.~~ [18-0217 B-4 central business district design standards.](#)
- (9) *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.
- (10) *Enforcement procedures.*

- (A) If the ~~downtown design review board~~ 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.
- (11) *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.
 3. An injunction directing a person to perform a condition, requirement or condition imposed or made under this ordinance or to remove a structure erected in violation of this ordinance.
 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)