



Legislation Text

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SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to encroachments, projections and special privileges.

115-32-2 rc
115-40 rp
245-1-5 cr
245-1-6 cr
245-4 rc
245-4.5 rc
245-4.6 rp
245-6 rc
245-6.5 rp
245-7 rc
245-8 rp
245-9 rp
245-10-1 am
245-10-7 am
245-10-8 cr
245-10-9 cr
245-11 am

This ordinance revises and clarifies ch. 245 relating to the permissibility of various encroachments, projections and special privileges into the public right-of-way. These changes include:

1. Codifying that, regardless of the special privilege granted, a minimum clear sidewalk path of 5 feet must be maintained at all times.
2. Updating those projections and encroachments allowable without a special privilege.
3. Merging provisions on residential fences and retaining walls into a broader category encompassing all encroachments allowable for both one and 2-family residential properties.
4. Revising regulations pertaining to movable awnings.
5. Combining and condensing rules on stationary fabric awnings, other fixed awnings and canopies.
6. Amending marquee regulations to include hoods.
7. Clarifying provisions relating to the removal of obstructions from the public way upon written

notice of the commissioner of public works.

Whereas, One- and 2-family buildings are treated separately from other types of buildings by chs. 20 to 25, Wis. Adm. Code, and by ch. 240 of the Code of Ordinances; and

Whereas, Hundreds, if not thousands, of existing one- and 2-family residences have existing encroachments in the public right-of-way, such as steps, fences and retaining walls that have been present without enforcement and, in particular, without requirement of special privileges; and

Whereas, The administrative burden of enforcing the special privilege requirements for one- and 2-family residences would be excessive; and

Whereas, Residential buildings with 3 or more units are typically investment properties operated for profit which are better able to absorb the cost and satisfy the procedural requirements involved in obtaining and maintaining a special privilege; and

Whereas, It is therefore necessary to amend the Code of Ordinances to allow encroachments for one- and 2-family residences without requiring special privileges but with approval by the Commissioner of Public Works; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 115-32-2 of the code is repealed and recreated to read:

115-32. Obstruction on Public Ways.

2. a. The location of any permitted obstruction shall not be construed or deemed to be a vested interest. A permittee shall remove or modify an obstruction at his or her own expense and restore the public way to the satisfaction of the commissioner whenever the city determines that the public convenience would be enhanced by such removal or modification. Except as otherwise provided, the owner shall remove the obstruction from the public way within 30 days, or any special privilege within 10 days, of the receipt of written notice from the commissioner. If the owner fails to carry out the required work, the commissioner may cause such removal and certify the costs thereof in the proper manner to have them levied as special charges against the property and the proper city officials shall enter such charges on the tax rolls.

b. The owner of any non-permitted obstruction shall remove, at his or her own expense, the obstruction within 5 days of receipt of written notice from the commissioner. The owner shall restore the public way to the satisfaction of the commissioner. If the owner fails to carry out the required work, the commissioner may cause such removal and certify the costs thereof in the proper manner to have them levied as special charges on the tax rolls.

Part 2. Section 115-40 of the code is repealed.

Part 3. Section 245-1-5 and 6 of the code is created to read:

245-1. General Regulations.

5. There shall be no permitted projections which limit the clear paved sidewalk width to less than 5 feet.

6. No permission shall be given for projections into the public right-of-way where there is no paved public sidewalk, unless the encroachments are otherwise allowed by code.

Part 4. Section 245-4 of the code is repealed and recreated to read:

245-4. Permissible Projections and Encroachments. Projections and encroachments beyond the street line other than those listed in this section may be permitted by special privilege granted by the common council under s. 245-12. Under the conditions prescribed in this chapter and within the limitations regulated herein, the following projections and encroachments beyond a street line are permitted:

1. Main cornices or roof eaves projecting not more than 3 feet, provided they are a minimum of 14 feet above the adjacent established grade.
2. Cornices of porches and false mansard-type structures projecting not more than 15 inches, provided they are a minimum of 10 feet above the adjacent established grade.
3. Pediments, nonstructural columns or pilasters, and similar architectural projections, including bases and capitals, projecting not more than 8 inches.
4. Masonry projections, including but not limited to quoins, belt courses, lintels, sills, base courses and rustications, projecting not more than 4 inches.
5. Footings or walls and their supports at street lines projecting not more than one foot, provided the tops of the footings are a minimum of 4 feet below the adjacent established grade. Projections beyond the one-foot line shall be subject to the approval of the commissioner of public works.
6. Emergency exit doors, when open, projecting not more than 48 inches into an alley. All other doors when open may project not more than 36 inches.
7. Fire escapes and balconies to smoke-proof stair towers or horizontal exits projecting not more than 7 feet. All other balconies may project not more than 6 feet. Fire escapes and balconies shall be a minimum of 10 feet above the adjacent established street walk grade and 14 feet above alley grade.
8. Oriel or bay windows projecting not more than 24 inches, provided that the lowest portion of the window is a minimum of 10 feet above the adjacent established grade. No oriel or bay window that projects into a public right-of-way shall exceed 10 feet in width. Oriel and bay windows shall not be permitted to project into a public right-of-way which is less than 30 feet in width.
9. Exterior hose connections for fire protection equipment, in approved locations, projecting not more than 8 inches, provided that such connections are a minimum of 1 ½ feet but not more than 3 feet above the adjacent established grade.
10. Street walk basements or sidewalk vaults when constructed and located as regulated in s. 245-5.
11. Movable awnings when constructed and located as regulated in s. 245-6.
12. Awnings, canopies and sunshades when constructed and located as regulated in s. 245-7.
13. Fixed awnings in the Historic Third Ward projecting beyond the street line under s. 245-7-9.
14. Marquees when constructed and located as regulated in s. 245-10.
15. Remodeled building facades encroaching a maximum of 6 inches.
16. Temporary encroachments and use of public thoroughfares during erection, construction, enlargement, alteration, repair, renovation, moving, removing or demolition of buildings and structures when in compliance with the regulations of ch. 228 and s. 245-11.
17. Signs or advertising devices when constructed as regulated in ch. 244.
18. Roof gutters and conductors projecting not more than 8 inches into a public alley. Roof gutters and conductors may not project into a public street.
19. The cutting of street curbs, the installation of driveways and any construction therewith, when in conformity with rules and regulations of the commissioner of public works and permitted by the

commissioner of public works.

20. Electrical or gas lighting fixtures attached to the exterior walls of buildings or structures, in approved locations, projecting not more than one foot, provided that the lowest portion of the fixture is a minimum of 7 feet but not more than 10 feet above the adjacent established grade. The fixtures, when more than 10 feet above grade, may extend 5 feet into the public right-of-way and shall be a minimum of 14 feet above grade when projecting into an alley.

21. Security cameras attached to the exterior walls of buildings or structures projecting not more than 5 feet into the public right-of-way, provided they are greater than 10 feet above the adjacent established grade. The fixtures shall be a minimum of 14 feet above grade when projecting into an alley.

22. Sewer sampling manholes, catch basins, water meter pits, sprinkler pits and similar underground structures when in compliance with s. 245-5.

23. Monitoring wells when associated with a remediation project recognized by the state of Wisconsin.

24. Flagpoles for the flying of federal, state, county or municipal flags only, attached to the exterior walls of buildings or structures, projecting a distance not closer than 3 feet from the curb line, provided the flag and pole have at least 8 feet clearance above the street walk.

25. Permissible projections, obstructions and encroachments as provided by s. 115-32.

26. Items installed in the public right-of-way as part of a streetscape for which a maintenance agreement, approved by the common council, has been fully executed.

27. Projections and encroachments for one and 2-family residential properties as provided in s. 245-4.5.

28. Decorative landscaping edging in the public right-of-way as regulated in s. 116-54.

29. Approved appliances and devices used in connection with equipment not otherwise regulated herein, in approved locations, projecting not more than one foot, provided the lowest portion thereof is a minimum of 10 feet above the adjacent established grade.

Part 5. Section 245-4.5 of the code is repealed and recreated to read:

245-4.5. Encroachments for One- and 2-Family Residential Properties. 1. DEFINITION.

“Encroachments for one- and 2-family residential properties” means objects or structures placed in the public right-of-way that are approved by the commissioner of public works and that are not otherwise permitted by s. 245-4.

2. GENERAL REGULATIONS. All encroachments for one- and 2-family residential properties shall comply with the following guidelines:

a. Plans shall be submitted to the commissioner of public works for approval and issuance of a permit prior to applying for any other necessary permits.

b. All necessary permits shall be obtained prior to construction of a proposed encroachment.

c. Any proposed encroachments shall conform to this section, as well as any other requirements of the code. If a conflict exists, the more restrictive requirement shall govern.

3. PROJECTION.

a. If a paved public sidewalk is present, encroachments may be located between the sidewalk and the street line and may project to the edge of the sidewalk.

b. If no paved public sidewalk is present, encroachments may not project into the public right-of-way unless specifically allowed by s. 245-4.

c. Encroachments may not project into an alley, pedestrian way or bicycle way unless otherwise allowed by the code.

4. APPLICATION. The owner of a property under consideration for construction and installation of a

public way encroachment shall submit plans to the city engineer for review and approval. The grantee shall subsequently submit plans and obtain permits from the commissioner of public works and commissioner of city development, as necessary, for any installation.

5. CONDITIONS OF PERMIT. The owner of a public way encroachment for one- or 2-family residential property shall:

- a. Become primarily liable for damages to persons or property by reason of the granting of a permit for the encroachment.
- b. Remove or modify the encroachment whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

6. SPECIAL PROVISIONS. Any encroachment for one- or 2-family residential property as herein regulated, in existence as of the passage of this ordinance [city clerk to insert date], which meets the requirements of sub. 3, shall be allowed to remain in its existing location until such time that removal of the encroachment is ordered pursuant to sub. 5. The owner of the existing encroachment shall be deemed primarily liable for damages to persons or property by reason of the maintenance of the existing encroachment.

Part 6. Section 245-4.6 of the code is repealed.

Part 7. Section 245-6 of the code is repealed and recreated to read:

245-6. Movable Awnings. 1. DEFINITION. “Movable awning” means a tractable roof-like shelter attached to the exterior wall of a building or structure in an approved manner, and so constructed and erected to permit being rolled, collapsed or folded back to a position against the building or structure.

2. GENERAL REGULATIONS. All movable awnings erected on any building or structure and projecting beyond a street line shall comply with the regulations of this section.

3. LENGTH. There shall be no limitation on the length of a movable awning.

4. PROJECTION. The projection of a movable awning from the street line shall not exceed $\frac{1}{2}$ the distance from street line to the curb line, but not more than 6 feet in any case. If a sidewalk is less than 12 feet in width, the awning may project 6 feet, but not closer than 2 feet to the curb line. Awnings shall not project into a public right-of-way which is less than 30 feet in width.

5. CLEARANCE. There shall be not less than 7 $\frac{1}{2}$ feet in the clear between any point of the frame of a movable awning and the sidewalk grade directly below.

6. CONSTRUCTION AND DESIGN.

a. Movable awnings shall be supported entirely by the building or structure to which they are attached.

b. The covering shall be of canvas, cloth or other approved material, which shall be sufficiently flame proofed.

c. Movable awnings shall be designed and supported to withstand snow and other loads of not less than 25 pounds per square foot and wind pressure of 20 pounds per square foot applied in any direction when the awning is not retracted.

d. Approved supporting structure shall be provided for the support and fastening of awnings.

7. SIGNS AND ADVERTISING DEVICES. No sign or advertising device shall be hung from, attached to, printed or painted on a movable awning unless the sign complies with the awning sign regulations of ch. 295.

8. REMOVAL. The owner shall remove or modify a movable awning whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

Part 8. Section 245-6.5 of the code is repealed.

Part 9. Section 245-7 of the code is repealed and recreated to read:

- 245-7. Awnings, Canopies and Sun Shades.**
1. **DEFINITION.** In this section “awning, canopy or sun shade” means a roof-like structure attached to the exterior of a building or structure in an approved manner.
 2. **GENERAL REGULATIONS.** Awnings, canopies and sun shades, when projecting beyond the street line shall comply with the regulations of this section. No awning, canopy or sun shade shall project into a public right-of-way which is less than 30 feet in width.
 3. **LENGTH.** There shall be no limitation on the length of an awning, canopy or sun shade.
 4. **PROJECTION.** The projection of an awning, canopy or sun shade from the street line shall not exceed $\frac{1}{2}$ the distance from such street line to the curb line, but not more than 6 feet in any case. If a sidewalk is less than 12 feet in width, the awnings may project 6 feet, but not closer than 2 feet to the curb line.
 5. **CLEARANCE.** There shall be not less than 7 $\frac{1}{2}$ feet in the clear between any point of an awning, canopy or sun shade and the sidewalk grade directly below.
 6. **CONSTRUCTION AND DESIGN.** Awnings, canopies and sun shades shall be:
 - a. Constructed of noncombustible, rust-resistive materials. Awnings covered in cloth, canvas or other approved pliable material shall be sufficiently flame-proofed.
 - b. Supported entirely by the building or structure to which they are attached.
 - c. Designed and supported to withstand snow and other loads of not less than 25 pounds per square foot and wind pressure of 20 pounds per square foot applied in any direction.
 7. **SIGNS AND ADVERTISING.** No sign or advertising device shall be hung from, attached to, printed or painted on an awning, canopy or sun shade unless the sign complies with the sign regulations of ch. 295.
 8. **EXISTING FIXED AWNINGS.** All fixed awnings heretofore erected and projecting beyond the street line except fixed awnings covered under sub. 9, shall be made to conform to the regulations of this section, or they shall be removed within 30 days following the effective date of this ordinance [city clerk to insert date].
 9. **AWNINGS IN THE HISTORIC THIRD WARD.** An awning which is located in the Historic Third Ward District, as defined in s. 200-61-2-e, projects beyond the street line and was in existence on December 16, 2003, may be maintained without a special privilege. The awning may also be repaired, altered or replaced without a special privilege, provided the projection from the street line is equal to that of the existing awning or the distance to the curb face, whichever is greater. The awnings shall be constructed in accordance with sub. 6. A permit shall be required for repair, alteration or replacement of an awning, but not for maintenance of an awning. Whenever a permit is required, the owner of the building to which the awning is attached shall:
 - a. Become primarily liable for damages to persons or property by reason of the granting of a permit for the awning.
 - b. Remove or modify the awning whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

Part 10. Sections 245-8 and 9 of the code are repealed.

Part 11. Section 245-10-1 and 7 of the code is amended to read:

245-10. Marquees. 1. DEFINITION. A marquee as herein regulated shall mean a rigid, flat, roof-like structure, ~~[[other than a hood,]]~~ affording shelter, attached to the exterior walls of a building or structure in an approved manner and erected only over an entrance to a building or structure.

7. SIGNS AND ADVERTISING DEVICES. No signs or advertising devices shall be hung from or attached to the bottom of a marquee, except that other signs or advertising devices may be attached to or made a part of the sides or front face of a marquee, as regulated in ch. 244 and in accordance with the regulations for hood signs in ch. 295. Illumination by means of recessed lighting fixtures or by other approved means shall be provided in soffits or marquees. ~~[[In no case shall individual glass panels of recessed light fixtures exceed 576 square inches in area.]]~~

Part 12. Section 245-10-8 and 9 of the code is created to read:

8. EXISTING MARQUEES. All marquees projecting 4 feet or less and being 32 square feet in size or smaller and heretofore erected prior to the effective date of this ordinance [city clerk to insert date] shall be made to conform to the regulations of this section when altered or replaced.

9. REMOVAL. The owner of a marquee shall remove or modify the marquee whenever the city determines that the public convenience would be enhanced by such removal or modification as provided in s. 115-32-2. The owner shall not be entitled to damages relating to the removal or modification.

Part 13. Section 245-11 of the code is amended to read:

245-11. Permits and Fees. 1. No person shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, raze or demolish any permissible projection regulated in ~~[[s. 245-4-1 to 19, 21 to 23 and 25 to 27]]~~>>s. 245-4-1 to 15, 17, 18, 20 to 24, 27 and 29<<, or any existing projections without first obtaining a permit therefore from the commissioner of city development and paying the fee as prescribed in s. 200-33.

2. Permits for the temporary occupancy and use of public thoroughfares, the cutting of street curbs, installation of driveways, the establishment of sidewalk area dining facilities and any construction therewith regulated in ~~[[s. 245-4-20, 24 and 28]]~~>>s. 245-16, 19 and 25<<, shall be obtained pursuant to ch. 115 and by rules, fees and regulations established by the commissioner of public works.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

DPW - Infrastructure Services Division
LRB09259-5

TWM:lp/MST
5/6/2010

clerical correction -- 6/11/10 -- lp