



CITY OF MILWAUKIE
COUNCIL ORDINANCE No. 2152

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 12.14 ADOPTING PROVISIONS FOR ENCROACHMENTS WITHIN PUBLIC RIGHTS-OF-WAY AND EASEMENTS.

WHEREAS, the City Council, finds it is in the public's best interest to allow private encroachments into the public right-of-way under certain circumstances; and

WHEREAS, the consensus of the city Council discussion has been to develop a comprehensive right-of-way encroachment program; and

WHEREAS, the City Council has held three work sessions on October 20, 2015, May 2, 2017 and September 5, 2017 to develop a new right-of-way encroachment program.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. The Milwaukie Municipal Code is amended by adding a new Chapter 12.14 Right-of-Way Encroachments, to read as shown on the attached Exhibit A

Section 2. The Milwaukie Municipal Code is amended by removing Chapters 12.20 and 12.28, which have been superseded by the proposed code.

Section 3. The Milwaukie Municipal Code is amended by revising Subsection 19.501.1.A to read as follows:

"No Accessory structure shall encroach upon or interfere with the use of any adjoining property or public right-of-way including but not limited to streets, alleys, and public and private easements, unless permitted in accordance with Section 12.14"

Section 4. This ordinance shall take effect 30 days after passage.

Read the first time on 10/17/17, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 10/17/17.

Signed by the Mayor on 10/24/17.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney

CHAPTER 12.14

ENCROACHMENTS WITHIN PUBLIC RIGHTS-OF-WAY AND EASEMENTS

12.14.010 DEFINITIONS

“City” means the City of Milwaukie.

“Clear vision area” means that area, as computed by Section 12.24.040, which allows the public using the City streets an unobstructed view of an intersection.

“Easement” means the right to use land in a limited way for a stated purpose.

“Frontage Zone” means the area between the property line and walkway. Where sufficient right-of-way exists, a frontage zone should be provided that is a minimum of 2 ft wide, except in locations adjacent to high and intermediate capacity transit stations. Frontage zones can accommodate sidewalk cafes, store entrances, retail display, or landscaping. A frontage zone is not needed if the sidewalk corridor is adjacent to a landscaped space.

“Furniture Zone or Landscape Zone” means the area between the roadway curb face and the front edge of the walkway or pedestrian zone (including the curb). The minimum width of this zone is defined by the Public Works Standards. Objects in the landscape/furniture zone must be set back a minimum distance from the face of the street curb. This zone buffers pedestrians from the adjacent roadway and is the appropriate location for street furniture, art, and landscaping. It is also the preferred location for street trees, and other elements such as pedestrian lighting, hydrants, and below grade utility hatch covers. Transit stops are also located in the landscape/furniture zone and are designated for transit customer waiting, loading, and alighting and may include transit signage, shelters, benches, litter receptacles, and pedestrian-scaled lighting.

“Pedestrian Access Route” means a continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path.

“Pedestrian Zone” means the area of the sidewalk corridor that is specifically reserved for pedestrian travel (see Pedestrian Access Route). The minimum width of this zone is defined by the Public Works Standards. Street furniture, plantings, and other fixed items should not protrude into clear zones established in accordance with the Americans with Disabilities Act (ADA).

“Public Property” means and includes any premises owned or maintained by the City and open to the general public for the use of motor vehicles, bicycles, and/or pedestrians, whether or not a fee is charged for the use of the premises.

“Right-of-way” means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement. See also “street.”

“Sidewalk” means that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property line intended for the use of pedestrians.

“Street” means the entire width between right-of-way lines for vehicular, bicycle, and pedestrian traffic and includes the terms “road,” “highway,” “lane,” “place,” “avenue,” “alley,” and other similar designations.

12.14.020 ENCROACHMENTS WITHIN PUBLIC RIGHTS-OF-WAY AND EASEMENTS

- A. Permits required for encroachment in public rights-of-way, easement, or public property.
1. It is unlawful for any person to erect, or cause to be erected, any structure or maintain any vegetation or landscaping in, over, or upon any public right-of-way, easement, or public property without first obtaining a revocable permit from the Engineering Department authorizing this action.
 2. The person in control of any encroachment of a structure, vegetation, and/or landscaping materials in, over, or upon any dedicated public right-of-way, easement, or public property constructed, modified, or relocated after September 1, 2015, must apply for an encroachment permit pursuant to this chapter no later than December 31, 2017. The City may not initiate a violation of this section for an encroachment existing on September 1, 2015 and before December 31, 2017, or while a timely filed application for an encroachment permit is under consideration by the City.
- B. Application and Fee Required
1. Any person desiring to locate an encroachment within any public right-of-way/easement must submit an application to the Engineering Department. The application must include a description of the proposed encroachment, a scale drawing illustrating the nature and extent of the proposed encroachment, and its relationship to adjoining properties. If the applicant is not the owner of the property benefitted by encroachment, the owner must sign the application as co-applicant. The Engineering Director or designee may require a survey to determine the exact location of any public or private improvements or significant vegetation.
 2. The applicant must pay a fee at the time of application in the amount identified in the most current fee schedule.
- C. The Engineering Director or designee will review the application for an Encroachment Permit to determine if it complies with standards and will request comments from affected City departments and utilities regarding the impact of the proposed encroachment.

12.14.030 ENCROACHMENT TYPES

- A. Encroachments are classified into four categories. Encroachments are identified into categories in the Public Works Standards.
- B. Category of Encroachment
1. “Major Encroachments” means encroachments that require some degree of engineering review or present a public safety or liability. Examples may include fences and walls (greater than 30 inches in height), stairs, building projections or extensions, encroachments that interfere with the Pedestrian Zone, and structural driveways.
 2. “Minor Encroachments” means encroachments the placement of which may interfere with the movement of vehicles, Pedestrian Access Route, or Pedestrian Zone. Typically includes any obstruction placed in the Furniture Zone. Examples may include fences and walls (less than 30 inches and greater than 9 inches in height), planter boxes, low-growing vegetation, bike racks, benches, and any other encroachment that may obstruct the motion of a motor vehicle.

3. "Special Encroachments" means those encroachments or programs that may or may not interfere with vehicles and/or pedestrians but have been identified as requiring a permit to occupy the public right-of-way. Examples include painted intersections, parklets, and sidewalk cafes.
4. "Exempt Encroachments" means those encroachments specifically exempt in Section 12.14.040 or otherwise exempted within the Public Works Standards.

C. Unlisted Uses

If the proposed encroachment is not expressly listed in the above categories, the Engineering Director or designee will review the proposed encroachment and determine which category is applicable to the encroachment. The applicant may appeal the result of the review to the City Manager by filing a notice of appeal within 10 days of the date the City mailed notice of the result of the review the property owner.

12.14.040 EXEMPTIONS

- A. Encroachments that would have a minor impact on the present or planned use of the public right-of-way, easement, or public property and those that are expressly permitted by this code are exempt from the permit requirements of Section 12.14.020. Except as provided by Subsection 12.14.040.B below, exempt encroachments are:
 1. Mailboxes and their enclosing structures subject to post office regulations.
 2. Planter boxes in the "Frontage Zone" no greater than 8 ft in length and 3 ft in height.
 3. Irrigation and low voltage illumination.
 4. Temporary signs and banners permitted by the Chapter 14.20 Signs in the Public Rights-of-Way.
 5. Lawns and plants encroaching in the public right-of-way that do not obstruct movement or visibility for pedestrians, bicyclists, and motorists.
- B. Encroachments described in Subsection 12.14.040.A above are not exempt if they create a line of sight traffic hazard or conflict with ADA requirements.
- C. Encroachments existing before September 1, 2015 that have not been recently modified may be allowed to remain in place as nonconforming encroachments, without requiring an Encroachment Permit, provided they are not:
 1. A public nuisance.
 2. Modified.
 3. Damaged.
 4. Removed or relocated.
 5. Subject of a complaint.

Regardless of compliance with the preceding conditions, the Engineering Department may require a full review of the encroachment, a complete permit application, and/or removal of the existing encroachment to protect public safety.

12.14.050 PERMIT ISSUANCE

The Engineering Director or designee may approve, modify, and deny the application for an encroachment permit. The City will send notice of the decision to the applicant for all encroachment permits. In addition, the City will send notice of decision to owners/occupants of

property within 200 linear feet in any direction of the boundary of any proposed Major Encroachment.

12.14.060 ENCROACHMENT PERMIT APPEAL PROCEDURE

A. Minor Encroachment

1. The applicant for a proposed Minor Encroachment may appeal the decision to the Engineering Director.
2. The applicant must file an appeal with the City Recorder within 15 days of the date of decision stating the basis for the appeal. The appellant must pay a fee in the amount identified in the most current fee schedule.
3. The Engineering Director will conduct a formal review on the appeal providing the appellant a reasonable opportunity to be heard on the question of why the decision should be reversed or modified. The City will send notice of the review to the appellant. After the review, the City Manager will make a final determination in the matter, applying the standards in Section 12.14.070.

B. Major Encroachment and Special Encroachment

1. An applicant or affected owner/occupant of property within 200 linear feet of the boundary of the proposed Major Encroachment or Special Encroachment may appeal the decision of the Engineering Director or designee to the City Manager.
2. The applicant or affected owner/occupant must file an appeal with the City Recorder within 15 days of the date of the decision stating the basis for the appeal. The appellant must pay a fee in the amount identified in the most current fee schedule.
3. The City Manager will conduct a formal review on the appeal providing the appellant or any other affected party reasonable opportunity to be heard on the question of why the decision should be reversed or modified. The City will send notice of the review to the applicant, appellant, and the owners/occupants of the property within 200 linear feet of the proposed encroachment. After the review, the City Manager will make a final determination in the matter, applying the standards in Section 12.14.070.

12.14.070 STANDARDS AND CONDITIONS

The Engineering Director or designee may issue a permit for encroachment within the public right-of-way/easement when the applicant can demonstrate that it can comply with the adopted standards found in the Public Works Standards or specific findings are made that the standard is not applicable. The Engineering Department may attach conditions to the issuance of the permit that are reasonably related to ensuring compliance with this section and protecting the public interest.

The City will approve Special Encroachments in accordance with specific standards and conditions established outside of this chapter based on the criteria established for the specific type of encroachment.

A. Standards for Approval

1. A minimum of 3 ft of clearance must be maintained on all sides of fire hydrants.
2. Clearances to water meters must be 1 ft behind and 2 ft from the sides measured from the outside edges of the box. The applicant must pay for meter relocations if this standard cannot be met.
3. Clearance to manholes, storm drains, etc., must be a minimum of 7 ft.

4. Clearances to utilities such as power, telephone cable TV, and natural landscape materials, or structures placed over those facilities, must be provided in writing by the affected utilities. The City must consider conditions requested by the utility providers for inclusion in the permit.
5. Proposed encroachments must not prevent access to, cover, obstruct, or block the flow of water to or into catch basins, ditches, or swales, and must not otherwise alter the natural drainage patterns in a manner that adversely affects other property. Where drainage is involved, the City Manager or designee may set specific requirements.
6. Where the adjacent right-of-way has been fully improved to its planned dimension with associated curbs, sidewalks, utilities, and street trees, the City may permit an encroachment between the property line and the back edge of the sidewalk provided there is a 1 ft minimum clearance between the proposed encroachment and the back edge of the sidewalk and all other standards have been met.
7. Sufficient room for off-street parking and pedestrian travel must be maintained and the encroachment may not result in a loss of area needed for parking, vehicular maneuvering, or pedestrian travel.
8. In the case of any barrier encroachments such as walls, boulders, or fences, the City will determine the distance of the encroachment placement from the line of traffic according to the clear-zone requirements established. A crashworthy end treatment is required if the barrier encroachment terminates within the clear-zone or is in an area where it is likely to be struck by a motorist. The end treatment must follow the Public Works Standards.
9. All landscaping elements, such as trees, shrubs, decorative rock, etc., must allow full visibility at the right-of-way intersection for drivers and pedestrians according to clear vision area requirements.
10. The requested encroachment must be consistent with the current use, established by the City, of the public right-of-way, easement, or public property.
11. Major Encroachments must be engineered and stamped by a Licensed Professional Engineer in the State of Oregon.

B. Conditions

1. When the Engineering Director or designee determines that permitting the requested encroachment may subject the City to potential liability, the City will require as a condition of permit issuance that the applicant file a policy of insurance and form of policy by an insurance company licensed to do business in the State of Oregon to the City of Milwaukie. The policy must protect the City, its officers, agents, and employees, and the abutting property owners, lessees, and tenants from any and all claims for injury or damage to persons or property that might result from the placing and/or maintenance of the permitted encroachment. The Finance Director or designee will determine the amount of the insurance policy, but the policy amount must be at least the limits of a public body liability under the Oregon Tort Claims Act. The policy must also contain a provision that the City be notified at least 30 days prior to any cancellation of the insurance. The permittee must maintain the insurance for the term of the permit issued. If the permittee fails to maintain the insurance, the City will automatically revoke the permit.
2. The Engineering Director or designee may place a time limit on the proposed encroachment as a condition of permit approval.

3. To ensure that right-of-way/easement encroachments do not contribute to visual blight or create a safety hazard, the City may require as a condition that the encroachment be appropriately maintained.
4. The City may impose a charge for the use of the public right-of-way/easement.

12.14.080 RECORDING PERMITS

The City may record approved encroachment permits against the title of the benefitting property and the applicant must pay the costs of the recording. Special Encroachments are not subject to the recording requirements of this chapter.

12.14.090 REVOCATION OF PERMITS

- A. The City may revoke all right-of-way/easement permits at any time for the sake of public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time gives the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.
- B. The City will automatically revoke any permit issued under this section if the permittee fails to comply with any condition of the permit or if the permittee fails to begin installation of the allowed encroachment within 60 days after the issuance of the permit unless an extension is requested before the expiration of the 60-day period.
- C. Permit revocation authority must be included in the language for the permit to be recorded against the title of the benefitting property.
- D. A permittee may appeal to the City Manager the decision on a permit revocation by the Engineering Director or designee. The permittee must file its appeal with the City Recorder within 15 days of the date of the decision and must state the basis for the appeal. The permittee must pay a fee in the amount identified in the most current fee schedule along with the appeal filing.

12.14.100 REMOVAL OF ENCROACHMENT

- A. If the City revokes a permit, the permittee or a successor permittee must remove the encroachment at the permittee's own expense no later than 30 days after the City has provided a written notice, unless a shorter period of time is specified in the notice of revocation.
- B. If the permittee does not remove the encroachment and return the right-of-way/easement to a condition satisfactory to the City Manager or designee, the City may do so and the permittee will be personally liable to the City for any and all costs of returning the right-of-way/easement to satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways. The City will impose those costs as a lien upon the property on the City lien docket.

12.14.110 LIABILITY

The permittee and owner of the benefitted property, if different from the permittee, are liable to any person who is injured or otherwise suffers damage because of any encroachment allowed in accordance with the provisions of this chapter. Furthermore, the permittee is liable to the City, its officers, agents, and employees, because of the existence of an approved right-of-way/easement encroachment.

12.14.120 ENFORCEMENT

Installation or maintenance of an encroachment in violation of Section 12.14.010 to 12.14.110, or an encroachment permit issued pursuant to Section 12.14.010 to 12.14.120, is hereby

declared to be a public nuisance as defined by Section 12.02.050 which may be abated pursuant to Chapter 8.04.

12.14.130 VIOLATION-PENALTY

Any person that violates this chapter is, upon conviction, subject to a fine not exceeding \$250 for a Minor Encroachment and \$1000 for a Major Encroachment or a Special Encroachment. For continuous violations, each day is considered a separate violation. The Finance Director or designee may approve a reduction in penalties with consideration of cost recovery of enforcement and hardships of violator if violations are resolved to comply with Sections 12.14.010 to 12.14.120.

12.14.140 SEVERABILITY

In the event a court of competent jurisdiction determines that any section, subsection, paragraph, sentence, or phrase of this chapter is invalid or unenforceable, the validity of the remainder of the chapter remains effective. If a court of competent jurisdiction determines that this chapter imposes a tax or charge, which may be unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the Encroachment Permit is created and the remainder of the chapter and the fees imposed under this chapter will continue to apply to the remaining properties without interruption. Nothing contained in this chapter may be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.