

ARTICLE III. - ENCROACHMENT AND OBSTRUCTION^[3]

Footnotes:

— (3) —

Editor's note— Ord. No. 1996-158, § 1, adopted August 20, 1996, amended the Code by repealing former Art. III, §§ 28-36—28-39, and adding a new Art. III, §§ 28-36—28-42. Former Art. III, pertained to similar subject matter and derived from the Code of 1975, §§ 47-22, 47-25, and 47-27.

Sec. 28-36. - Findings of city council.

City council finds it necessary to promulgate standards to govern encroachments on public property including rights-of-way. Such public property is an integral component of the public realm, that should and must be available for public use, access and enjoyment without undue interference by private sector interests. The purpose of this article is to promote the public health, safety and welfare by establishing reasonable regulations to govern the placement, type, appearance and servicing of encroachments on public rights-of way so as to:

- (1) Provide for pedestrian and driving safety and convenience;
- (2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic including ingress and egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;
- (3) Provide for public and property safety during adverse weather conditions;
- (4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs, signals, hydrants, mailboxes, and access to locations used for public transportation purposes;
- (5) Relocate and/or replace encroachments which result in visual blight and/or excessive space allocation on the public rights-of-way, or which unreasonably detract from the aesthetics of store window displays, adjacent landscaping and other improvements, as well as to have abandoned or neglected encroachments removed;
- (6) Maintain and protect the values of surrounding properties;
- (7) Reduce unnecessary exposure of the public to personal injury or property damage claims,
- (8) Treat all applicants equally according to the standards set forth in this article and all applicable regulations promulgated in furtherance hereof; and
- (9) Provide uniformity as to the type of encroachments and the means by which they are permitted.

(Ord. No. 1996-158, § 1, 8-20-96)

Sec. 28-37. - Definitions.

Canopies shall mean any overhead covering which extends over the public right-of-way, typically made of fabric.

Encroachment shall mean any privately owned personalty situated on, affixed to or overhanging any public right-of-way, including but not limited to canopies and street furniture.

Encroachment fee shall mean the amount, as established by the city council from time to time, payable by the encroachment applicant upon submitting an encroachment request application which covers the costs of processing the encroachment request application. This fee is in addition to any recordation fee that may be required for filing encroachment agreements with the appropriate Register Mesne Conveyance office.

Permanent encroachment shall mean all items of privately owned personalty affixed, connected, attached or fastened to any public right-of-way. Examples of these include footings, building cornices and parapets, balconies, portions of a residence, HVAC units, special finish sidewalks, and driveways.

Public right-of-way shall mean any public property, including, but not limited to, a street, highway, sidewalk, parkway or alley.

Street furniture shall mean benches, planters, flower boxes/pots, or other personalties constructed or used outdoors.

Temporary encroachment shall mean all items of privately owned personalty situated on, but not affixed, connected, attached or fastened to, any public right-of-way. Examples of these include non-permanently affixed street furniture, irrigation system, fences, awnings, and signs.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2008-134, § 1, 10-7-08; Ord. No. 2012-367, § 1, 8-21-12)

Sec. 28-38. - Permissive encroachments.

The projection of a building or structure, or any part thereof, or any attachment thereto, beyond the property line into, on or above any street, way, lane, open court or other public property which existed on December 11, 1962 is a permissive encroachment. Permission for such permissive encroachment, expressed or implied, may be revoked by the city in accordance with [section 28-43](#). Any such projection which existed on December 11, 1962 may be maintained as constructed until removal is directed by the city, but no change or enlargement of any such encroachment shall be made except as hereafter authorized. Maintenance and liability for the permissive encroachment shall be the responsibility of the property owner or tenant.

(Ord. No. 2010-112, § 2, 7-20-10)

Editor's note— Ord. No. 2010-112, §§ 1 and 2, adopted July 20, 2010, renumbered the former §§ [28-38](#)—28-43 as §§ [28-39](#)—28-44, and enacted a new [§ 28-38](#) as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 28-39. - Prohibition of unauthorized encroachments.

No person shall place, affix, connect, attach, fasten, erect, construct or maintain an encroachment on public rights-of-way without first obtaining approval, evidenced by an encroachment agreement, for each encroachment in accordance with the provisions of this article.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2010-112, § 1, 7-20-10)

See the editor's note to [§ 28-38](#).

Sec. 28-40. - Location, style, etc., of encroachments.

(a) *General placement of encroachments.*

- (1) Subject to the standards set forth hereinafter, an encroachment must be placed near any wall structure parallel to and not more than six (6) inches from the wall unless such location is determined unsuitable, then consideration shall be given to locating encroachments parallel to and closer than eighteen (18) inches from the edge of the curb based on the standards listed in subsection (b) below.
- (2) The standards hereinafter set forth are minimum standards and nothing herein shall be deemed to preclude the public service department or the public works and utilities committee from denying approval of an encroachment or requiring additional measures when in the opinion of the public service department or the public works and utilities committee such is necessary for the public safety and general welfare.

(b) *Standards.*

(1) *General.*

- a. No encroachment shall be placed, connected, attached, fastened, installed, used, erected or maintained in the public right-of-way:
 1. If the proposed encroachment can be sited on private property;
 2. In a manner affixed or attached to any fixture located within the public right-of-way including the surface of the walkway unless approved by the city engineer;
 3. On or within two (2) feet of a sign, parking meter, street light, utility pole or planting area for flowers, shrubs or trees within the public right-of-way or within two (2) feet of a public park;
 4. Within fifteen (15) feet of any roadway at an intersection (measured fifteen (15) feet back from the edge of the right-of-way intersection);
 5. Within five (5) feet of any crosswalk or driveway;
 6. Within fifteen (15) feet of any fire hydrant, standpipe or Siamese connector;
 7. Within five (5) feet of any emergency call box or other emergency telecommunication equipment or any other emergency facility;

8. Within five (5) feet on the departure side of, and fifteen (15) feet on the approach side of any sign marking a designated bus stop, measured parallel to the edge of the curb;
 9. At any location where the clear space for the passageway of pedestrians is reduced to less than forty-eight (48) inches;
 10. At any location which obstructs underground utility access points, ventilation areas, meters, physically disadvantaged ramps, or other facility provided for the physically disadvantaged persons, any building access, exit or any emergency access or exit way;
 11. In front of any display window of any building abutting the right-of-way when the encroachment is placed within six (6) inches of the building or in such a manner as to impede or interfere with the reasonable use of such window display purpose unless the tenant consents to such location in writing (this standard is not applicable when the encroachment is adjacent to the curb); and
 12. To display merchandise.
- b. Consideration shall be given to aesthetic appearance and safety in the siting, design and construction of encroachments.
- (2) *Canopy standards.* All canopies must adhere to the following standards:
- a. A minimum height from sidewalk surface to the underside of the canopy must be nine (9) feet for the structure and eight (8) feet for the valance;
 - b. The staff in the architecture and preservation division of the department of planning and urban development must approve the color design and construction of canopies if located in the old city district or the old and historic district, all others will be approved by the design review committee; and
 - c. Signage is subject to the City of Charleston zoning ordinance.
- (3) *Street furniture standards.* The following must be adhered to in addition to the standards in subsection (1), general standards, above:
- a. The color, design and construction must be approved by the city's design review committee;
 - b. Street furniture shall be constructed for outdoor use and shall be made of appropriate materials to withstand one hundred-mile per hour winds;
 - c. Any means of securing the furniture must be approved by the design review committee; and
 - d. Street furniture shall carry no advertising.
- (4) *Sandwich board signs.* In addition to meeting the standards in subsection 1), general standards, above, all sandwich boards must adhere to the requirements of the City of Charleston zoning ordinance.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2010-112, § 1, 7-20-10; Ord. No. 2012-367, § 2, 8-21-12)

Note— See the editor's note to [§ 28-38](#).

Sec. 28-41. - Administration.

- (a) *Issuing authority.* Pursuant to [section 2-55](#) of the Code of the City of Charleston, South Carolina the public works and utilities committee shall be the issuing authority for all permanent encroachments and the department of public service shall be the issuing authority for all temporary encroachments.
- (b) *Applications.* The applicant shall file with the department of public service a typed application for a one-time only installation of encroachment(s) which shall contain the following information:
 - (1) The name, address and telephone number of the applicant, who is the owner and/or principal in charge of the encroachment(s);
 - (2) The number of encroachments and the proposed location of each to be shown on a scaled drawing;
 - (3) An illustration and description of the encroachment(s) and method of securing;
 - (4) Evidence of the applicant's City of Charleston business license, as applicable;
 - (5) Encroachment fee;
 - (6) Recording fee, if applicable; and
 - (7) An agreement to indemnify and save harmless the city, its officers, directors, and employees against any loss, liability or damages, including expenses and costs for bodily or personal injury and for property damage sustained by any person as the result of the installation, use or maintenance of an encroachment within the city.

- (c) *Temporary encroachment approval.* Upon a finding by the department of public service that a temporary encroachment application meets the provisions of this article, the department may approve the temporary encroachment application, evidenced by an encroachment agreement.
- (d) *Permanent encroachment approval.* Upon a finding by the public works and utilities committee that an applicant is in compliance with the provisions of this article, approval, as evidenced by an encroachment agreement, for installation may be issued along with a sticker identifying the permitted location for each approved encroachment.
- (e) *Zoning.* No approval shall issue for any temporary or permanent encroachment requiring separate approval under the zoning ordinance until evidence of such approval is presented to the department of public service or the public works and utilities committee. Further, the standards contained herein are deemed minimum guidelines and at times, given unique situations, requirements may exceed these stated standards.
- (f) *Denial of approval.* If approval for a permanent or temporary encroachment shall be denied, the city shall notify the applicant of the specific cause for the denial. If approval for a temporary encroachment shall be denied, the applicant shall have the opportunity to appeal the denial to the public works and utilities committee.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2008-134, § 3, 10-7-08; Ord. No. 2010-112, § 1, 7-20-10; Ord. No. 2012-367, §§ 3—5, 8-21-12)

Note— See the editor's note to [§ 28-38](#).

Sec. 28-42. - Encroachment installation, mounting and maintenance permitting and standards.

- (a) The public works and utilities committee shall approve the location of permanent encroachments.
- (b) The construction in right-of-way fee required from the city engineer shall be required for each encroachment installation when applicable;
- (c) Mounting standards shall be governed by manufacturers specifications, if applicable, and approved by the city engineer.
- (d) Encroachments shall be maintained in good working order at all times and be freshly painted and maintained in as good as a condition as originally installed.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2010-112, § 1, 7-20-10)

Note— See the editor's note to [§ 28-38](#).

Sec. 28-43. - Removal.

- (a) Any unlawful encroachments existing in the public right-of-way shall be subject to removal and the owner shall be responsible for labor and costs associated with such removal.
- (b) Any encroachments existing in the public right-of-way shall be removed upon twenty-four (24) hours notice given by the department of public service when such removal is necessary to repair or improve the right-of-way. If it is necessary to remove the encroachment(s), the owner shall be responsible for labor and costs associated with removal and reinstallation.
- (c) In the event that the city police, fire, public service or traffic and transportation departments determine that the location of an encroachment constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the city removes an encroachment, a notice of removal shall be sent to the owner as soon as practicable under the circumstances.
- (d) Any abandoned encroachment shall be subject to removal. For purposes hereof, "abandoned" shall mean the vacating of the premises by the encroachment's owner/applicant for a period of seven (7) consecutive days or more.
- (e) Any costs incurred to the city in restoring the public right-of-way to the condition that existed prior to the encroachment shall be the responsibility of the encroachment owner/applicant.

(Ord. No. 1996-158, § 1, 8-20-96; Ord. No. 2010-112, § 1, 7-20-10)

Note— See the editor's note to [§ 28-38](#).

Sec. 28-44. - Exemptions.

This article shall not be applicable to a public utility or private utility encroachment or encroachments which are a result of a franchise or other written agreement with the city.

(Ord. No. 2008-134, § 1, 10-7-08; Ord. No. 2010-112, § 1, 7-20-10)

Note— See the editor's note to [§ 28-38](#).

Sec. 28-45. - Promotion of civil sidewalks.

- (a) *Findings.* The King and Market Street corridors in the downtown area of the city are places of gathering and commerce, where patrons, residents and visitors conduct business, shop, sightsee and recreate. Being in the heart of the peninsula, these corridors offer an array of services to support residents living nearby and those coming into the peninsula to enjoy the urban core of the city, to include shopping, dining and art venues. Being in the heart of the tourism district, these corridors are heavily impacted not by just visitors, but also by vendors and service providers tending to the needs of the industry businesses. Being adjacent to the College of Charleston campus, these corridors are also impacted by students tending to daily needs or seeking places to recreate. The sidewalks of these corridors, part of an urban street grid established in the eighteenth century, are narrow by modern standards and are incapable of being enlarged in any meaningful way. It is imperative that pedestrian flow along the sidewalks of these corridors be safe, effective and efficient during times of heavy use. The primary purpose of a sidewalk is to provide a means of conveyance by foot. Interferences with that purpose should be minimized to the extent feasible. Sitting or lying on the sidewalks of the King and Market Street corridors during times of heavy use poses a threat to safe pedestrian passage, especially for the elderly, disabled, vision-impaired and small children. As there exist alternate public places in the vicinity of the King and Market Street corridors that accommodate sitting or lying down, council finds it necessary and in furtherance of the public peace and good order that sitting or lying on the sidewalks of the King and Market Street corridors be regulated in a manner that promotes safety but which preserves these areas for traditional constitutional expression and other lawful activity on sidewalks consistent with any city permitting requirements.
- (b) *Prohibition.* During the hours between eight (8:00) a.m. and two (2:00) a.m., it is unlawful to sit or lie down upon a public sidewalk:
- (1) On King Street, between Line Street and Broad Street;
 - (2) On streets crossing King Street for one (1) block in either direction of King Street between and including Line Street and Broad Street;
 - (3) On North and South Market Streets, between King Street and East Bay Street; and
 - (4) On streets crossing North and South Market Streets for one (1) block in either direction from North and South Market Streets between and including King and East Bay Street.
- (c) *Exceptions.* The prohibitions in subsection (b) shall not apply to any person:
- (1) Sitting or lying on a public sidewalk due to a medical emergency;
 - (2) Using a wheelchair, walker, or similar device as the result of a disability;
 - (3) Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a sidewalk use permit;
 - (4) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, picketing, or similar event conducted on the public sidewalk pursuant to and in compliance with a street use or other applicable permit;
 - (5) Sitting on a fixed chair or bench located on the public sidewalk supplied by a public agency or by the abutting private property owner;
 - (6) Sitting in line for goods or services unless the person or person's possessions impede the ability of pedestrians to travel along the length of the sidewalk or enter a doorway or other entrance alongside the sidewalk; or,
 - (7) Who is a child seated in a stroller.
- (d) *Warning.* No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a police officer that the conduct violates this section.
- (e) *Other laws and orders.* Nothing in any of the exceptions listed in subsection (c) shall be construed to permit any conduct which is prohibited by City Code sections [17-93](#), [17-98](#), and [21-109](#), which prohibit willfully and substantially obstructing the free passage of any person.
- (f) *Penalties.*
- (1) *First offense.* Upon conviction for a first offense of this section, the court shall impose a fine of not more than twenty-five dollars (\$25.00).

- (2) *Subsequent offenses.* Upon conviction for a second offense of this Section, the court shall impose a fine of not more than fifty dollars (\$50.00). All further violations of this section may be handled in a manner consistent with the general penalty provision as provided in [section 1-16](#) of this Code.
- (g) *Reporting.* One (1) year after the effective date of the ordinance from which this section derives, and every two (2) years thereafter, the police department shall make a written report to the mayor and the city council members that evaluates the effectiveness of enforcement of this section in the King and Market Street Corridors as set out herein.
- (h) *Outreach.* The city shall maintain an outreach plan summarizing the city's efforts with assisting those that are chronically found sitting or lying down on a public sidewalk. The outreach plan must outline what assistance the city supplies to connect individuals in need of social services with providers of the social services. The plan must also include, but not be limited to, health care and social service capacity, evaluation of service delivery and identification of areas for improved service delivery.
- (i) *Severability.* If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall not affect the validity or the effectiveness of the remaining portions of this section or any part thereof which can be given meaning without the offensive subsection, sentence, clause, phrase or word.

([Ord. No. 2018-051, § 1, 4-10-18](#); [Ord. No. 2019-024](#), § 1, 4-9-19)