

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

October 12, 2021

AN ORDINANCE TO ESTABLISH A PROCEDURE FOR BUSINESSES AND OTHER ORGANIZATIONS TO APPLY FOR LICENSES TO OCCUPY OUTDOOR CITY PROPERTY, INCLUDING PORTIONS OF PUBLIC WAYS

Be it ordained by the City Council of the City of Newburyport as follows:

Amend existing Section 12-1 (Obstructing streets, sidewalks generally.), as follows, with deletions ~~double-stricken-through~~, and additions double-underlined:

Sec 12-1. - Obstructing streets, sidewalks generally.

(a) Generally. No person shall occupy, encumber or obstruct any street or sidewalk by means of boxes, crates, advertising signs, barrels, or other things, or in any other way hinder or obstruct the convenient use of the streets or sidewalks and other ways by any vehicles or pedestrians.

(b) Notwithstanding subsection 12-1(a), above, any business or other organization that occupies ground-level space (hereinafter the "Business Premises") abutting a public way under the jurisdiction of the city (hereinafter the "Applicant") may submit a written application to the city clerk to obtain a license to place and maintain tables, chairs, and/or merchandising displays on property under the control of the city, including, without limitation, portions of public way or within a park or playground (hereinafter "City Land").

(1) License area. The area of a public way to be occupied by such tables, chairs, and/or merchandising displays shall not exceed in width the frontage of the Applicant's Business Premises upon such public way. The area to be occupied on City Land other than public ways, including, without limitation, within a

park or playground, need not be proportional to the applicant's frontage upon such property.

(2) Duration.

A. Licenses issued pursuant to this subsection 12-1(b), unless earlier revoked, shall remain effective for a period of no longer than seven (7) months between April 15 and November 15.

(3) Applications. Application for the use of City Land shall be made to the city clerk, on forms prepared in conformance with the terms and conditions contained herein, including the following:

A. Written authorization signed by the Applicant's landlord acknowledging and agreeing to the use of the adjacent portion of any Public Way;

B. Evidence of liability insurance with minimum coverage in the amount of one million dollars (\$1,000,000), naming the city of Newburyport as co-insured, and in force for the duration of the approved period of occupancy; and

C. A clear, legible diagram of the proposed area of occupancy, no smaller than 8½-inches by 11-inches, detailing the following, which shall be in addition to any other requirements of law, regulation or ordinance, including state alcohol law:

i. The perimeter of such area, with relevant linear dimensions;

ii. If such area includes portions of a public way traveled by pedestrians, such as a sidewalk, the public, pedestrian path of travel, which must be no less than five (5) feet in width and must be contiguous to the face of the buildings along which it runs;

iii. If such area includes portions of a public way traveled by vehicles, then the public, vehicular path of travel, no less than eleven (11) feet in width, or wider as may be required by the City Engineer;

iv. All relevant obstacles such as streetlights, signs, trees, etc.; and

v. All tables, chairs, seats, total seating count and total occupancy.

vi. The area of occupancy must be enclosed by a fence, rope or other means to control access and demarcate the area proposed for the service of food and alcohol or the sale of retail goods;

D. Proof, in the form of registered mail receipts and written attestation, as to compliance, of notice of the application sent via registered mail, return receipt requested within seven (7) days of the filing of the completed application with the city clerk, to each of the persons appearing upon the assessors' most recent valuation list as the owners of the property immediately adjacent to the Applicant's Business Premises, and to the address of any businesses within 100 feet of the Applicant's Business Premises. The notice shall set forth the name of the applicant in full, a description of the space on the Public Way and area covered in the application, the use of the same, and the street and number.

E. Where the City Land is part of a city park or playground under the jurisdiction of another city body, commission or entity, approval of such use by the relevant city body, commission or entity, such as the the Parks Commission for land under their jurisdiction and control..(4) Application processing and fees. Applications under this subsection 12-1(b) shall be delivered to the office of the city clerk by hand, mail, or email.

A. Applications shall be placed on the next available agenda of the City Council for referral to its Committee on License and Permits per Council Rules and procedure..

B. The processing fee charged for applications under this subsection 12-1(b) shall be One-Hundred Dollars (\$100.00).

C. The city council shall establish by order the rent or other compensation due for any occupancy approved hereunder.

D. After hearing by the Committee on Licenses and Permits and recommendation for approval, and upon approval by the City Council for the use of the City Land, , the city clerk shall transmit such approval to the Newburyport License Commission (the "License Commission"), which shall hold a public hearing to approve, disapprove, or approve the application with conditions.

E. Approval of the application for use shall be at the sole discretion of the City Council , and, without limiting or defining the sole discretion of the City Council in making its decision, the City Council may but is not

required to the input of neighbors, other residents and nearby business owners, the degree to which the proposed use accommodates its shared use with members of the public, and any frustration of the City Land's primary use by the public..

F. The License Commission shall hold a public hearing regarding all applications wherein the City Council has approved the use of the City Land under this subsection 12-1(b), and may consider multiple applications at one hearing. After such hearing, the board shall render its written decision regarding each such application, which shall be to approve, to disapprove, or to approve with conditions.. The License Commission shall conduct any hearing in compliance with any other governing law, regulation or ordinance.

(6) Bare license. The City Council, License Commission and any other boards, commissions or city entities with jurisdiction of public ways shall have no obligation whatsoever to approve any application submitted hereunder, each of which shall be processed, reviewed, and a determination thereon made by the relevant city officers, boards, and commissions in their sole discretion.

A. Any condition of approval and submitted plan shall be in force for the entire duration of any validly issued license.

B. Any license issued hereunder may be revoked at any time by super-majority vote of the city council, after a public hearing, for any reason, or no reason.

~~(b) Food service establishments on public rights of way.~~

~~(1) The above shall not apply to any restaurant or food service establishment located on a public way which includes a sidewalk and which is restricted to pedestrian traffic only and which has a sidewalk of no less than five (5) feet in width. Any such restaurant or food service establishment seeking to place such tables on a public way shall apply for a permit from the city council.~~

~~a. Initial permit. May be issued for a period of one (1) year subject to city council approval by majority vote.~~

~~b. Renewal permits.~~

~~1. No material changes may be issued for a period of two (2) years subject to administrative approval by the city clerk.~~

~~2. Material changes may be issued for a period of one (1) year subject to city council approval by a majority vote.~~

~~e. [Said permit.] Said permit shall be valid during any calendar year for which a valid permit has been issued. The city clerk shall notify in writing any business with an expiring permit of such expiration no later than sixty (60) days prior to the expiration date.~~

~~d. Any condition of approval and submitted plan shall be in force for the entire duration of any validly issued permit. Any validly issued permit can be revoked at any time by super majority vote of the city council.~~

~~(2) Said restaurant or food service establishment may place tables upon the public way directly in the area in front of said establishment with the consent of the city council. The area occupied by said tables shall not exceed in width the frontage of said restaurant or food service on the public way. Said tables shall be solely for the exclusive use of customers of said restaurant or food service establishment.~~

~~(3) If no sidewalk exists on the public way, the tables, upon approval of the city council, shall be situated in a contiguous manner and shall allow at least twelve (12) feet of passage for pedestrian traffic to flow smoothly on the public way. In any circumstance, said tables, in the opinion of the city council, shall not impede the flow of pedestrian traffic, irrespective of the twelve foot requirement.~~

~~(4) If a sidewalk so called does not exist on the public way, said sidewalk must have a width of at least five (5) feet to allow tables to be situated on the sidewalk. In addition to the five feet described above, the configuration shall ensure that the remaining portion of the public way is at least twelve (12) feet wide and allows for free and smooth flowing pedestrian traffic.~~

~~(5) The city council can impose that any applicant provide certificates of liability insurance naming the city as insured and may impose such other conditions as in its discretion it deems appropriate.~~

(c) Any violation of this section 12-1 shall be punishable by a fine of one hundred dollars (\$100.00). Any condition found to violate this section shall be deemed to constitute a separate offense on each day during which it exists after the giving of notice to the violator.

(d) Prosecution of violations of this section 12-1 shall be non-criminal disposition as provided in M.G.L., c. 40, § 21D, as may be amended from time to time, the provisions of which are incorporated herein by reference.

Councillor James J. McCauley

Councillor Byron J. Lane

In City Council October 12, 2021:

Motion to refer to Ad Hoc Committee on Economic Development by Councillor Vogel, seconded by Councillor McCauley. Roll call vote. 9 yes, 2 absent (JD, CW). Motion passes,

In City Council December 13, 2021:

Motion to invoke Rule 7H to move to next City Council Session by Councillor Zeid, seconded by Councillor Lane. Roll call vote. 11 yes. Motion passes.