

January 25, 2021

AN ORDINANCE TO ESTABLISH PROCEDURE FOR BUSINESSES AND OTHER ORGANIZATIONS TO APPLY FOR LICENSES TO OCCUPY OUTDOOR CITY PROPERTY

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 "~~Public Way~~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 ~~said business or other organization~~ the ~~A~~Applicant's Business Premises upon such public way. The area to be occupied on ~~property under the control of the city~~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. ~~Initial licenses issued pursuant to this subsection 12-1(b), unless earlier revoked, shall remain effective for a period of no longer than eight (8) seven (7) months between April 15 and November 15 one (1) year, commencing on April 1.~~
- B. ~~A renewal license with no material changes from the previous year's license may be issued for a period of two (2) years subject to administrative approval by the city clerk, also commencing on April 1.~~
- C. ~~A renewal license with material changes from the previous year's license shall be processed in the same manner as an initial license.~~

(3) Applications. ~~Application for the use of a Public Way City Land shall be made to the city clerk, on forms shall prepared in conformance with the terms and conditions contained herein and provide to applicants a form for such applications, including the following and each applicants shall complete such form and submit it to the city clerk together with:~~

- A. ~~Written authorization signed by the Applicant's landlord to file such application signed by the record owner acknowledging and agreeing to the use of the adjacent portion of any Public Way of the relevant property occupied by the applicant;~~
- 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 sketch-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 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 less than five feet JARED—FIX 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 Means to demarcate any the areas 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 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 Public Way City Land an application under this subsection 12-1(b) would authorize occupation of is part of a city park or playground under the jurisdiction of another city body, commission or entity, such committee of licenses and permits shall not consider or act upon such application until the earlier of (i) having received a recommendation approval of such use by the relevant city body, commission or entity, such as the by the Parks Commission for land under their jurisdiction and control, regarding such application, or (ii) 30 days from the city clerk's receipt of such complete application.

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(4) Application deadlines-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, as directed by such office.

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A. The deadline for such A-applications shall be placed on the next available agenda of the City Council for referral to the its Committee on License and Permits Committee per Council Rules and

~~procedure the close of business on the first business day of March for the relevant year. For example, such deadline for the year 2021 shall be 4:00 pm on March 1.~~

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 ordinance the rent or other compensation due for any occupancy approved hereunder, ~~but such fee shall be waived for the 2021 license term.~~

(5) Processing. Each application shall be reviewed by the committee of licenses and permits of the city council, hereby expressly authorized to act on its behalf.

AD. After hearing by the ~~Committee on Licenses and Permits~~ Committee and recommendation for approval, and upon approval by the City Council for the use of the ~~Public Way~~ City Land, No later than the public hearing scheduled by the licensing board on such application under this subsection 12-1(b), and after such committee on licenses and permits has duly convened to consider and act on such application, the city clerk shall transmit such approval to the Newburyport License Commission (the "License Commission") ~~such board the recommendation of such committee on licenses and permits, which shall hold a public hearing be to approve, to disapprove, or to approve the application with conditions.~~

B. ~~Where an application under this subsection 12-1(b) would authorize occupation of a city park or playground, such committee of licenses and permits shall not consider or act upon such application until the earlier of (i) having received a recommendation by the parks commission regarding such application, or (ii) 30 days from the city clerk's receipt of such complete application.~~

C. Approval of the application for use shall be at the sole discretion of the City Council. Such committee on licenses and permits shall exercise its reasonable discretion in making its recommendation to the licensing board, 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 ~~but shall, in all cases, the input of neighbors, other residents and nearby business owners, the consider the degree to which the proposed use application minimizes the area of city~~

Comment [JE1]: While this permanent legislation is pending, the Council could pass an emergency order repeating last year's procedure for 2021, too.

~~property to be occupied, and accommodates its shared use with members of the public, and any frustration of the **Public-Way City Land's** primary use by the public.the recommendation of the parks commission under the previous paragraph B, if any has been received timely.~~

~~D. The **Licensing Commission** shall hold a public hearing regarding all applications wherein the City Council has approved the use of the **Public-Way 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; provided, however, that the board shall have no authority to approve any application that has failed to receive a favorable recommendation from both the committee on licenses and permits of the city council and, in addition, from the mayor. 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 individual 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 reasonable 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 supermajority vote of the city council, after a public hearing, for any reason, or no reason.~~

~~(7) Notice of expiration. The office of the city clerk shall notify in writing any business or other organization with an expiring license of such expiration no later than February 1 of the relevant year.~~

~~(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.~~

~~c. [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) ~~Each~~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 Jared J. Eigerman

Councillor Byron J. Lane

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____