

CHAPTER 39

SUB-SIDEWALK SPACE

1. **PERMIT REQUIRED - TRANSFER OR ASSIGNMENT.** No person, firm or corporation shall use any space underneath the surface of any street or other public ground or construct or maintain any structure thereunder without first obtaining a permit so to do from the City, issued by the Public Works Director. No permit or any right or privilege thereunder shall be transferred or assigned except upon consent of the said officer. Such permits are personal to the permittee and do not run with the land, and do not create any right, title or interest in the public ground so occupied.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(Amended, Ordinance No. 2000-63, July 17, 2000)

2. **APPLICATION.** Applications for such permits shall be made to the Public Works Director stating specifically the space desired, its breadth and depth, the use intended to be made thereof and the structure to be built therein. No permits shall be issued hereunder for the use of any space under the surface of the roadway of any street or other public ground.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(Amended, Ordinance No. 2000-63, July 17, 2000)

3. **PUBLIC LIABILITY INSURANCE.** Before a permit is issued, the applicant must obtain a public liability policy, with the City as a named insured, in the minimum amounts of \$1,000,000 per occurrence, and \$1,500,000 aggregate, for bodily injury and property damage combined, protecting and insuring the City against loss by reason of accidents arising out of construction, operating and maintenance of said sub-sidewalk space, including the surface of the

sidewalk over said sub-sidewalk space and the sidewalk in front of the premises involved. A certificate of such insurance must be filed with the City. The policy shall have a clause that said insurance cannot be terminated without a previous thirty (30) day notice to the City.

(Amended, Ordinance No. 89-35, April 7, 1989)

4. **RELEASE OF LIABILITY.** Any permittee who shall convey the abutting property in fee may notify the City Manager in writing of such conveyance and of the name and address of the purchaser thereof, in which case all liability under any bond theretofore given by such permittee shall cease and determine, except as to acts happening or causes of action accruing prior to the giving of such notice.

5. **NEW BOND WHEN REQUIRED.** Whenever the City Manager shall be of the opinion that the sureties on any bond given for any permit issued hereunder have become insufficient, a new bond for such permit shall thereupon be filed, with sureties to be approved by the City Manager.

6. **DISTURBING PIPES.** No person shall ever use the space under any such sidewalk in such a manner as to interfere with any sewer or water pipe or any other work lawfully in said street, alley or public way except upon special consent of the City Manager, and no such permit shall be granted until the applicant therefore has paid to the director of the department having jurisdiction thereof a sum of money sufficient, in his judgment, to defray the cost and expense of renewing, or rebuilding, or relaying such sewer or water pipe or public work, and making the necessary connections therewith.

7. **REQUIRING BACKFILL.** In case of rebuilding or widening of a street, the City may, without liability to itself, vacate such permit and require the owner to fill such sub-sidewalk space with sand, at its own expense.

8. **FAILURE TO SECURE PERMIT.** If any person, firm or corporation using any such space, and any grantee of the abutting property, shall fail to take out a permit as herein provided, then the Public Works Director shall proceed to remove every such structure and close such space therein; provided, however, this action shall not apply to any person, firm or corporation using any such space under special permit of the City so long as the conditions of said permit are carried out by the user thereof.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(Amended, Ordinance No. 2000-63, July 17, 2000)

9. **SIDEWALKS TO BE KEPT CLEAR AND IN REPAIR.** Every person, firm or corporation using such space shall at all times keep such sidewalk in good condition and repair and clear and free from obstructions or encumbrances.

10. **REVOCAION.** The City Manager may revoke any permit at any time if the permittee fails or neglects to comply with the terms hereof or if the space is needed for the public use.

11. **COMPENSATION.** The provisions hereof shall not preclude the City from charging in the future a fee for the use of any space permitted hereunder.

12. **PRECAUTIONS REQUIRED.** No person, firm or corporation shall remove, insecurely fix or cause or procure or suffer or permit to be removed, or to be insecurely fixed so that the same can be moved in its bed, any grate or covering of any coal hole, vault or chute under any street, sidewalk or other public place, provided, that nothing herein contained shall prevent the owner or occupant of the building with which such coal hole, vault or chute shall be connected from removing the grate or covering for the proper purpose of such opening, provided he encloses such opening or aperture and keeps the same enclosed while such grate or covering shall be removed, with a strong box or curb at least twenty-four (24) inches high firmly and

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securely made, and provided further that he shall not remove such grate or covering until after sunrise of any day and shall replace such grate or covering before sunset.

13. **SAFETY OF PUBLIC.** Whenever any coal hole, vault or elevator under any sidewalk or any aperture constructed in any sidewalk is not covered or firmly secured, or in the opinion of the Public Works Director is unsafe or inconvenient for public travel, said Director may order the same to be placed in a safe condition satisfactory to him; and if the same shall not be done within two days from the service of notice on the owner or person in possession of the premises, said Director may make such change and the expense thereof shall be paid by such owner or person in possession of the premises.

(Amended, Ordinance No. 2009-39, May 18, 2009)

(Amended, Ordinance No. 2000-63, July 17, 2000)

14. **LIABILITY OF PERMITTEE.** The owner, permittee and the person, firm or corporation in possession of any premises abutting on such space, vault, coal hole or aperture shall be held responsible to the City for any or all damages occasioned to persons or property in consequence of the aperture in the sidewalk being left exposed or uncovered or in consequence of the covering thereof being left insecure or unfastened or in consequence of any defect of construction thereof.

15. **PENALTY.** Any person, firm or corporation who shall violate any of the provisions of this Chapter shall be fined not less than One Hundred Fifty Dollars (\$150.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and each day on which a violation occurs or continues shall be considered as a separate offense. (Amended, Ordinance No. 2011-69)