

ORDINANCE 1020B

CREATING PROCEDURES FOR GRANTING PRIVILEGES IN STREETS AND AMENDING PROVISIONS REGARDING OBSTRUCTIONS AND ENCROACHMENTS

THE CITY COUNCIL OF THE CITY OF LAKE MILLS, JEFFERSON COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

Section 1. Sections 7-1-5, -6 and -7 are renumbered to be sections 7-1-6, -7, and -8, respectively.

Section 2. Section 7-1-4 is repealed and recreated as follows:

- A. Obstructions and Encroachments Prohibited: No person shall encroach upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way, unless a privilege in the street has been granted under section 7-1-5, or unless such obstruction or encroachment is permitted under the specific conditions provided in subsections B or C below.
- B. The prohibitions of subsection A above shall not apply to the following:
1. Projecting signs attached to buildings and that extend over a public right-of-way or sidewalk in the B-1 or B-1C zoning districts, provided a conditional use permit has been granted under section 10-16-4-B-6 for any projecting sign so attached after November 7, 2000. Any new projecting signs, or projecting signs attached after November 7, 2000 but for which no conditional use permit has been obtained, shall be subject to section 7-1-5. Upon the effective date of this ordinance, section 10-16-4-B-6 shall be amended by striking all references and procedures for obtaining a conditional use permit for projecting signs and by instead stating: Projecting signs located over public property shall be prohibited unless a privilege in the street is obtained under section 7-1-5.
 2. Sandwich board signs, otherwise known as sidewalk signs, in the B-1 or B-1C zoning districts, provided such signs meet the standards as set forth under section 10-16-8.
 3. Merchandise displays on public sidewalks in the B-1 or B-1C zoning districts, provided such items meet the standards as set forth under section 10-16-9.
 4. Goods, wares, merchandise or fixtures being loaded or unloaded and which do not extend more than three feet onto a public sidewalk, provided such items do not so remain for a period of more than two (2) hours.
 5. Awnings installed to extend over the public sidewalk in the B-1 or B-1C zoning districts, provided they maintain a minimum height of seven feet above the sidewalk surface, and provided they have been previously authorized and are in existence prior to the enactment of this ordinance. Any new awnings that were not authorized prior to the date of enactment of this ordinance shall be subject to section 7-1-5, privileges in the streets.
 6. Signs on awnings in the B-1 and B-1C zoning districts that are consistent with the requirements of section 10-16-3-5.
 7. Planters on the public sidewalk in any B-1 or B-1C zoning district, provided the planters are subject to a permit granted by the Council on April 4, 2000, addressing the size, design and placement of such planters by the Lake Mills Chamber of Commerce, as well as the care of the plants placed within such planters. Any planters not covered by the Chamber permit that will be or have been placed on the right-of-way shall be subject to section 7-1-5, privileges in the streets.
 8. Sidewalk cafes that have been licensed under regulations in Title 3, Chapter 9.

9. Fire escapes and jump platforms, which do not extend below any point ten feet above the sidewalk or alley, and which have been permitted by the Council on a case-by-case basis prior to the enactment of this ordinance. Any fire escapes or jump platforms that replace such existing, approved structures and any newly placed fire escapes or jump platforms that will extend over the public right-of-way after the enactment of this ordinance shall be subject to section 7-1-5, privileges in the streets.

10. Temporary encroachments or obstructions authorized by permit from the Public Works Director for no more than ninety days, and in accordance with section 7-2-8.

11. Excavations and openings permitted under Chapter 2 of this Title.

12. Public utility encroachments duly authorized by the Wisconsin Statutes or this Code.

C. The prohibitions of subsection A above shall not apply to mailboxes in the right-of-way, provided any such mailbox complies with the following:

1. The post or other support for the mailbox must be set back at least one foot from the face of the curb.

2. The mailbox must be set back at least six inches from the face of the curb.

3. The bottom of the mailbox shall be not less than forty-two inches above the traveled portion of the street closest to the mailbox.

4. The mailbox and its post or support shall not encroach upon or obstruct any sidewalk or in any way interfere with the use of the sidewalk by pedestrians.

5. The post or support for the mailbox shall not exceed dimensions of 4.5 inches in diameter or 4 inches by 4 inches across.

D. Mailboxes that do not comply with the requirements of C above are deemed obstructions and may be subject to orders for removal. If removal is so ordered, the owner of the property abutting such obstruction shall remove said obstruction within thirty days of receipt of such order, and if said obstruction is not removed prior to the expiration of such 30-day period, the property owner may be subject to citations under section 1-4-1 of this Code for each day the obstruction continues, unless the property owner makes application for and receives a privilege in the street under section 7-1-5.

E. Any person depositing snow or ice onto any public sidewalk or street or other public property, or causing the same to be so deposited, unless specifically authorized by the Director of Public Works, may be subject to a forfeiture of no less than twenty-five dollars and no more than one hundred dollars, plus costs of prosecution, for each violation of this section.

F. Any person placing, or causing to be placed, any hoses used to convey stormwater or groundwater onto or across public right-of-way may be subject to a forfeiture of no less than one hundred dollars, plus costs. Each day on which a violation of this section occurs and continues shall constitute a separate offense.

Section 3. Section 7-1-5 is created as follows:

7-1-5: PRIVILEGES IN STREETS

A. Section 66.0425 of the Wisconsin Statutes, entitled "Privileges in Streets" and section 86.04 of the Wisconsin Statutes, entitled "Highway Encroachments," along with any amendments thereto, are adopted by reference as fully as if set out verbatim herein. Privileges for an obstruction or encroachment in the public right-of-way or on other public property, or for an enlargement or alteration to an obstruction or encroachment within the public right-of-way or on other public property shall be granted only as provided in this section.

B. All existing, new or enlarged encroachments or obstructions that are non-conforming to the provisions of sections 7-1-4-B or D shall comply with the requirements of this section.

C. Property owners presently having or using encroachments or obstructions of the public right-of-way or public property that are not exempted under sections 7-1-4-B or C, or who are contemplating the installation of such

encroachments or obstructions, shall forthwith apply to the City Council for authority to continue or to install the same, as the case may be, on the terms and conditions hereinafter stated.

D. Applications for privileges in streets shall be filed with the Director of Public Works and shall be accompanied by a nonrefundable application and initial processing fee of one hundred fifty dollars (\$150.00). There shall be no proration of the application and initial processing fee.

1. If the encroachment is above ground or underground, the application shall include a drawing to scale of not less than one inch equals ten feet on 8½ x 14 inch paper. This drawing shall show the location and dimensions of the above-ground or underground encroachment, e.g. projecting sign, overhanging clock, awning, fire escape, jump platform, or structure under the surface of the right-of-way or public property, in relation to the applicant's property and in relation to the right-of-way or other public property where such encroachment does or will exist.

2. If the encroachment is located on the surface of the right-of-way or other public property, the application shall include a plat of survey at a scale of not less than one inch equals ten feet on 8½ x 14 inch paper. This survey must show the area subject to the privilege in streets in relation to the owner's property and in relation to the right-of-way or other public property where the encroachment does or will exist. The survey shall include a legal description and square footage of the public area to be occupied by the privilege in streets.

3. If the Director of Public Works, or his or her designee, recommends approval of an application for a privilege in streets, the Director shall inform the applicant in writing of the recommendations and any special conditions of approval which are listed in paragraph 7. In the event that the Director does not recommend approval of the privilege to the Council, or recommends approval with special conditions listed in paragraph 7 to which the applicant is in disagreement, the applicant may appeal that decision to the Council within 30 days of receipt of the Director's written reasons for not recommending the grant of the privilege or placing special conditions on the proposed privilege. The Council may affirm, reverse or modify the initial determination of the Director, and the process for approval shall continue under paragraph 4 below.

4. Following concurrence with the applicant with the recommended conditions of approval, or following a reversal or modification of the determination of the Director by the Council on appeal, the City Attorney, in cooperation with the Director, shall prepare an agreement setting forth the requirements and conditions under which the privilege in streets would be permitted if the City Council approves the application and the agreement.

5. The Council may, in its discretion, grant or deny such application. If denied, the Council may, in the case of an existing use, order the same to be removed within thirty days pursuant to the terms, conditions and penalties provided in Section 86.04 of the Wisconsin Statutes. In the event of failure or refusal on the part of the property owner so ordered, the Council may, under section 86.04(2), seek a court order for the removal by the time stated in the order, and if not so removed, then the City may cause the removal thereof and assess the costs of such removal to the property as a special charge.

6. If said application is granted by the Council, it shall be granted only upon the following conditions:

a. By its acceptance, the applicant, or his or her heirs and assigns shall: 1) become liable for damages to person or property by reason of the granting of the privilege; and 2) be obligated to remove the same upon ten days' written notice by the City.

b. The applicant shall file a bond in an amount determined by the Council not to exceed ten thousand dollars that runs to the City and such third parties as may be injured or have incurred damages. Such bond shall be to secure the performance of the conditions in paragraph 6.a., and said bond shall be approved by the City Attorney.

c. Following approval of the privilege by the Council, the resolution granting the privilege, and the agreement setting forth the requirements and conditions under the privilege, shall be recorded in the Office of the Jefferson County Register of Deeds.

d. The Clerk-Treasurer shall verify annually that the bond continues to remain in force, and if said bond should lapse, then the applicant is to be notified immediately to file a bond within ten days or the matter will be brought to the Council for termination of the privilege.

7. Special Privileges – Optional Conditions. If a privilege is granted by the Council, it may, if the circumstances warrant, require any or all of the following as additional conditions of the grant of the privilege:

a. The applicant may be required to furnish proof that sufficient and proper public liability insurance is carried which will afford adequate protection to the City in connection with said privilege;

b. The applicant may be required to make such alteration, reconstruction and safeguarding of any special privilege as the Council deems necessary;

c. The property owners and/or contractors working for the property owners that receive the grant of a privilege may be required to execute waivers or agreements in favor of the City exonerating it from any liability for damages connected with the use of such privilege, or caused by construction, operation or maintenance of such privilege.

8. The following additional responsibilities shall be applicable to any grant of a privilege in the streets:

a. The holder of such privilege shall be entitled to no damages for removal of the obstruction or encroachment, if so ordered by the City, and if he or she does not remove the same upon due notice, it shall be removed at his or her expense.

b. Third parties whose rights are interfered with by the granting of the privilege shall have a right of action only against the holder of the privilege.

9. Removal of Encroachment or Obstruction. The recipient of the privilege shall remove said encroachment or obstruction and restore the public right-of-way or other public property upon ten (10) days written notice by the City of Lake Mills. Additionally, the applicant or the applicant's heirs or assigns may terminate the privilege by removing the encroachment or obstruction and by restoring the surface of the area affected by the same to a condition comparable to that of the remainder of the right-of-way or other public property adjacent to the area affected by the privilege, and by recording a suitable document terminating the privilege, and filing the same with the City Clerk-Treasurer.

Section 3. This ordinance and second amendment are sponsored by Council Representative Pamela Lazaris, and its first amendment is sponsored by Council President Ed Grunden.

Section 4. All ordinances or parts of ordinances inconsistent with or contravening the provisions of this ordinance are hereby repealed in whole or in part.

Section 5. This ordinance shall be in full force and effect upon passage and publication as provided by law.

Adopted this 18th day of March, 2008.

Ed Grunden, Council President

Attest:

James E. Heilman, City Clerk-Treasurer