



**Request for City Council Committee Action
From the Department of Public Works**

Date: December 14, 2004
To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee
Referral: None

Subject: **Public Hearing Ordinance amending Title 5, Chapter 95, titled *Projections and Encroachments*.**

Recommendation:

- Approve recommended changes to the Ordinance amending Title 5, Chapter 95, titled Projections and Encroachments.

Previous Directives:

- March 21, 2003, City Council recommendation to direct staff to bring forward actions to revise authority and procedures for issuance of special permits.
- November 23, 2004, set public hearing for ordinance amendments.

Prepared by: Dennis Morris, Public Works Right of Way Supervisor, 673-3607

Approved by: _____
Klara A. Fabry, P.E., Director of Public Works, City Engineer

Presenters: Dennis Morris, Right of Way Supervisor

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain):
- Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information Attached

In December of 2002 a task force consisting of representatives from the City Clerks Office, Public Works Department, City Attorneys Office, Regulatory Services, Zoning and Inspections Divisions presented the City Council with a proposal to eliminate the use of special council permits and identify other existing permits and procedures that could be eliminated or modified. The goal is to better serve the public by quicker, easier permit processing (One Stop Shop)

or eliminating certain permits altogether. The group has continued meeting and has now begun the process of implementing various ordinance revisions to the Council in compliance with that directive.

The Encroachment Permit Process is one of the oldest permitting procedures by the City. Historically private use of public rights of way have been reviewed and approved by the City Council. Originally it was in the form of resolutions or ordinances adopted by Council and later in the form of permits issued by the City Clerks Office. More recently, in 1991, the ordinance was amended so that full Council approval was not necessary, only the approval of the Ward Council Member. Although this lessened the processing time from several months to several weeks, it still results in a lengthy, multi departmental approval process.

The proposed amendment takes the next step in streamlining the permit process. It allows the City Engineer to accept, review and issue encroachment permits. This will shorten the process to a few days. In situations where little or no conflict with public interests occurs, permit could be issued at the time of application or through use of the City web site.

In their review of the proposed ordinance amendment, the City Attorneys Office noted that the city charter and related ordinances give the City Council final authority over use of the public rights of way. The proposed changes to the ordinance maintain the provision for an appeal to the City Council should the City Engineer deny any application (Ch. 95.13). It also retains the provisions for the City Council to approve any revocation of an existing permit (Ch 95.20). By retaining these provisions, the amendment does not conflict with city charter or ordinance authority.

As the task force continues to review current City permit processes, we will be presenting more ordinance revisions to the Council during the 2005 Council cycle. The reports will be presented to the appropriate governing Committees by the participants of the task force.

Attachment No. 1: Draft Ordinance

Attachment No. 2: Four year permit overview

Attachment No. 3. Flow Chart of Permit Process

Attachment 1

Author

Amending Title 5, Chapter 95 of the Minneapolis Code of Ordinances relating to Building Code: Projections and Encroachments.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 95.10 of the above-entitled ordinance be amended to read as follows:

95.10. Permit required for encroachment; liability; expiration. No portion of a building or other structure, including but not limited to steam lines, conduits, lighting standards, areaways, retaining walls, parking bays, etc., but excluding signs, as stated in Chapter 109, shall for any length of time encroach upon or project into, upon, over or under any street or alley, right-of-way, park or other public property without a ~~special~~ permit having been issued by the ~~city clerk~~ city engineer, except as specifically stated in this code, and the owner of any structure any part of which encroaches on, into, upon, over or under any public property shall be liable to the city for any damage which may result to any person or property by reason of such encroachment or the removal of such encroachment whether or not such encroachment is specifically allowed by this Code.

Any permission hereunder granted and all rights of the permittee hereunder shall cease at any time that said encroachment shall be removed and such permission shall in no way be considered a relinquishment by the city of that portion of said public right-of-way, or be of any force or effect beyond the time herein provided. Additional conditions may be imposed on encroachment permits to protect the health, safety or welfare of the public or to protect nearby property owners from hardship or damage or to protect other public interests as determined by the city engineer ~~director of public works or the appropriate elected official~~.

Section 2. That Section 95.11 of the above-entitled ordinance be amended to read as follows:

95.11. Insurance requirements. Upon compliance with all other provisions of this chapter, such encroachments into, upon, over or under any street or alley right-of-way, park or other public property may be granted only after filing with the ~~city clerk~~ city engineer by the owner and/or lessee of the property:

(a) Evidence of a public liability insurance policy in force in the amount of five hundred thousand dollars (\$500,000.00) combined single limit, or more, for bodily injury and property damage for any one encroachment granted after the effective date of this ordinance [adopted February 13, 1976], wherein the City of Minneapolis is made additional insured, or fifty thousand dollars (\$50,000.00) for bodily injury and property damage for encroachments on public property which adjoins property used or zoned to be used for residential purposes, wherein the City of Minneapolis is made an additional insured on a homeowner's policy of insurance. The additional insured endorsement shall show the date the permit was granted, description and location of the encroachment, and shall state that the policy does provide the insurance coverages required by this chapter. For any one encroachment at any one location granted prior to the effective date of this ordinance [adopted February 13, 1976], public liability insurance coverage shall be in the amount of three hundred thousand dollars (\$300,000.00) combined single limit, or more, wherein the City of Minneapolis is made additional insured. The above endorsements naming the city as additional insured shall not be required where the ~~city clerk~~ city engineer determines that such provision is not commercially available at reasonable cost. Provided, however, that the furnishing and existence of any such insurance policy shall not limit nor abrogate the obligations of the permittees, their successors or assigns, to secure, indemnify and hold harmless the City of Minneapolis for the full amount of any actions, proceedings, claims, costs, damages and expenses.

(b) On all underground encroachments, such policy of insurance shall specifically delete any exclusion with regard to "XCU" (explosion, collapse, underground).

(c) If any permittee, or the permittee's successors or assigns, allows the insurance policy to lapse without furnishing a new policy in lieu thereof, the ~~city clerk~~ city engineer shall ~~request the city attorney to~~ initiate proceedings to have the permit revoked and the encroachment removed.

Section 3. That Section 95.12 of the above-entitled ordinance be amended to read as follows:

95.12. Issuance of building permit. The director of inspections shall not issue a permit for any encroachment requiring a ~~special~~ permit from the ~~city clerk~~ city engineer without verification by the ~~city clerk~~ city engineer that all conditions relating to acceptance of the terms of the permit and filing of the insurance policy have been complied with.

Section 4. That Section 95.13 of the above-entitled ordinance be amended to read as follows:

95.13. Manner of making application. The public works department shall accept the permit fee, which is not refundable and shall refer the application to the appropriate officials for approval.

The following non-refundable fees shall be charged to defray the administrative costs of issuing an encroachment permit:

(a) Fifty dollars (\$50.00) for encroachments on public property which adjoins property used or zoned to be used for residential purposes;

(b) Seventy-five dollars (\$75.00) for encroachments on public property which adjoins property used or zoned to be used for nonresidential purposes; and

(c) Twenty-five dollars (\$25.00) to amend a previously issued encroachment permit, at the discretion of the public works department.

The city engineer ~~director of public works and the appropriate elected official~~ shall examine the application and shall approve the same unless they find that the application fails to meet the applicable requirements contained in this chapter or if there is a basis for denying the application because allowing the encroachment would endanger the health, safety or welfare of the public or would cause hardship or damage to nearby property owners. If ~~both approved~~ the application, the ~~city clerk~~ city engineer shall issue the permit. If either the city engineer ~~director of public works or the appropriate elected official~~ denies the application, the applicant may, within 30 days of notice of denial, appeal this decision to the transportation and public works committee which shall make its recommendation concerning the application to the full city council. The city council shall have the authority to consider any previously denied application and may order the issuance of an encroachment permit.

Section 5. That Section 95.20 of the above-entitled ordinance be amended to read as follows:

95.20. Removal upon order. The owner of any building or other structure, including but not limited to those cited in section 95.10 herein, any part of which projects into, upon, over or under any public property shall remove at once any part or all of such encroachment upon being ordered to do so by the city council and shall restore the right-of-way to a safe condition, and the city shall not be liable for any damages resulting to the property owner by reason of such an order.

Such removal and restoration of the right-of-way will be at the sole expense of the property owner. Upon failure of the property owner to remove the encroachment as ordered, the reasonable costs of removing such encroachment incurred by the city shall be billed and levied against the property as a special assessment.

Section 6. That Section 95.30 of the above-entitled ordinance be amended to read as follows:

95.30. Projections to be safe. All such projections over public property, including awnings, canopies and marquees, shall be structurally safe and shall be kept in a safe condition and maintained in a workmanlike state of repair consistent with the design thereof and repaired when necessary in the opinion

of the ~~director of inspections~~ city engineer by and at the expense of the person having ownership or control of the building from which they project.

Section 7. That Section 95.10 (a), (b) and (e) of the above-entitled ordinance be amended to read as follows:

95.90. Areaways. (a) **Defined.** The term "areaway," as used in this Code, shall mean a below-grade area which is or was used as an extension of, or adjunct to, a building or structure and which extends into and occupies a portion of a street or other public right-of-way.

(b) New construction or modification of areaway. No areaway shall be constructed or modified without an encroachment permit issued by the ~~city clerk~~ city engineer. Persons seeking an encroachment permit for an areaway shall submit an application before they apply for a building permit and shall submit their plans, including present and proposed top-of-curb profiles and other pertinent information, for the city's review regarding compliance with the following conditions and restrictions:

- (1) No areaway shall be permitted in any alley right-of-way or in the roadway portion of any street (from the back of the curb to back of curb, or, if a new layout plan for a street has been approved by the city council, then between the proposed backs of curbs).
- (2) No areaway shall be permitted in the sidewalk utility corridor, which is the five-foot wide portion of the public right-of-way parallel and adjacent to the back of the curb and having a depth of nine (9) feet measured from the top of the curb. No areaway shall extend more than twelve (12) feet into the public right-of-way as measured from the property line. Further, the areaway shall not serve as an essential support function for the adjacent building, so that the areaway can be readily removed without affecting the structural integrity of the adjacent building or other essential support systems to said building.
- (3) The minimum granular cover material between the top of the areaway and the bottom of the sidewalk or driveway shall be six (6) inches at the property line. Further, said cover shall uniformly increase by sloping the areaway roof downward way from the property line at a minimum rate of three-fourths (3/4) inch per foot advancing into the right-of-way.
- (4) No opening of any kind, including, but not limited to, stairways, chutes, and ventilation openings, shall be allowed from the public sidewalk into the areaway.
- (5) The walls of the areaway shall be of adequate strength and sufficiently braced with cross walls to resist all lateral and vertical loads, including but not limited to earth loads, hydrostatic loads, vehicular loads and loads imposed by the structure.
- (6) The areaway shall be constructed of reinforced concrete or other suitable material adequate to safely carry the design load, including the capability of sustaining a concentrated live load of ten thousand (10,000) pounds on any area not exceeding six (6) inches square. All materials shall be corrosion-resistant.
- (7) The shutoff (stop box) for all water supply lines shall be outside of and at least two (2) feet from the areaway walls and no such areaway shall interfere with pipes, sewers, conduits or other underground construction of the city or any public service corporation.
- (8) Areaway roofs less than three (3) feet from the surface shall be insulated with a suitable material so as to prevent the melting and refreezing of snow caused by heat loss to the sidewalk or utility corridor above.

Upon completion of the ~~city staff~~ review, the application for an areaway encroachment permit will be forwarded to the ~~city clerk~~ city engineer for approval or denial. After ~~city clerk~~ the city engineer approval

issues of the encroachment permit, the requesting party shall obtain a building permit prior to constructing said areaway.

Any modification of an existing areaway shall be performed in compliance with the requirements of section (b) above, as well as the additional requirements set forth for existing areaways in section (c) below as determined by the city engineer.

(e) *Safety inspection and certification of areaways.* All areaways shall be inspected when they become thirty-five (35) years of age, and every ten (10) years thereafter, by an inspecting engineer who shall be a qualified civil or structural engineer, licensed by the State of Minnesota as a professional engineer. Said inspecting engineer shall be selected, hired and paid by the owner of the areaway, to determine whether said areaway is capable of carrying the required loads and is otherwise structurally sound and in compliance with the provisions of this section.

The inspecting engineer shall make an engineering report of findings which shall consist of the following: (i) a statement as to whether or not the areaway is capable of carrying required loads, is structurally sound and is in compliance with the requirement of Subsection (c) for areaways constructed prior to January 1, 1990, or Subsection (b) for areaways constructed on or after January 1, 1990; and (ii) a list of the modifications, if any, that must be made in order to make the areaway capable of carrying required loads, structurally sound and in compliance with the appropriate Subsection (b) or (c) as stated above; and (iii) a signed signature paragraph, stating the inspection and report was done by or under direct supervision of the inspecting engineer who is a duly licensed professional engineer under the laws of the State of Minnesota. In lieu of extensive modifications, the owner of the areaway may opt to make lesser modifications and more frequent engineering report of findings inspections, all as recommended by the inspection engineer, and included as an option in the engineering report of findings; provided, that such lesser modifications shall, in any event, incorporate sufficient structural and safety features to satisfy the appropriate subsections (b) or (c). In all cases, the full list of modification to meet the requirement (ii) above, must be submitted to the director of inspections.

The director of inspections or designee shall visually inspect all areaways when they become twenty (20) years of age and every ten (10) years thereafter. If, on such visual inspection, the inspector notices deterioration of the areaway, the director may require the owner to have it inspected forthwith and periodically thereafter by an inspecting engineer in the same manner and under the same requirements as set forth above for areaways which are thirty-five (35) years of age or more.

The director of inspections shall, within one hundred twenty (120) days following the publication of this ordinance, mail a notice to the owners of all areaways for which there is an encroachment permit, notifying them of the requirements of subsection (e) and (f). Thereafter, as areaways are required to be inspected pursuant to this subsection, the director of inspections shall mail a notice to the owner of the areaway at least ninety (90) days prior to the date an engineering report of findings inspection is due to be made and thirty (30) days prior to the date of a visual inspection. The owner shall be required to submit to the director of inspections the engineering report of findings from the inspecting engineer on or before the date set forth in the notice. If the engineering report of findings requires modifications to be made, the owner shall also submit with the engineering report of findings, a time schedule for making the modifications. In no event shall the time schedule exceed one (1) year for the completion of all recommended modifications.

This subsection (e) shall apply to all areaways in existence prior to the effective date of this ordinance as well as those constructed after the effective date. For areaways in existence at the effective date of this ordinance, the initial implementation for both the visual inspection and engineering report of findings inspection, shall be done in an orderly manner as scheduled by the director of inspections with the general direction that the primary intent of this subsection is to require inspections of the areaways at the regular intervals, as stated above, and that the dates of the inspections, in relation to the age of the areaways, is secondary and reasonably adjustable. Whenever the age of an areaway is not readily ascertainable, the director or inspections shall use reasonable and best efforts to estimate the age of the areaway. Said estimated age shall then be used for the purpose of setting inspection schedules, as

stated above. The areaway owner may, for whatever reason, have an engineering report of findings inspection done at any time. Once the engineering report of findings is submitted to the director of inspections and the fee is paid, the future inspection schedule shall be adjusted, maintaining the frequencies of visual inspections and engineering report of findings inspections, as described above, without regard to the actual age of the areaway.

Whenever the city engineer or the director of inspections becomes aware of any areaway for which there is no encroachment permit, the city engineer shall send a written notice to the owner of the areaway, setting forth the requirements of this subsection. Also included in the notice shall be the requirements of an encroachment permit for the areaway. Within sixty (60) days after the city engineer has sent the written notice to the owner, the owner shall submit a completed encroachment permit application and an engineering report of findings by the owner's inspecting engineer as required by this subsection, if the areaway is more than thirty-five (35) years of age. If the areaway is between twenty (20) years and thirty-five (35) years of age, the director of inspections, or designee, will conduct a visual inspection of the areaway. The owner shall comply with all provisions of this section relating to the making of necessary modifications to the areaway in the same manner and time schedule as required herein as to owners who have an encroachment permit. The owner shall also comply with all of the encroachment permit requirements of this chapter applicable to areaways. Should the owner fail to comply with these requirements, no encroachment permit shall be issued and the owner of the areaway may be ordered by the city council to remove the areaway pursuant to section 95.20 of this chapter.

The city council may revoke any previously issued encroachment permit for the failure to comply with the provisions of this section, including the failure to cause the required areaway inspections to be made or the failure to make the necessary modifications within the submitted time schedule. Upon revocation of such permit, the owner of the areaway may be ordered by the city council to remove it pursuant to section 95.20.

This subsection (e) shall not apply to any areaway that is appurtenant to a parking ramp for which an operating certificate has been issued and is currently in effect pursuant to Chapter 108 of this Code.

Section 8. That Section 95.110 (d) of the above-entitled ordinance be amended to read as follows:

95.110. Awnings.

(d) ~~Permits.~~ Permits for the erection, reconstruction and structural alteration of awnings as set forth in this article may be issued by the director of inspections without requiring a ~~special~~ permit by the ~~city clerk~~ city engineer.

Section 9. That Section 95.120 (c) of the above-entitled ordinance be amended to read as follows:

95.120. Marquees.

(c) Length. A marquee projecting more than two-thirds of the distance from the property line to the curblin shall not exceed twenty-five (25) feet in length along the direction of the street without specific approval of the ~~city clerk~~ city engineer.

Section 10. That Section 95.130 (e) of the above-entitled ordinance be amended to read as follows:

95.130. Canopies.

(e) ~~Permits.~~ Permits for the erection, reconstruction and structural alterations to canopies weighing less than three (3) pounds per square foot of surface area and which derive all of their support from the building from which they project and do not exceed one hundred twenty-five (125) square feet in area measured in the horizontal plane may be issued by the director of inspections without requiring a ~~special~~ permit by the ~~city clerk~~ city engineer.

Section 11. That Section 95.135 (d) of the above-entitled ordinance be amended to read as follows:

95.135. Backlit awning signs.

(d) *Permits*: Permits for the erection, reconstruction and structural alterations to backlit awning signs weighing less than three (3) pounds per square foot of surface area and which derive all of their support from the building from which they project may be issued by the director of inspections without requiring a special permit by ~~city clerk~~ city engineer.

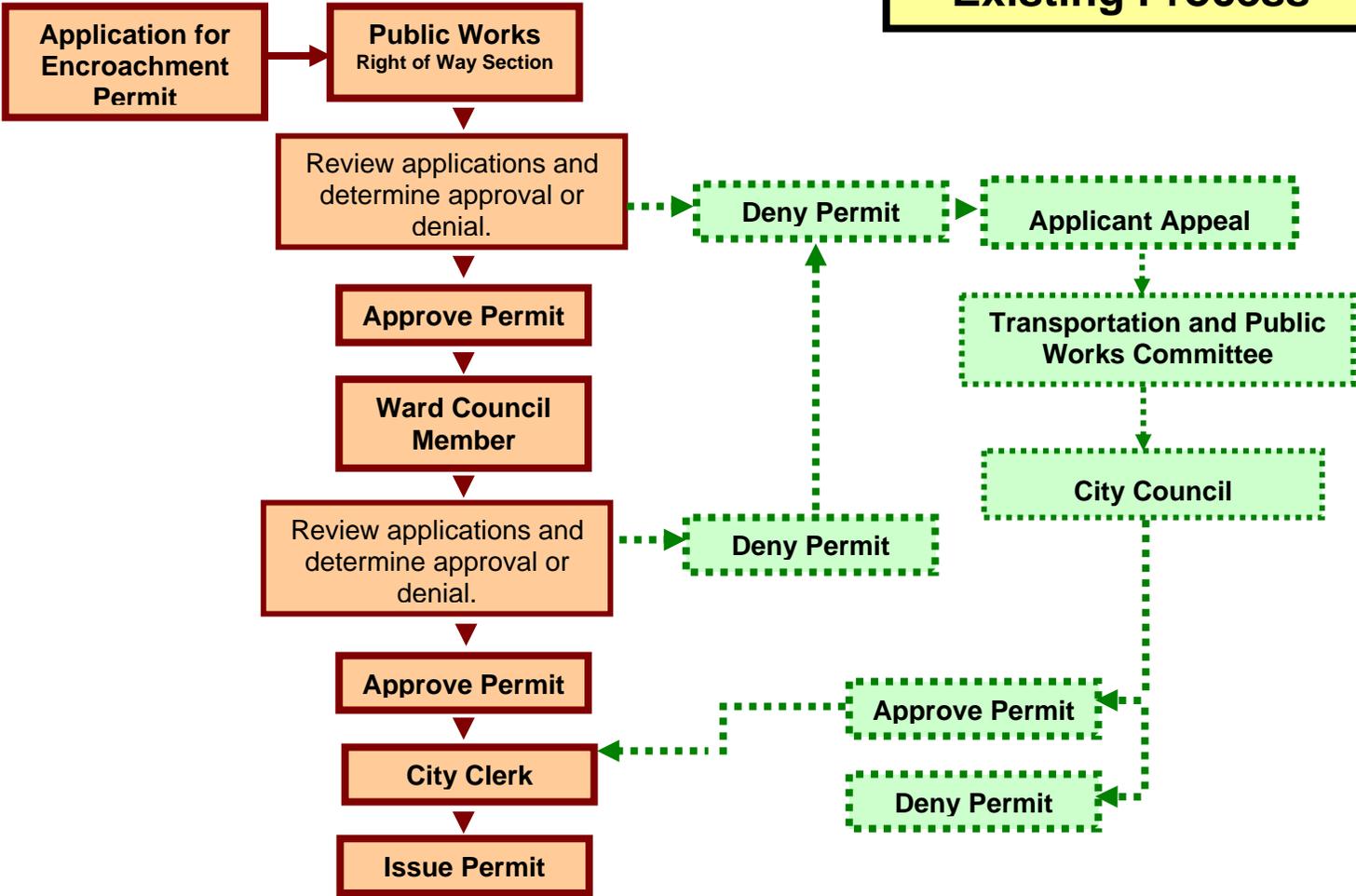
Attachment 2

Encroachment Permit Data						
YEAR	2000	2001	2002	2003	2004	TOTALS
Permit Applications	195	366	191	223	190	1,165
Applications withdrawn	40	49	19	16	29	132
Applications denied	5	2	4	1	0	12
	-45	-51	-23	-17	-29	-165
Permits Issued	150	315	168	206	161	1,000

Permit Application Types by Year						
Underground Utility	51	190	82	78	65	466
Aboveground Utility	14	12	2	6	0	34
Architectural	42	67	28	31	34	202
Decorative/Ornamental	24	28	29	24	28	133
Monitoring Systems	16	8	5	8	13	50
Construction	38	55	36	62	39	230
Signs & Banners	10	6	9	14	11	50

Attachment 3

Existing Process



Proposed Change

