

Chapter 14.54

OCCUPANCY ABOVE OR BELOW PUBLIC PROPERTY

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14.54.010 Definitions.

For the purpose of this chapter, the following definitions shall prevail:

Fence shall mean a barrier serving as an enclosure or a boundary usually intended to prevent escape or intrusion.

Owner shall mean and include the record owner of the fee simple of property or the lessee for a term of five years or more of such property, or purchaser in possession under land contract.

Retaining wall shall mean a structure that provides lateral support to higher ground at a change of level, generally intended to retain a slope and prevent erosion.

Story shall mean the distance between the lower surface of any ceiling and the lower surface of the ceiling immediately above or below it, but if the distance between such ceiling surface and the floor immediately below is more than sixteen feet, such distance shall be considered to be not less than two stories in depth.

Structure shall mean anything constructed, placed or erected, the use of which requires location on the ground or attachment to something having a location on the ground, whether temporary or permanent, and shall include, but not be limited to, vaults, underpasses, areaways, tents, basements, liquid storage tanks, boilers, and cantilevered areas of buildings. (Ord. 19716 §6; May 21, 2012: prior Ord. 19115 §1; August 4, 2008: Ord. 13212 § 11; September 28, 1981).

14.54.020 Permit Required.

It shall be unlawful for any person to use any space underneath, on, or above the surface of any street, alley, sidewalk, public space, or other public ground within this city, or to construct any structure, whether temporary or permanent, thereunder, thereon, or thereover unless approved by the city by a permit issued as a privilege. A building permit shall also be required from the Building Official if a permit would be required under the ordinances of the city to construct a similar structure upon private property. (Ord. 19716 §7; May 21, 2012: prior Ord. 19115 §2; August 4, 2008: Ord. 13212 § 12; September 28, 1981: Ord. 8782 § 2; July 26, 1965: Ord. 7255 § 2; August 8, 1960).

14.54.030 Application for Permit.

Applications for such permit shall be made to the Department of Public Works and Utilities, and such application shall be in writing stating specifically the space desired, its length, breadth and depth, and the use intended to be made thereof, or the structure to be built therein; provided, however, applications for fence and retaining wall permits shall be made on forms provided by said Department for that purpose together with four copies of a plot plan, unless waived by the Department for an existing fence or retaining wall, showing the proposed use drawn to an accurate scale. At the time the application is filed, the applicant, except an applicant for a fence and retaining wall permit, shall pay a fee, to be established by the Department, which shall cover the cost to the City of processing the application, investigating the facts stated therein, and enforcing the provisions of this chapter.

Any person aggrieved by the Department in the denial of an application for a permit shall have the right to appeal to City Council by filing with the City Clerk a notice of appeal within 14 days of denial. (Ord. 19115 §3; August 4, 2008: prior Ord. 16951 §109; March 11, 1996: Ord. 7255 § 3; August 8, 1960).

14.54.035 Fences and Retaining Walls.

- (a) Retaining walls may be permitted on City property under the following conditions:
 - (1) The wall is not higher than six inches above the land that it supports.
 - (2) The wall shall comply with Chapter 14.44 of the Lincoln Municipal Code.
 - (3) The wall shall be safe and aesthetically compatible with the neighborhood.
- (b) Fences may be permitted on City property under the following conditions:
 - (1) The fence shall comply with Chapters 20.10 and 27.71 of the Lincoln Municipal Code.
 - (2) The fence shall comply with Chapter 14.44 of the Lincoln Municipal Code.
 - (3) Fences installed after August 1, 2008 shall be no closer than two feet to any existing or proposed sidewalk unless installed so as to not interfere with pedestrian and bike traffic.
 - (4) Fences shall not be allowed between a sidewalk and the street. If no sidewalk is present, the fence may be no closer than twelve feet from the curb.
 - (5) The fence shall be safe and aesthetically compatible with the neighborhood.
- (c) After review of the application, the Director shall issue a permit if the application complies with the provisions of this chapter; provided however, any fence or retaining wall which does not comply with the provisions of this section may apply for a permit as a structure. The fence and retaining wall permit shall be subject to the following conditions, which shall be made a part of said permit:
 - (1) The use of public space shall be temporary. The owner shall not acquire any right, title or interest to such space.
 - (2) In the event that it becomes necessary to construct, maintain or repair utilities within the space occupied by the fence or retaining wall, the removal and replacement of said permitted item shall be done at the expense of the owner, and by the owner within 14 days after written notice is given by the City. In the event emergency maintenance or repairs must be made to utilities, the City may remove the fence or retaining wall with no liability or responsibility for damages thereto.
 - (3) The retaining wall or fence shall be located only in the exact location described in the approved application.

(4) The owner shall maintain the fence or retaining wall in good repair and in the form approved by the permit. Such maintenance shall solely be the responsibility of the owner, and shall be performed at the owner's expense. In case such owner refuses or neglects, after 14 days' written notice, to repair or maintain such fence or retaining wall, the City may repair or remove such fence or retaining wall and charge the cost thereof to the owner. In the event the fence or retaining wall endangers or is likely to endanger the life, limb, health, property, or safety of the public, the City may repair or remove such fence or retaining wall without notice and charge the cost thereof to the owner.

(5) The owner shall hold the City harmless from any and all liability resulting from the construction, maintenance, or existence of any of the allowed or permitted items.

(6) The City of Lincoln is released from any and all liability and responsibility for any damage to an allowed or permitted use which might occur during installation, maintenance, or repair work performed by the City of Lincoln, its departments or utilities, or another quasi-public utility, or franchisee of the City of Lincoln including, but not limited to, street maintenance and repair, snow removal, street widening, utility project, street cleaning, sign replacement, maintenance and repair, or any other construction, or repair function of the City of Lincoln, its departments, agencies, utilities, or quasi-public utilities, or franchisees, or its successors or assigns. In no event will compensation be provided for use of the right-of-way by the City. If the owner desires to salvage material, it must be done before the project begins at the owner's expense.

(7) The owner shall be responsible for any damage or repairs to public property caused by the installation or removal of any fence or retaining wall.

(8) The owner assumes all risk in placing the permitted item on City property including damages, vandalism, and destruction.

(9) All terms and conditions shall be binding and obligatory on the owner and such owner's successors, personal representatives, heirs, and assigns. (Ord. 19115 §4; August 4, 2008).

14.54.040 Bond and Public Liability Insurance.

Every applicant for such permit, except applicants for fence or retaining wall permits, shall file with the application required, a continuing bond in the sum of not less than \$5,000.00, but in the event that the City Council in the resolution authorizing the permit shall fix a different sum, then a bond for such sum so fixed shall be substituted and filed with the application. All bonds and sureties shall be approved by the City Attorney before such permit becomes effective. All bonds shall be conditioned that the person to whom such permit shall be issued and such person's heirs, successors, or assigns shall strictly comply with all applicable laws and regulations and all conditions of the permit and which shall save and keep the city free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the space or structure therein mentioned, and for the maintenance of the street, alley, sidewalk, or other public way in such condition that said street, alley, sidewalk, or other public way shall at all times after such structure is completed or such space is covered, be safe for the public use; for the full and complete protection of the city against any and all litigation growing out of the granting of such permit or anything done under such permit and for the removal of any structure permitted in the public space by such permit at the sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful performance and observance of all the terms and conditions of this chapter; and where the permit is given to use space which under this chapter is taxed, such bond shall also be conditioned for the prompt and full payment of the compensation required by this chapter, or any other ordinance required to be paid

during the period said permit shall be outstanding. Following the issuance of such permit and as long as the use continues or as long as the structure exists in such public space, the owners of such property from time to time shall also be responsible to the city for the performance of all of the conditions of said bond above described.

Whenever the City Council shall be of the opinion that the surety on such bond given for such permit issued hereunder has become insufficient and shall so declare by resolution, a new bond for such permit shall thereupon be filed with a new surety to be approved by the City Attorney.

In addition to the bond, the applicant, except an applicant for a fence or retaining wall permit, shall be required to:

(a) At all times maintain public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City Attorney, with a minimum combined single limit of \$500,000.00 aggregate for any one occurrence. The coverages required herein shall be subject to review and approval by the City Attorney for conformance with the provisions of this section;

(b) At all times keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with the provisions of this section evidencing the existence of valid and effective policies of insurance naming the city as an additional insured for the coverage required by subsection (a) of this section, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declarations page of such policies. Any termination or lapse of such insurance shall automatically revoke any permit issued pursuant to this chapter. (Ord. 19115 §5; August 4, 2008; prior Ord. 15654 § 11; July 9, 1990: prior Ord. 13212 § 13; September 28, 1981: Ord. 12139 § 4; November 7, 1977: Ord. 8853 § 1; October 25, 1975: Ord. 8760; June 28, 1965: Ord. 7255 § 4; August 8, 1960).

14.54.060 Interference with Sewer, Gas, or Water Pipes.

No person shall ever use the space under any such street, alley, or public way in such manner as to interfere with any wastewater collector, gas, water, or any other public works or utilities lawfully in such street, alley, or other public way unless by consent of the City Council especially granted by resolution; and no such permit shall be granted until the applicant therefor has deposited with the Department of Public Works and Utilities a sum of money equal to the estimated cost prepared by the Department of Public Works and Utilities to defray the cost and expense of removing, replacing, and relaying such wastewater collector, gas, water pipes, or other public works or utilities, and making the necessary connections therewith. Each and every applicant disturbing any such wastewater collector, gas, water pipes, or other public works or utilities, shall, within ten days after so disturbing it, restore the same to such condition as will meet with the approval of the Department of Public Works and Utilities. When such wastewater collector, gas, water pipes, or other public works or utilities are so restored by said applicant, the sum so deposited with the Department of Public Works and Utilities shall be refunded to such applicant less any sums which may be necessary to defray any damages which might arise from such disruption. If such applicant shall fail to restore such wastewater collector, gas, or water pipes, or other public works or utilities within ten days after the same is disturbed, then the Director of Public Works and Utilities shall ca-

use the same to be restored in a manner meeting with his/her approval, and the cost thereof shall be paid out of the sum thus deposited. (Ord. 16951 §167; March 11, 1996: prior Ord. 13212 § 15; September 28, 1981: Ord. 7255 § 6; August 8, 1960).

14.54.070 Revocation of Permit; Removal of Structure, Fence or Retaining Wall.

A permit issued under this chapter may be revoked by the City upon the giving of 14 days' written notice to such person for the following reasons:

- (a) Failure of the permitholder to pay the compensation required within ten days after the date for payment is due;
- (b) Failure or neglect of the permitholder to comply with the provisions of this chapter or provisions of the permit;
- (c) Failure to use the space for which the permit was granted for a continuous period of at least six months;
- (d) Upon a determination by the city that the space for which the permit was granted is needed for public use;
- (e) Failure to maintain the structure, fence or retaining wall in the same form as specified in the permit or in a safe and well-maintained manner;
- (f) If the fence or retaining wall interferes with existing public or quasi-public utilities or would interfere with proposed installation or maintenance of new public utilities or interferes with curb and gutter repair or street maintenance.

In the revocation notice, the City shall provide the permitholder a deadline of not less than 30 days to remove or abandon the space for which the permit was granted, together with the removal of any structures, fences or retaining walls at his/her own cost and expense and to return that space to the City of Lincoln, free and clear of all structures or encroachments of any type, at no expense to the city. If said space is below ground, such space shall be filled to the satisfaction of the Director of Public Works and Utilities at the expense of the permitholder. If a removal, abandonment, or fill is not completed after the required notice, the City may cause such removal, abandonment, or fill to be so done, and the costs of such work shall become a lien against the property of the permitholder. Any such revocation may be appealed to the City Council by filing with the City Clerk a notice of appeal within 14 days of revocation; provided however, the time period to file a notice of appeal may be extended for up to 21 days by the City Clerk for good cause shown. (Ord. 19115 §6; August 4, 2008: prior Ord. 16951 §110; March 11, 1996: Ord. 13212 §16; September 28, 1981: Ord. 7255 §7; August 8, 1960).

14.54.080 Application of Chapter: Exceptions.

The provisions of this chapter shall apply to fences and retaining walls on City property and to all uses of any space under or over the public space where said use involves the construction of or excavation for structures to be placed in that space. The provisions of this chapter shall not apply to public utilities located above or under the public space, the use of street or sidewalk areas during construction work occurring on adjacent property and for parking of vehicles within the sidewalk space, balconies, appendages, marquees, footings, and awnings provided for in the Lincoln Municipal Code, skywalks, sidewalk cafes, or signs for which a permit has been issued under Title 22 of the Lincoln Municipal Code. (Ord. 19115 §7; August 4, 2008: prior Ord. 13212 § 17; September 28, 1981: prior Ord. 7255 § 8; August 8, 1960).

14.54.090 Rental Fee for Space.

Every person, firm, or corporation owning and maintaining any building projecting over the public street or sidewalk permitted as a privilege under the terms of Sections 14.54.010 through 14.54.080, upon a finding by the City Council that such building is to be used for a parking facility offered to the public and where such facility is located in the B-4 Business District, shall pay to the city an annual rental for the use and occupancy of the space over such public street or sidewalk occupied by such structure, which rental shall be as follows:

If such structure over the public street or sidewalk is one story or less in height, a minimum of fifty cents per square foot of floor space over the public street or sidewalk so used; and if such structure over the public street or sidewalk is over one story in height, an additional fifty cents or more per square foot of floor space over the public street or sidewalk for each additional story.

For every other use of space above or below public space permitted as a privilege under the terms of this chapter, the following annual rental fee shall apply:

For each story above or below the surface, the fee shall be fixed at fifty cents per square foot.

If such use of space involves utilization of the surface by the applicant, the fee for such surface use shall be fixed at one dollar per square foot. This fee shall be in addition to the fee for each story if the use is for surface space as well as for stories above or below the surface.

For use of public space for a retaining wall or fence under the terms of this chapter, there shall be no annual rental fee. (Ord. 19115 §8; August 4, 2008; prior Ord. 13395 § 1; June 1, 1982: Ord. 13212 § 18; September 28, 1981: Ord. 7318; October 17, 1960).

14.54.100 Rental Due Date; Collection.

All payments made under the provisions of this chapter shall be made to the City Treasurer and he/she is the collector thereof; and said rentals shall be due and payable on the first day of October of each year; provided, however, if the permit is issued for such space after the first day of October, the amount of the initial payment shall be prorated from the date when such permit is issued to the first day of October of the next year, and payments shall be due and payable on October 1 thereafter.

Any such rent shall become delinquent on the first day of December of each year and such delinquent rent shall bear interest at the rate of one percent per month until paid, and if such rent is not paid for six months or more after such delinquent date, a penalty of five percent shall be added thereto, in addition to said interest. (Ord. 13212 § 19; September 28, 1981).