COUNCIL BLUFFS POLICY AND PROCEDURES FOR

PRIVATE USE IN THE PUBLIC RIGHT-OF-WAY IN THE DOWNTOWN C-3 AND C-4 DISTRICT FOR THE PURPOSE OF ALCOHOL AND NON-ALCOHOLIC BEVERAGES AND/OR FOOD CONSUMPTION



CITY COUNCIL
ADOPTED April 25, 2011
AMENDED February 13, 2012
AMENDED February 22, 2021

SECTION 1 – INTRODUCTION

Purpose

This policy has been prepared to assist property owners, City staff, and the Council Bluffs City Council in the evaluation of requests to allow intrusions into the public pedestrian right-of-way in the C-3 and C-4 zoning districts in the downtown area by conveying possession and use rights located within the public right-of-way. This policy will implement the following objectives:

1) To provide due process and citizen participation in the application and review process ~~allowing~~ to allow alcohol and non-alcoholic beverages and/or food consumption in the public pedestrian right-of-way without the need for right-of-way vacations.
2) To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.
3) To maintain appropriate right-of-way width that will accommodate adequate pedestrian circulation and maintain the public's safe use of public sidewalks and other public pedestrian ways in the downtown area.
4) To enhance and promote a vibrant urban downtown environment, and to accommodate reasonable requests to improve the public pedestrian right-of-way in accordance with applicable zoning laws and a comprehensive master plan.
5) To preserve the historic integrity of the area.

SECTION 2 – GENERAL GUIDELINES

This policy is not intended to supersede Municipal Code sections, but is intended to allow for typical uses and/or treatments which are customary in urban downtown settings pursuant to the Chapter 3.08.045 paragraph (a) "Open Air Dining – Exception" or paragraph (f) "Open Air Tavern – Exception 1" provisions of the Council Bluffs Municipal Code, or other outside dining or non-alcohol drinking uses.

The following general requirements apply to all intrusions allowed under this policy. Additional requirements may be found in the Iowa Code, the Council Bluffs Municipal Code, and applicable building and public safety codes.

1) Intrusions cannot block access to underground utility vaults or prevent access to utility meters, safety switches/valves, or other critical mechanics.
2) Intrusions shall not interfere or cause damage to public fixtures including, but not limited to, parking meters and streetlights.
3) Intrusions shall not diminish the public's enjoyment and use of the public pedestrian right-of-way.
4) The "best" location of outside dining in the public right-of-way will be determined by the city council on a case by case basis. The location will be a balance of the needs for pedestrian pathway, landscaping, and dining. A minimum width of 6 feet pedestrian pathway can be acceptable for constrictions of short length. Otherwise, minimum pedestrian pathway should be 8 feet.

5) The location of the dining area can be against the building or away from the building. The location will be determined by the city council. Planter modifications may be required.
6) The planned intrusion shall be limited to the right-of-way between the applicant's side yard property lines projected to the street.
7) No signage or advertising is allowed on the planned intrusion.
8) If alcohol is served, the area conveyed will be enclosed by fencing in a standard established by the City. If alcohol is not served, but only food and/or non--alcoholic beverages, a fence may be used if the property owner requests and the City approves.
9) Any damage to the conveyed premises, fencing, or other public fixtures, normal wear and tear excepted, shall be charged to the leaseholder. Damage shall be charged in accordance with normal city standards and costs.
10) Any fixture or furniture placed within the conveyed premises shall be provided by the property owner, but is subject to standards established by the City.
11) If the property is in a designated local Historic District, City-adopted standards for furniture and fencing shall include approval by the Historic Preservation Commission.
12) As a condition of the use, the property owner will be required to maintain the used premises in a safe and sanitary manner, in accordance with normal city standards.
13) As a condition of the use, all refuse and waste generated by the premises that migrates into the public pedestrian right-of-way and landscaped areas shall be properly disposed of within 24 hours by the property owner.
14) As a condition of the use, the property owner will be required to carry liability insurance in the amount of $1,000,000.00 for the term of the use.
15) As a condition of the use, the property owner will be required to name the City of Council Bluffs, its employees, and its assignees as additionally insured parties.
~~16) All furnishings and any other intrusion placed by a property owner into the conveyed right-of-way shall be removed between November 1 and March 15. All furnishings shall be stored off public right-of-way, including the areas conveyed by this policy. Furnishings must be stored indoors or off site premises.~~
~~17) The property owner shall have no rights of usage permitted under this policy after November 1 and before March 15.~~
18) Any fencing around the areas conveyed shall be furnished and installed by the City. The fencing shall remain the property of the City. The fencing shall be provided as an obligation of the City in a leasehold agreement.
~~19) The fencing shall be removed by the City no sooner than November 1 and be installed no later than March 15. The fencing shall be stored offsite by the City.~~
20) If the area is to be fenced, the City shall be the responsible for relocation of obstructions in the right-of-way in conflict with the leased area and the pedestrian pathway. Obstructions include signs, benches, trash cans, etc. The City shall be responsible for modification of landscape planters in conflict with pedestrian pathway or the leased area.
~~21) If the area is not fenced, the City shall not have the responsibilities cited in *paragraph 19* above.~~

SECTION 3 – INSTRUMENTS TO GRANTING RIGHTS OF USE

The City will convey the right to use public right-of-way in one of two manners. If no alcohol consumption is permitted, the property owner may occupy a portion of the right-of-way through the execution of a license to occupy. The license to occupy permits the property owner to place furniture and provide service for food and/or non-alcohol beverages. No alcohol sales or consumption is permitted in the area granted a license to occupy. A license to occupy allows a property owner to reserve the use for their customers only.

If the property owner chooses to enclose a non-alcoholic dining use with fencing or will serve alcohol, a leasehold agreement is required. A license to occupy is not applicable. The leasehold agreement permits the property owner to place furniture and provide service for food, non-alcoholic, and/or alcohol beverages. A leasehold agreement allows a property owner to reserve the use for their customers only.

SECTION 4 – APPLICATION PROCESS FOR LICENSE TO OCCUPY

A. APPLICATION.

The property owner shall submit a letter of intent to the Public Works Department. The letter of intent shall include the property owner's intended use and a ~~scaleable~~ scalable drawing of the property. The drawing should include: the boundaries of the property, the right-of-way intended for private use, adjoining uses in the right-of way and all public and private fixtures located in the right-of- way. The design specifications of the furnishings and fixtures including the manufacturer's product description and color must be submitted with the letter of intent. Submittal of a certificate of insurance is required upon approval of the request.

B. FURNITURE STANDARDS

If the requested use is in right-of-way located in a designated local Historic District, furniture must comply with standards approved by the City Historic Preservation Commission and the City Council. Any deviation from these standards requires specific approval from the Historic Preservation Commission and City Council.

If the requested use is in right-of-way outside of a designated local Historic District, furniture must comply with standards approved by the City Council. Minor deviations in standards may be approved by City staff. Major deviations require specific approval of the City Council.

C. APPROVAL OF THE LICENSE TO OCCUPY (For proposed non-alcoholic uses)

The Public Works Department, the Community Development Department, and the City Attorney's Office will review the application for compliance with this policy, ~~compat aibility~~compatibility of the use with the neighborhood, and impacts on right-of-way.

If the City staff approves of the use, the City and the property owner will execute a license to occupy. The license to occupy will provide terms and conditions of the use. The Public Works Director and the City Attorney will execute the license for the City.

A license to occupy is valid for one year plus unlimited one year automatic annual renewals. Special terms may be imposed by the City. The cost of a license to occupy for the purpose of this policy shall be $100.00 per year. The initial year of the license shall be paid at the time of approval. Subsequent renewals shall be paid by March 1st of each year.

D. APPEAL

A decision of City staff may be appealed to the City Council. The City Council shall make the final decision on approval of a license to occupy.

SECTION 5 - APPLICATION PROCESS FOR LEASEHOLD AGREEMENT (for proposed uses including the sale of alcohol or non-alcoholic uses requesting a pedestrian barrier)

A. APPLICATION

Requests for the conveyance of a property right through a leasehold agreement to allow alcohol or non-alcoholic beverages, and/or food consumption in the public pedestrian right-of-way shall be submitted to the Public Works Department, along with the required application fee as set forth in the prevailing schedule of fees adopted by the City Council. All requests for leasehold agreements allowing intrusion into the public pedestrian right-of-way shall include (1) a letter of intent including property owner's name and business operator name, (2) an exhibit prepared, signed, and sealed by a land surveyor licensed in the State of Iowa, legally describing the area governed by the proposed lease agreement, (3) sufficient plans and details to review the request, (4) an application fee as determined by the Public Works Department to satisfy the administrative costs associated with processing the application.

The letter of intent shall include property owner's intended use and a ~~scale able~~ scalable drawing of the property. The drawing should include: the boundaries of the property, the right-of-way intended for private use, adjoining uses in the right-of way and all public and private fixtures located in the right-of-way. The design specifications of the furnishings and fixtures including the manufacturer's product description and color shall be submitted with the letter of intent. Submittal of a certificate of insurance is required upon approval of the request.

B. DEPARTMENT AND UTILITY NOTIFICATION

Upon receipt of the completed application and all necessary attachments, the Public Works Department shall notify all appropriate city departments.

C. PROPERTY OWNER NOTIFICATION

The Public Works Department shall notify all title holders and contract purchasers abutting the requested lease in writing via standard first class mail. The written notification shall include a location map and legal description of the property affected by the requested lease, the time and place of the City Council public hearing and request for comment.

D. REPORT PREPARATION

Upon receipt of city department comments, property owner comments, and review of the above-stated guidelines, a staff report shall be prepared by the Public Works Department. This staff report shall include general information on the request and all comments from city departments and property owners. This information combined with existing guidelines shall be included in the staff report. Based upon these comments, the Public Works Department will develop a recommendation for City Council consideration. All staff reports will be forwarded to the applicant prior to the City Council public hearing.

E. HISTORIC PRESERVATION COMMISSION REVIEW

Necessity of Review

Standards for fencing and furniture are established by the City. If the property is in a designated local Historic District, and the applicant requests a modification to the standard, the change must be approved by Historic Preservation Commission prior to City Council consideration.

F. CITY COUNCIL REVIEW

1. City Council Public Hearing

If the Historic Preservation Commission review is required, the Public Works Department shall incorporate the Historic Preservation Commission recommendation into the staff report. The staff report will be forwarded to the City Council to set a public hearing in the manner set out in Section 364.7 of the Iowa Code. Upon the establishment of a date for public hearing, the City Clerk shall make the legal notification in the manner prescribed by law.

2. City Council Review

Upon hearing all comments in favor and against the request, the City Council shall close the public hearing and render a decision on the requested lease proposal. The City Council shall consider the staff report recommendation, Historic Preservation Commission recommendation (if applicable) public hearing comments and findings of fact. If the City Council approves the requested lease proposal, a finding that the lease will not adversely impact the public's use of the pedestrian right-of-way shall be made. The City Council shall approve the request for a lease

agreement by resolution. The City Council shall have the right to revoke or modify said lease following public hearing.

G. CONVEYANCE PROCEDURES

The initial lease term shall be for a period of five (5) years, with the option to renew the leasehold by mutual agreement of the parties.

The lessee's application for a leasehold agreement to the Public Works Department shall be deemed as the lessee's written offer to be bound by contract. A resolution from the City Council conveying the possessory property rights associated with the leasehold shall be deemed as the City's acceptance of the lessee's offer.

The leasehold agreement shall include the property owners who are parties to the leasehold agreement, along with a corresponding description of the lease and all provisions of it. If the operator of establishment that will utilize the subject property is not the property owner then the operator will also be required to execute the lease and be bound to its terms in the same fashion as the lessee.

The leasehold agreement shall include a plat of survey clearly identifying the leased premises. The plat of survey shall be, prepared, signed and sealed by a surveyor licensed in the State of Iowa. Upon approval, the resolution shall be recorded with the Pottawattamie County Recorder's office. A standard format for the conveyance of a leasehold is illustrated in Exhibit "A".

H. CONSIDERATION

Consideration for the five-year term shall be determined by the City Council, payable to the City of Council Bluffs annually. The first installment shall be due upon the execution of the lease. Future annual lease payments shall be paid by March 1st of each year.

I. REVOCATION OR MODIFICATION OF LEASE

The City reserves the right after public hearing by the City Council to revoke or modify said lease if lessee is in violation of this policy, the Municipal Code or Iowa Code.

RESOLUTION OF INTENT

Prepared by: City of Council Bluffs Legal Department, 209 Pearl Street, Council Bluffs, Iowa 51503 (712) ~~328-4620~~890-5317
Return to: City Clerk, 209 Pearl Street, Council Bluffs, Iowa 51503 (712) ~~328-4616~~890-5261

RESOLUTION NO. _____

A RESOLUTION of intent to dispose of a property right by entering into a five-year leasehold agreement with _____ for a portion of the public right-of-way adjacent and contiguous to _____, in the City of Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, _____ has applied for a five-year leasehold agreement with the City of Council Bluffs for a portion of the public right-of-way adjacent and contiguous to _____, generally described as follows:

See attached exhibit

WHEREAS, this City Council hereby declares its intent to dispose of said property right.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That this City Council hereby declares its intent to dispose of a property right by entering into a five-year leasehold agreement with _____; and

BE IT FURTHER RESOLVED:

That a public hearing on the City's intent to enter into a five-year leasehold agreement is hereby set for _____.

ADOPTED
AND
APPROVED _____, ~~2012~~20___

_____
~~THOMAS P. HANAFAN~~MATTHEW J. WALSH
Mayor

Attest:

~~MARCIA L. WORDEN~~JODI QUAKENBUSH
City Clerk

NOTICE OF PUBLIC HEARING

ON INTENT TO DISPOSE OF PUBLIC RIGHT-OF-WAY

TO WHOM IT MAY CONCERN:

You are hereby notified that the City Council for the City of Council Bluffs, Iowa, has hereby expressed its intent to dispose of a property right by entering into a five-year leasehold agreement with _____for a portion of the public right-of-way adjacent and contiguous to _____, in the City of Council Bluffs, Iowa,

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting to be held at 7:00 p.m. on the _____day of _____, 20___, in the City Council Chambers in the City Hall building, 209 Pearl Street, Council Bluffs, Iowa, at which time and place all persons interested in said matter will be given an opportunity to be heard.

~~MARCIA L. WORDEN~~JODI QUAKENBUSH City Clerk

RESOLUTION AUTHORIZING DISPOSAL

Prepared by: City of Council Bluffs Legal Department, 209 Pearl Street, Council Bluffs, Iowa 51503 (712) ~~328-4620~~890-5317
Return to: City Clerk, 209 Pearl Street, Council Bluffs, Iowa 51503 (712) ~~328-4616~~890-5261

RESOLUTION NO. _____

A RESOLUTION authorizing disposal of a property right by entering into a five-year leasehold agreement with _____ for a portion of the public right-of-way adjacent and contiguous to _____, in the City of Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, _____ has applied for a five-year leasehold agreement with the City of Council Bluffs for a portion of the public right-of-way adjacent and contiguous to _____; and

WHEREAS, following public hearing, this City Council hereby authorizes disposal of said property right by entering into a five-year leasehold agreement; and

WHEREAS, a copy of the leasehold agreement is attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That this City Council hereby authorizes disposal of a property right by entering into a five-year leasehold agreement with _____; and

BE IT FURTHER RESOLVED:

That the Mayor is hereby authorized to execute the leasehold agreement on behalf of the City of Council Bluffs, Iowa.

ADOPTED
AND _____,
APPROVED 20____
~~2012~~

_____
~~THOMAS P. HANAFAN~~MATTHEW J. WALSH
Mayor

Attest:

~~MARCIA L. WORDEN~~JODI QUAKENBUSH City Clerk