

CITY OF TOLEDO

ORDINANCE NO. 1362

AN ORDINANCE ADOPTING CHAPTER 12.10 OF THE TOLEDO MUNICIPAL CODE RELATING TO SIDEWALKS; AND, DECLARING AN EMERGENCY.

WHEREAS, Toledo Municipal Code Chapter 12.08 addresses sidewalk repairs, and Chapter 12.12 regulates work permits for public rights-of-way, but they fail to adequately address the use of sidewalks within the City; and

WHEREAS, it's necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law;

WHEREAS, sidewalks are an important part of our community's mobility and livability;

WHEREAS, as sidewalks and curbs are designed and built to comply with the Americans with Disabilities Act (ADA) requirements, this ordinance reiterates the City's ongoing commitment to providing equal access for mobility and livability to citizens with disabilities;

WHEREAS, the City of Toledo desires to improve livability, and strengthen the uniformity, use, and enforcement of the public rights-of-way, and sidewalks in the City within these provisions;

NOW THEREFORE, THE CITY OF TOLEDO ORDAINS AS FOLLOWS:

SECTION 1.

Sections 2 through 19 of this Ordinance are added to and made a part of the Toledo Municipal Code, Chapter 12.10, "Sidewalk Regulation," as indicated.

SECTION 2.

The following definitions are added to §12.10.010 of the Toledo Municipal Code, to read as follows:

12.10.010 Definitions.

Unless the context requires otherwise, in this chapter, the following mean:

"Edge of sidewalk" means the edge of the public sidewalk opposite the curb where the area dedicated to sidewalk use by the City meets either private property or public property that is not dedicated to sidewalk use.

"Entity" means any corporation, non-profit corporation, limited liability company, partnership, family limited partnership, association, or any other type of business entity doing business in the City.

"Fence" means a wood, metal, masonry, plastic or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.

"Inset area" means an area including vestibules, entrances, stairways or porches outside the exterior wall of a building that follows the property boundary line of the tax lot or parcel but is under the main roof. Such inset area is not in the public rights-of-way, but includes an angled entrance into a building or a space that does not follow the edge of sidewalk that border the sidewalk. Nothing in this ordinance is meant to regulate this area, because it is outside the public rights-of-way and such area is owned by property owners up to the adjacent property line.

"Owner" means a natural person, firm, corporation, or other entity holding deed or title to real property addressed herein.

"Pedestrian" means a person who is on foot or assisted by a mobility device and able to move immediately to accommodate other sidewalk users.

"Pedestrian Use Zone" means a path where the surface of a public sidewalk for pedestrian use is located, which is six foot in width on sidewalks that are ten feet wide or less, or alternatively, five feet wide on sidewalks that are eight feet wide or less.

"Person" means a natural person, whether he, she, or is acting for himself or herself, or as the employee or agent of another.

"Person or entity in charge of property" means an agent, occupant, lessee, contract purchaser, person, or entity, other than the owner, having legal possession or control of the property.

"Public rights-of-way" means any real property owned by the city that is used for the free and unimpeded passage of the public; any lesser interest in real property held by the city which contains a grant for the free and unimpeded access by the public across such property. Public rights-of-way includes, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, public trails and paths, and all other easements which provide the public with a right of access or give the city the right to construct, maintain, repair and operate a public improvement. As used in this chapter, public rights-of-way includes subsurface and air space over the property. For example, building an awning above the sidewalk requires a permit to do

work in the public rights-of-way. As used in this chapter, public rights-of-way also includes a sidewalk and sidewalk landscape area.

"Sidewalk" means any paved area intended for the use of pedestrians, improved by surfacing, within that part of the public rights-of-way located normally between the curbing or lateral lines of the rights-of-way and the edge of sidewalk. As used in this chapter, public rights-of-way includes a sidewalk.

"Sidewalk landscape area" means that area consisting of the nearest three and one-half feet from the curb edge, more or less, where light poles, street trees, city owned trash cans, pots and planters provided they do not infringe on the ability to exit a vehicle at the curb, and signs, or similar objects, after city council approval, may be permanently located; and temporary flags and signs, including A-frame signs for advertisement, may be located only during daytime hours. As used in this chapter, public rights-of-way includes a sidewalk landscape area.

"Temporary-in-nature" means signs, bicycle parking, banners, flags, temporary seating, sales displays, and other objects similar in nature, that are located on sidewalks, provided they are removed each and every night from the sidewalk and as long as they are not located within the pedestrian use zone. Items that meet this definition are allowed outright without a permit.

SECTION 3.

§12.10.020(A) and (B) are added to the Toledo Municipal Code, to read as follows:

12.10.020 Jurisdiction.

A. Except as otherwise provided by state or federal law, the city has jurisdiction, and may exercise regulatory control, over all public rights-of-way owned by or otherwise vested in the city.

B. The exercise of jurisdiction and regulatory control pursuant to this chapter does not obligate or create an obligation for the city to maintain, repair or improve any part of or improvement in public rights-of-way.

SECTION 4.

§12.10.030 is added to the Toledo Municipal Code, to read as follows:

12.10.030 Exclusions.

A. Nothing in this ordinance shall require a permit or shall be construed to pertain to the placement of objects, such as street signs, street lights, trees, trash cans, and mailboxes, without

limitation, in the public right-of-way by the City, or any other government body, public service agency, such as the US Postal Service, or utility that have been authorized by the City to place objects.

SECTION 5.

§12.10.040(A) and (B) are added to the Toledo Municipal Code, to read as follows:

12.10.040 Encroachment prohibited.

A. Except as otherwise permitted by this ordinance, no person or entity may occupy or otherwise encroach upon the sidewalk subject to the jurisdiction or regulatory authority of the city, unless it is temporary-in-nature, or without first obtaining a permit, as the case may be, from the city for such encroachment.

B. Except as otherwise provided by this ordinance, it shall be unlawful to occupy or otherwise encroach upon any portion of the path that is a part of the definition of the pedestrian use zone.

SECTION 6.

§12.10.050(A) and (B) are added to the Toledo Municipal Code, to read as follows:

12.10.050 Objects temporary-in-nature; pedestrian use zone.

A. If an object is temporary-in-nature, it is allowed outright on the sidewalk provided it is outside the pedestrian use zone as identified by the city planner. A permit for an encroachment under Section 12.10.060 may be issued and is required if an object is not temporary-in-nature. Violation of this section may also be considered a public nuisance and is subject to the abatement provisions of this chapter and those set forth in other city ordinances relating to nuisances.

B. The pedestrian use zone extends from the edge of sidewalk, opposite the curb, but does not include the sidewalk landscape area unless objects with permit or temporary-in-nature require the path to deviate from the edge of the sidewalk into the sidewalk landscape area. If objects in the sidewalk landscape area do not allow a pedestrian use zone that is as wide as required for the width of that sidewalk, then objects may not receive a permit and those temporary-in-nature may not be placed on the sidewalk. No temporary or permitted objects may be placed on the sidewalks, except where a path can remain unobstructed. At street corners, the pedestrian use zone encompasses the entire area bounded by the extended edge of sidewalk and the streets.

SECTION 7.

§12.10.060 is added to the Toledo Municipal Code, to read as follows:

12.10.060 Permits.

Except as otherwise permitted by ordinance, any property owner or person or entity in charge of property desiring to obtain a permit to locate an object in the public rights-of-way shall file an application therefor with the City. If the city finds that the application submitted by the owner or person or entity in charge of property will be consistent with the City's policies for sidewalks and curbs, the city shall approve the application and set forth the fee required. Thereupon the City shall collect such fee established by council resolution and issue the permit. All construction to be in accordance with plans and specifications on file in the planning department.

SECTION 8.

§12.10.070(A)(1)-(6), (B) and (C) are added to the Toledo Municipal Code, to read as follows:

12.10.070 Issuance of permits to allow encroachment.

A. Except as otherwise provided in this Code, the planning department, or other department as designated by the City Manager, may issue permits for encroachment on sidewalks. The permit may impose conditions on the encroachment. In the event that a permit is denied, or the conditions imposed on the permit are unsatisfactory, the applicant may appeal this planning department decision to the City Manager, within fifteen (15) days of the decision, or within fifteen (15) days of the placement of object that encroaches on the sidewalk, whichever is more. In the event that the decision by the City Manager in an appeal is unsatisfactory, the decision can be appealed to the City Council, within fifteen (15) days of the decision.

B. In making a decision on a permit, the decision maker shall consider the following criteria:

1. The applicant's willingness and ability to assume all risk for the proposed activities.
2. Consent of the property owners and occupants of the affected property and adjacent properties.
3. The degree of interference with pedestrian and vehicular traffic and utilities use of the public rights-of-way.
4. Compliance with land use designations on adjoining property.
5. Compliance with all applicable state and local laws.
6. Compatibility of proposed use with the purposes for which the right-of-way was dedicated.

C. A permit issued under this section may be permanently or temporarily suspended by the City Manager or designee if the public interest requires use of the right-of-way for a public event, construction, repair or any other purpose. There is no property interest in this permit, which is revocable for any or no reason.

SECTION 9.

§12.10.080(A) and (B) are added to the Toledo Municipal Code, to read as follows:

12.10.080 Permanent objects allowed on sidewalks.

A. Except as otherwise permitted by ordinance, no person or entity shall permanently affix or attach anything that isn't a temporary-in-nature object to the public sidewalk without a permit.

B. The following objects considered permanent-in-nature, but are not affixed or attached to the sidewalk, are allowed without a permit, but only if they do not block the pedestrian use zone. Such objects are city approved garbage cans, newspaper boxes, flower planters, whiskey barrel planters, benches permanently affixed to the sidewalk, or benches affixed to a building that are located primarily within an alcove which does not encroach on the sidewalk more than twelve inches.

SECTION 10.

§12.10.090 is added to the Toledo Municipal Code, to read as follows:

12.10.090 Depositing rubbish or debris upon.

No person or entity shall deposit upon any street or public sidewalk any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench, create a fire hazard, detract from the cleanliness or safety of such street or sidewalk, or would be likely to injure a person, animal or vehicle traveling upon such street or sidewalk.

SECTION 11.

§12.10.100 is added to the Toledo Municipal Code, to read as follows:

12.10.100 Snow and ice on street or sidewalk.

The owner or person or entity in charge of property shall make sure sidewalks are clear of snow and ice within a reasonable time of accumulation, and structures above the sidewalk should be cleared of collected water, snow and ice that might fall on such sidewalks.

SECTION 12.

§12.10.110(A), (B), and (C) are added to the Toledo Municipal Code, to read as follows:

12.10.110 Obstructing streets or sidewalks.

A. Except as otherwise permitted by ordinance, no person or entity shall place, park, deposit or leave upon any street, alley, curb, sidewalk, park, or other public right-of-way (whether developed or not), any article, thing or material which in any way prevents, interrupts or obstructs the free passage of pedestrians or vehicular traffic or obstructs a driver's view of traffic-control signs and signals. No person or entity other than the city may erect a fence, structure or other impediment to the free movement of pedestrian or vehicle traffic within a public right-of-way, except with an approved permit. The free flow of pedestrian traffic on sidewalks is impeded when doors or gates into buildings are not closed and blocking pedestrian traffic on the sidewalk.

B. It is hereby made a duty of every owner and person or entity in charge of property to remove any obstacle or obstruction on any sidewalk abutting or located on such owner's property and to maintain and afford continuous unobstructed access to such sidewalk to the public.

C. This section specifically exempts vehicles whose purpose is delivering or picking up merchandise, materials or passengers at regular business or commercial establishments as long as said vehicles do not violate safety, traffic or other ordinances of the City or infringe upon the rights of private property owners.

SECTION 13.

§12.10.120 is added to the Toledo Municipal Code, to read as follows:

12.10.120 Trees and shrubs endangering usefulness of streets and sidewalks – Public nuisance.

Trees, plants, shrubs or vegetation, or parts thereof, which endanger the security or usefulness of any public street, sidewalk, sewer or other underground utility, are declared to be a public nuisance, except that trees may extend over the sidewalk when kept trimmed to a height of eight feet above sidewalks and twelve feet above a roadway.

SECTION 14.

§12.10.130 is added to the Toledo Municipal Code, to read as follows:

12.10.130 Summary Abatement.

The procedure provided by this chapter is not exclusive but is in addition to any procedure provided by any other chapters of this Code.

SECTION 15.

§12.10.140 is added to the Toledo Municipal Code, to read as follows:

12.10.140 Nuisance – Declared - Abatement.

Any act or condition prohibited by the ordinance codified in this chapter is declared to be a public nuisance, and may be abated by any of the procedures set forth in this chapter or set forth in other ordinances relating to nuisances, including the abatement procedures found in Chapter 8.04 of this Code.

SECTION 16.

§12.10.150 is added to the Toledo Municipal Code, to read as follows:

12.10.150 Violation - Procedures.

Any violation or infraction of this chapter will be punishable upon conviction as a violation in accordance with the civil infractions ordinance found in Chapter 1.20 of this Code.

SECTION 17.

§12.10.160(A) and (B) are added to the Toledo Municipal Code, to read as follows:

12.10.160 Violation - Penalties.

- A. Violation of this chapter will constitute a Class A infraction.
- B. The penalties imposed by this chapter are not exclusive and are in addition to any other remedies available under City ordinance or state statute.

SECTION 18.

§12.10.170 is added to the Toledo Municipal Code, to read as follows:

12.10.170 Violation - Each day a separate offense.

Each day's violation of this chapter shall constitute a separate offense.

SECTION 19.

§12.10.180 is added to the Toledo Municipal Code, to read as follows:

12.10.180 Violation - Abatement deemed additional remedy.

The abatement of a nuisance is not a penalty for violating this chapter but is an additional remedy. The imposition of a penalty does not relieve a person or entity of the duty to abate a nuisance.

SECTION 20.

This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall take effect upon its passage.

APPROVED AND ADOPTED by the City Council of the City of Toledo, Oregon on this _____ day of _____, 2016.

APPROVED by the Mayor of the City of Toledo, Oregon, on this ____ day of _____, 2016.

APPROVED:

Billie Jo Smith, Mayor

ATTEST:

Nancy Bryant, City Recorder