

ORDINANCE NO. 2027

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA REVISING BOZEMAN MUNICIPAL CODE CHAPTER 34, ARTICLE 5, DOWNTOWN SIDEWALK ENCROACHMENT PERMIT PROGRAM.

WHEREAS, the City of Bozeman (“City”) has adopted a growth policy identifying the Bozeman downtown area as important to community character and economic development policy; and

WHEREAS, the City has adopted a downtown Bozeman neighborhood plan identifying Bozeman's historic core as unique for the region and should be used to increase economic competitiveness; and

WHEREAS, the City has adopted a Downtown Sidewalk Encroachment Permit Program which regulates and controls private uses and encroachments occurring upon public rights of way sidewalk businesses and advertising in the Downtown Business District; and

WHEREAS, the City has adopted a Downtown Sidewalk Encroachment Permit Program that is fair and equitable, enhances the overall appearance, ambiance and environment of the Downtown Business District, and protects the health, safety and welfare of the general public; and

WHEREAS, the City has, over time, identified aspects of the Downtown Sidewalk Encroachment Permit Program that should be amended to further these purposes.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That Section 34.05.010 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.010. - Purpose and intent.

- A. It is the intent of the city commission, in enacting the ordinance from which this article is derived, to:
1. Serve and protect the health, safety and welfare of the general public;
 2. Regulate and control private uses and encroachments occurring upon public rights of way in the downtown business district of the city by establishing distinct criteria to permit and/or approve non-substantial encroachments, substantial encroachments, and exclusive uses;
 3. Develop a fair and equitable program that will enhance the overall appearance, ambiance and environment of the downtown business district; and
 4. Ensure accessibility for all users as established under the Americans with Disabilities Act.

Section 2

That Section 34.05.020 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.020. - Definitions.

- A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. "Block face" means one side of a street between two consecutive intersecting rights of ways, including alleys;
 2. ~~"Downtown business district" means those areas of the B-2 and B-3 zoning district of the city located on or between the north side of Lamme Street and the south side of Olive Street and on or between the east side of Broadway Avenue and west side of 3rd Avenue;~~
 3. "Commercial use" means any activity involving the sale of goods or services carried out for profit;
 3. "Corner triangle area" means the sidewalk area at street intersections from each building face to where the sidewalk curb meets each of the two crosswalks that contain the accessible ramps at the intersection and the sidewalk area in between the two crosswalks.

4. "Director" means the director of public works and includes the director's authorized representative;
- ~~25.~~ 25. "Downtown business district" means those areas of the ~~B-2 and B-3 zoning district of~~ the city located on or between the north side of Lamme Street and the south side of Olive Street and on or between the east side of Broadway Avenue and west side of 3rd Avenue;
- ~~56.~~ 56. "Encroachment" means any fixture or device including but not limited to a showcase, table, bench, rack, handcart, pushcart, sign, portable sign, stall, newspaper dispensers and publication racks, seating area, fence, barrier, or partition which intrudes into or invades the public right-of-way;
- ~~67.~~ 67. "Exclusive use" means any act undertaken by a private entity upon the public right-of-way of the downtown business district that excludes the public from their normal use and enjoyment of the public right-of-way;
8. "Frontage zone" means the space between the building front and the pedestrian zone. The frontage zone provides the shy distance from the building and buffers the pedestrian zone from doorways and other store front uses. The frontage zone generally accommodates benches, portable business signage, merchandise displays, or cafe seating.
9. "Furnishings zone" means the space between the curb and the pedestrian zone. The furnishings zone is the area of the sidewalk generally reserved for street furnishings such as street signs, bike racks, garbage or recycling receptacles, or street trees.
- ~~710.~~ 710. "Non-substantial encroachment" means any encroachment occurring upon the public right-of-way of the downtown business district that is temporary and mobile in nature and does not modify the material components of the public right-of-way;
11. "Pedestrian zone" means the primary, accessible pathway that ensures that pedestrians have a safe and adequate place to walk. This zone is generally located in the center of the sidewalk and allows people to move along the sidewalk. The pedestrian zone lies between the frontage zone and the furnishing zone.
- ~~812.~~ 812. "Permanent" means a period of six months or more;
- ~~913.~~ 913. "Portable sign" means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to signs designed to be transported by means of wheels and signs converted to A- or T-frames;
- ~~1014.~~ 1014. "Public right-of-way" means any area legally open to public use, including but not limited to, and projecting vertically skyward above, public streets, sidewalks, roadways, highways, parkways, alleys, or parks as well as areas surrounding and immediately adjacent to public buildings;
- ~~1115.~~ 1115. "Public use" means any normal use of the public right-of-way as distinguished from "exclusive use" as defined under this article;
- ~~1216.~~ 1216. "Side street" means all streets within the downtown business district that run in a north-south direction.
- ~~1317.~~ 1317. "Sidewalk" means all that area legally open to public use as a pedestrian public way between the curblines and the legal building line of the abutting property;

1418. "Sidewalk cafe" means any group of tables, chairs, benches, barriers or partitions, trash containers and suitable decorative devices maintained upon any part of the public right-of-way for use by an establishment with a valid food and drink permit in the sale to the public of food, refreshments, and beverages of all kinds and is not a sidewalk vending cart;
1519. "Sidewalk display" means any showcase, table, bench, rack, sign, stall, kiosk, or any other fixture or device used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, or offering for sale any food, beverage, goods, wares, merchandise, event, or service upon a sidewalk;
1620. "Sidewalk vending cart" means any handcart, pushcart, stall, or any other mobile device that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling, or offering for sale any food, beverages, goods, wares, or merchandise upon a sidewalk;
1721. "Special event" means any occasion including but not limited to fairs, shows, exhibitions, city-wide celebrations, and festivals taking place within a specifically defined area of the city; and
1822. "Substantial encroachment" means any encroachment that creates a permanent physical reduction in existing asphalt width to streets in the downtown business district except for intersection curb bulbs installed for traffic calming or pedestrian safety purposes;
1923. "Temporary" means a period of six months or less.

Section 3

That Section 34.05.050 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.050. - Non-substantial encroachments; permit required.

- A. A non-substantial encroachment may be placed upon sidewalks in the downtown business district only if a permit is issued by the director as described herein, and only during the period authorized by such permit.
- B. Upon application, the director may authorize, subject to specific conditions as determined by the director, non-substantial encroachments to occur upon sidewalks in the downtown business district. Each permit must be renewed on an annual basis and the director shall have the right to refuse to renew any permits issued. All applications for non-substantial encroachments must include:
1. A completed downtown sidewalk encroachment revocable permit form including any necessary supporting materials;
 2. A letter of support from the owner, operator, or manager of the business immediately adjacent to the sidewalk where the use is requested ~~or if a letter of support cannot be obtained, an explanation summarizing the lack of support;~~

3. A sketch depicting, as accurately as possible, the size and location of all requested encroachment items as well as other existing obstructions or improvements which would limit the free use of the sidewalk by pedestrians;
4. A certificate of liability insurance which names the city and (if non-substantial encroachment occurring upon a state-designated primary or urban route) the state as additional insureds. The insurance must provide a minimum coverage of \$750,000.00 for each claim and \$1,500,000.00 for each occurrence;
5. The permit holder shall agree in writing to indemnify, defend, and hold harmless the city and (if non-substantial encroachment occurring upon a state-designated primary or urban route) state department of transportation and their employees and agents against all claims, liability, loss, damage, or expense incurred by the city and/or state department of transportation due to any injury to or death of any person or any damage of property caused by or resulting from the activities for which the permit is granted; and
6. A valid city business license corresponding to the use requested.

Section 4

That Section 34.05.060 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.060. - Substantial encroachments—Approval required.

Every substantial encroachment in the downtown business district requires a valid permit issued by the director as described herein. Substantial encroachments in a public right-of-way of the downtown business district may occur only after a project proposal satisfies provisions of chapter 38, is found to be compliant with required regulations of same, and satisfies specific conditions as determined by the director. Projects proposing substantial encroachments shall submit to the city engineer for approval a report certified by a professional engineer addressing the following conditions, both present and future: truck turning movements, vehicular site vision, pedestrian conflicts, and, as directed by the city engineer, intersection level of service. Substantial encroachments affecting state-designated primary and urban routes shall also be approved by the state department of transportation. Substantial encroachment projects shall satisfy all applicable emergency service requirements.

Section 5

That Section 34.05.070 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.070. - Same—Standards, exceptions and limitations.

- A. To protect public health, safety and welfare, and provide for the orderly development of the downtown business district, the following standards, exceptions and limitations are hereby placed upon substantial encroachments:

1. Substantial encroachments shall not occur within the public right-of-way of Main Street and Rouse Avenue;
2. Substantial encroachments shall occur along the entire length of a property;
3. Two-way traffic (or two-lane traffic for one-way streets) shall be provided at all times and in all locations;
4. A minimum 11-foot-wide vehicular travel lane shall be provided, measured from face of curb or edge of parking lane.
5. A minimum seven-foot-wide parking lane shall be provided, measured from face of curb;
6. Sidewalk alterations shall provide a minimum six-inch-thick, ten-foot-wide sidewalk for public use and shall be ADA compliant;
7. Curb alterations shall provide positive drainage and shall not cause ponding to occur in the gutter line. City curb construction standards shall be adhered to;
8. Construction plans shall be reviewed and approved by the city engineer and a pre-construction meeting held prior to initiating construction;
9. Substantial encroachments involving the elimination of any on-street parking within that area of the B-3 zoning district regulated under this article shall provide the following:
 - a. Parking commission approval; and
 - b. Compensation shall be provided for each on-street parking space eliminated from the downtown business district parking inventory in accordance with the following schedule:
 - (1) A one-time payment, equal to the current cash in lieu of parking fee as established by resolution of the City Commission ~~\$5,000.00~~ per eliminated space. Payment shall be provided prior to final approval of the proposal under chapter 38; or
 - (2) The applicant may elect to pay for the eliminated space over a period of time not more than ten years, making equal monthly payments of principal and interest. Interest will be charged at a rate equal to the current yield of the ten-year U.S. Treasury Note at the time the space is eliminated against a ~~\$5,000.00~~ principal amount equal to the cash in lieu of parking fee as established by resolution of the City Commission.
10. The adjacent property owner shall keep all sidewalk areas, including those areas of exclusive use, free and clear of snow and ice at all times.

Section 6

That Section 34.05.100 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.100. - Uses Encroachments permitted under this article; additional standards.

- A. It is the permittee's responsibility to place any encroachments allowed under this article in a manner which ensures safe pedestrian and vehicular travel, complies with any conditions placed upon the permit, and to immediately correct any deficiencies noted by the director. ~~All items permitted pursuant to this article shall be placed not less than two feet from the curb, or not less than 18 inches from the curb when located on side streets that have no adjacent on-street parking, and leave a minimum of six feet of sidewalk aisle clear and~~ Encroachments shall be placed so as to not interfere with vehicular sight triangles as set forth in chapter 38, and as necessary for safe vehicular traffic. Additionally, all encroachments permitted under this article will be ~~Permittees must build,~~ installed, and maintained all encroachments permitted under this article in such as a manner as to ensure the safety of the public.
- B. To ensure accessibility and to reduce congestion, no encroachments will be allowed in the corner triangle area. Permits may be issued under this article for the following uses:
- C. No encroachment may restrict the pedestrian zone to less than six feet, measured perpendicularly to the building face.
- D. Pedestrian zone.
1. Encroachments are prohibited in the pedestrian zone.
 2. The pedestrian zone must be a minimum of six (6) feet wide.
- F. Furnishings zone. Except as otherwise noted, no encroachments other than those listed here shall be permitted in the furnishings zone:
1. Traffic control devices and signs authorized by the Montana Department of Transportation and/or the city;
 2. Items installed and maintained by the Downtown Bozeman Partnership (or successor entity charged with administering the downtown business improvement district) such as garbage receptacles, street lighting, bike racks, planters, signs;
 3. Additional bike racks placed by businesses with approval of the director and complying with 34.05.100.G.4.
 4. Public art installations licensed by the city.
- G. Frontage zone. Permits may be issued under this article for the following encroachments in the frontage zone only, except as provided otherwise herein:
- ~~1. Benches. Any benches must be placed flush to the corresponding building and must not project more than three feet into the sidewalk;~~
 1. 2. Portable signs. These signs must not exceed a height of five feet or a width of three feet, placed adjacent and perpendicular to the corresponding building business and within four feet of the business entrance;
 2. 3. Sidewalk displays. With the exception of kiosks, displays must be placed flush against the building, must not exceed six feet in height, and must be within four feet of the business entrance.

- ~~4. *Kiosks.* Kiosks must not exceed seven feet in height, except as allowed in section 38.28.070.E, and must be placed in a manner so as not to interfere with free flow of pedestrian and vehicular traffic;~~
- ~~3.~~ 5. *Bike racks.* A single bike rack may be permitted to supplement those installed and maintained by the Downtown Bozeman Partnership (or successor entity charged with administering the downtown business improvement district) and can be located in the frontage zone or in the furnishings zone, but are not permitted in the corner triangle area. Bike racks must not exceed a ten-bike capacity, with five bikes per side, or a width of 4 feet, whichever is less. Bike racks shall and be placed so the parked bikes run parallel with the street;
- ~~4.~~ 6. *Sidewalk vending carts.* The cart must be no more than three feet wide, must be placed within 4.5 feet of the store face, and may operate between 6:00 a.m. and 9:00 p.m. or until sunset, whichever occurs first. All signage must be attached to the cart and shall not exceed six feet in length. The city, at its discretion and upon request, may allow the use of a portable sign. Vending carts will be allowed on Mendenhall, Main, and Babcock Streets only and not more than one cart will be allowed per city block face;
- ~~5.~~ 7. *Tables and chairs.* Tables used for the primary purpose of consuming food or beverages must be no more than four feet wide and set in a manner such that respective table and chair settings do not occupy more than five feet of total right-of-way width. Tables and chairs may be located building and/or curbside, subject to the provisions of section 34.05.130, and shall maintain at all times upon the public sidewalk a minimum six-foot wide clear aisle for pedestrian movement. Tables and chairs while in use shall in no way restrict the pedestrian zone to less than six feet, measured perpendicularly to the building face, subject to the provisions of section 34.05.130;
- ~~6.~~ 8. *Planter Boxes or Hanging pots.* Pots for flowers or other miscellaneous items may be hung from the rods extending from the light poles only. The bottoms of all pots must not be lower than seven feet and shall not block street signs in any manner. Planter boxes may be placed flush against the building within 4 feet of the primary business entrance. Planter boxes shall not exceed the dimensions of 24 inches wide by 36 inches long by 36 inches tall. All plantings shall be watered and maintained in good condition;
- ~~7.~~ 9. *Newspaper dispensers and publication racks.* Coin-operated newspaper dispensers and media publication racks and displays must be placed flush against the building and may not exceed four feet in height and shall be of a design quality approved by the city;
- ~~9.~~ 10. *Sidewalk cafe serving alcohol.*
 - a. All sidewalk cafes having an alcoholic beverage license shall be required to have the staff of the establishments owning such sidewalk cafes serve all food, alcoholic beverages and non-alcoholic beverages in the sidewalk cafe area only. Service of alcoholic beverages in all sidewalk cafes shall be limited to persons seated at tables in the sidewalk cafe site. The serving of alcohol shall be served in glasses and not in paper or plastic products. Any person serving alcohol must have received alcohol server training through a city-approved training program;
 - b. The sidewalk cafe alcoholic beverage license issued by the state must include, as part of the licensed premises floor plan, the sidewalk cafe area. The use and operation

of the sidewalk cafe area shall occur in accordance with the state-approved alcoholic beverage license and a copy of the license shall be kept on file with the director of public works and the director of community development;

- c. Liability insurance required in section 34.05.080.A.2.c will cover the sidewalk cafe area;
- d. Each sidewalk cafe serving alcoholic beverages shall be responsible for policing the area of the sidewalk cafe to be sure that customers are of legal drinking age and that alcoholic beverages are not removed from the premises;
- e. There shall be no sale of alcohol for consumption at a sidewalk cafe after 12:00 midnight until normal opening of business each day. In addition, all containers of intoxicating beverages shall be removed from the tables of the sidewalk cafe and the sidewalk cafe area by 12:00 midnight;
- f. The sidewalk cafe area must be adjacent to the licensed building and shall be enclosed, except for ingress and egress entry points, by a temporary fence approved by the director of public works. The fence shall be:
 - (1) Black or of a color that matches the adjacent building;
 - (2) At least four feet in height; and
 - (3) Shall be of a design and quality that does not permit children or other persons to crawl under the fence;
- g. Cafe seating fence must be removed entirely from the sidewalk during winter, between November 1st and April 1st.

10. Sidewalk Stickers. Temporary sidewalk stickers may be displayed for wayfinding purposes associated with community events. No commercial applications are allowed. Stickers may not exceed 30" x 30". Stickers may not be installed longer than 7 consecutive calendar days.

11. 10. Miscellaneous items. The director of public works may permit other items as deemed appropriate. The director shall place what restrictions and conditions the director deems necessary to ensure the safe passage for pedestrian and vehicular traffic. Such additional restrictions and conditions will be included in the encroachment permit if issued.

Section 7

That Section 34.05.0140 of the Bozeman Municipal Code be amended as follows:

Sec. 34.05.140. - Fees.

A. *Non-substantial encroachments.* A \$~~10~~50.00 fee shall be charged for non-substantial encroachments which shall be provided with each new application/renewal of a downtown sidewalk encroachment revocable permit. Fees shall go to the Public Works Administrative account.

- B. *Substantial encroachments.* Application fees authorized in chapter 38 shall be provided.
- C. *Exclusive uses.* A fee calculated by multiplying the square-foot area of the right-of-way encumbered by the exclusive use of same, by the total final square-foot land value of the adjacent property (as determined in the most recent appraisal by the state department of revenue for ad valorem property taxation purposes), multiplied by the whole-month percentage of the calendar year the exclusive use is occurring, multiplied by a factor of five percent shall be assessed and provided with each downtown right-of-way exclusive use permit application and annual renewal.

Section 8

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 9

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 10

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect

the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 11

Codification.

This Ordinance shall be codified as indicated in Section 1 – 7.

Section 12

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 4th day of November, 2019.



CYNTHIA L. ANDRUS
Mayor

ATTEST:



ROBIN CROUGH
City Clerk



FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 18th of November, 2019. The effective date of this ordinance is December 18, 2019.

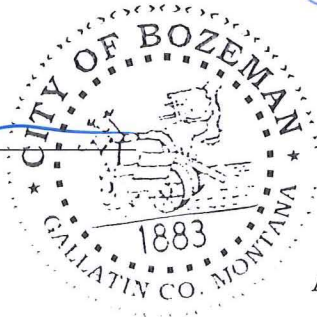


CYNTHIA L. ANDRUS
Mayor

ATTEST:



ROBIN CROUGH
City Clerk



APPROVED AS TO FORM:



GREG SULLIVAN
City Attorney