

ORDINANCE NO. xxxx

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING SECTION 12.28
SIDEWALK OBSTRUCTIONS

WHEREAS, Section 12.28 of the Lynden Municipal Code regulates sidewalk obstructions and use of planting strips, including infractions for violations; and

WHEREAS, ~~from time to time certain chapters of the Lynden Municipal Code need updating in order provide clarification and to reflect minor changes needed in order to accurately reflect changes in parking needs~~The City has determined that additional guidance is required to identify which obstructions are allowed without permits and which obstructions require permits; and

WHEREAS, The City of Lynden seeks to provide opportunity for outdoor dining areas to be placed on sidewalks adjacent to, and operated by the restaurants provided that safe pedestrian access can be maintained; ~~and;~~

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WHEREAS, The City seeks to provide clarification on the permit application process required for sidewalk obstructions that require permits;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN,
WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 12.28 of the Lynden Municipal Code is hereby repealed and replaced as follows:

Chapter 12.28 - SIDEWALK OBSTRUCTIONS

12.28.010 - Sidewalk obstructions prohibited—When.

Nothing shall be placed on any sidewalk in the city which either partially or totally obstructs or impedes the flow of pedestrian traffic except as specifically permitted in this chapter.

(Ord. 812 § A(part), 1989).

12.28.020 - ~~Authorized partial o~~Sidewalk Obstructions – Exceptions without permit.

The following obstructions shall be permitted on public sidewalks where a minimum continuous unobstructed width of 5 feet for pedestrian travel is maintained.

A. Fire hydrants.

B. Planters and other landscaping placed by the city.

- C. Benches and bicycle racks placed by the city.
- D. Communication and light poles placed either by the city or pursuant to franchise granted by the city.
- E. Flagpoles or standards therefor placed by the city or community business groups recognized by the city.
- F. Traffic-control devices placed by the city.
- G. Refuse containers, either placed directly by the city, or where the location of the container is on a sidewalk or planting strip as required by the city.
- H. Postal boxes, either individual or group, erected according to city and post office specifications.
- I. Public Art placed by the city or community business groups working with the city.
- J. New awnings or canopies that comply with the provisions of LMC 19.23.070.
- K. Hanging planters attached to city poles or otherwise overhanging the sidewalk with a minimum clearance of seven feet above sidewalks.
- L. Merchandise being moved into or out of an adjacent business; provided, that such merchandise does not remain on the sidewalk or planting strip for more than 30 minutes.
- M. Merchandise located within thirty-two (32) inches of the building façade and maintaining a continuous 5-foot unobstructed width for pedestrians.
- N. Sandwich board signs or similar which may be placed only by the owner or lessee of adjacent property, provided they are less than 36 inches tall and not visually obstructing views at the intersection.

12.28.020 – Sidewalk Obstructions – Permit required.

Obstructions of public sidewalks not covered by section 12.28.010 may be placed by private parties, if a permit is obtained from the city public works department. Partial obstructions may only occur on sidewalks with sufficient width to allow a continuous minimum of width of 5 feet to remain unobstructed for pedestrian travel. These partial obstructions can include:

- A. Merchandise displays, limited to special sales events of no more than seven days continuously abutting the business offering such merchandise in such a way that an unobstructed pedestrian corridor is maintained at a minimum width of five feet;

- B. Facades for buildings built up to the right-of-way line of the public street; provided, that such addition shall not exceed six inches in depth as measured perpendicular to the existing façade.
- C. Temporary obstructions occurring as part of a city permitted special event. A description of the obstruction must be included with the special event permit request and reviewed by public works.
- D. Outdoor Dining areas may be permitted which comply with the following conditions:
- a. The dining area must be adjacent to the permit applicant's property and written concurrence must be obtained from the adjacent businesses and submitted with the application.
 - b. Business must utilize sturdy furniture and provide trash receptacles of good quality and attractive appearance consistent with the streetscape and adjacent architecture.
 - c. No elements including railings, tables, signs, or umbrellas may be permanently affixed to the sidewalk.
 - d. If patio-style umbrellas are used, they should be placed within an outdoor dining table, and not protrude into the unobstructed sidewalk area outlined in this section.
 - e. Outdoor railings, partitions, or fences may not be taller than forty-two inches in height.
 - f. If alcohol is to be served, the applicant must have a liquor license and comply with all provisions of WAC 314-02-125.
 - g. Applications for outdoor dining shall include:
 - i. Proof of insurance and covenant. The business must continually maintain during the term of the permit, a certificate of insurance naming the City as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. The policy must contain the additional insured statement, coverage amounts of no less than \$1,000,000 and cancellation notification.
 - ii. A copy of City of Lynden business license.
 - iii. A copy of Whatcom County Health Department approval.
 - iv. If alcohol is to be served, a copy of approval by the Washington State Liquor and Cannabis Board per WAC 314-02-125.
 - v. The proposed site plan, that shows the location, number, and dimension of all seating, dining, signs, and barriers, such as railings or planters within the dining area and the dimension of clear zone(s) which are contiguous with the clear zones or the adjacent properties.

- h. The applicant shall sign a covenant to hold harmless and indemnify the City to be retained by the City for the duration of the business activity

E. Revocation

- a. All permits approved under this chapter shall be temporary, shall vest no permanent right and may in any case be revoked at the sole discretion of the City upon 30 days' notice, or without notice in the event any such use or occupation shall become dangerous; any structure or obstruction so permitted shall become insecure or unsafe; shall become a public nuisance; or shall not be constructed, maintained or used in accordance with the provisions of this chapter or the application materials submitted for review. The determination by the City Building Official that a structure is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter and applicable codes and standards shall be conclusive.
- b. Permits shall also be revoked if:
 - i. Following written notice of the lapse of an insurance policy required to be maintained by LMC 12.28.020, the permittee fails to supply a valid certificate of insurance; or
 - ii. Following written notice of the lapse of the annual renewal, or any associated renewal fee, or fees for the exclusive use of the right-of-way, the permittee fails to bring fees current.
- c. If any such obstructions, or use occupancy is not discontinued on notice to do so by the City and with the time period designated, the City may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

F. Denial

- a. The Public Works Director or their designee may reject or deny an Outdoor Dining Permit application when he/she determines that any of the following apply:
 - i. Encroachment into the public right-of-way at the location proposed is prohibited by recorded documents associated with the property;
 - ii. The Lynden Municipal Code, the Lynden Development Standards and/or other adopted codes, regulations and standard prohibit encroachment of the type and/or quality proposed.
 - iii. Insufficient area exists to preserve a five foot clear zone and automobile ingress/egress.
 - iv. An obstruction would result in a threat to life or safety.
 - v. An encroachment would result in cost prohibitive City maintenance costs.

- vi. The permit application includes information that is false, misleading, or is intentionally erroneous.
- vii. Work proposed is within a right-of-way not controlled by the City at the time of application, either as the result of separate ownership or as part of an ongoing project in which state or federal control supersedes.
- viii. An alternative design or location is available to the applicant that would reduce or eliminate potential impacts to the City, and would not cause a hardship to the applicant.

G. Appeal. Final decisions of the Public Work Director or their designee may be appealed pursuant to LMC Chapter 17.11.

H. Violation. Enforcement procedures and penalties resulting from violations of this chapter shall be administered pursuant to LMC Chapter 12.28.060.

I. Fees. All application fees for sidewalk obstruction permits shall be established by the City Council and shall be paid prior to issuance of any permit

12.28.~~030-040~~ - Use of planting strips.

Sandwich board signs, garbage cans, merchandise, flower containers, benches and/or newspaper stands may be placed on a planting strip between the street and sidewalk in CS, CSC, RS and I zones; provided, that they are at least twenty feet from any street intersection, are less than fifty inches high and do not constitute a safety hazard in the opinion of the Lynden police and public works departments. No fee shall be charged for the permit which is issued by public works. Use of the planting strip shall not interfere with ~~LID BMP~~city stormwater facilities or infiltration functions.

(Ord. 812 § A(part), 1989).

~~12.28.040 – Placement of bike racks, benches or newspaper stands.~~

~~Bicycle racks, benches or newspaper stands may be placed only at locations approved in advance by the public works director.~~

~~(Ord. 812 § A(part), 1989).~~

12.28.050 - ~~Existing signs allowed.~~ **Reserved**

~~Sandwich board signs in place before October 1, 1988, may remain in place even though they violate Section 12.28.020 or 12.28.030; provided, that they do not, in the opinion of the Lynden police department, constitute a traffic safety hazard.~~

(Ord. 812 § A(part), 1989).

12.28.060 - Penalty.

The penalty per violation of this chapter shall be ~~as follows~~at the rates set forth in the adopted annual budget:

- ~~A. — First offense within one year — Twenty five dollars;~~
- ~~B. — Second offense within one year — Seventy five dollars;~~
- ~~C. — Third and subsequent offense within one year — Three hundred dollars.~~

(Ord. 812 § A(part), 1989).

Section 2 – Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, ____ IN FAVOR ____ AGAINST AND SIGNED BY THE MAYOR THIS ____ DAY OF _____, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY