

Article III of Chapter 23 of the City Code requires people to get permits from the City if they want to put any kind of an obstruction or encroachment on City property, including streets, alleys, sidewalks and other rights-of-way. The City does not have to have a permit to obstruct or encroach on its own property. Permitted obstructions and encroachments are usually construction related items such as barriers, fencing, dumpsters, equipment and materials. Seating outside restaurants that encroaches on the sidewalk also requires a permit. However, under Section 23-83(e) of the City Code one cannot get a permit for a privately owned, unattended display intended to convey a meaning or message, with the exception of newsracks.

For both parks and natural areas there are a number of activities and uses that are prohibited outright by the Code, or allowed only with a permit from the appropriate department.

In natural areas, except as authorized by a permit, it is unlawful to "Post a notice or sign, including fastening, displaying or depositing cards, posters or other written materials in a natural area, or to erect a display in a natural area, unless such items are incidental to another ongoing permitted activity and are specifically authorized by the permit for such activity." (23-193(d)(12)). So one could apply for a permit to place an unattended display in a natural area, but in evaluating the application for the permit the Service Area Director is entitled to consider, among other things, the City's needs and objectives in maintaining and operating natural areas. If an unattended display is not consistent with those needs and objectives, the Director need not permit it.

In parks (which are considered "recreation areas" under the Code), except as authorized by a permit, it is unlawful to "Post a notice or sign, including fastening, displaying or depositing cards, posters or other written materials in a recreation area, or to erect a display in a recreation area. Even when the posting or displaying of such items is authorized by a permit, no such items shall be left within the recreation area between the hours of 11:00 p.m. and 5:00 a.m." (23-203(d)(11)). As in natural areas, the Service Area director is allowed to consider a number of factors in deciding whether to permit a particular use or activity, but even if an unattended display is permitted in a park, it cannot be left up overnight.

Obviously, the Council could amend these Code provisions and policies to allow for additional encroachments such as private holiday displays but, as discussed previously with the Task Force, such a change in City policy would have significant First Amendment implications and would set precedents that would have to be carefully considered.

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**Sec. 23-83. Investigation of application information; fee; permit modification and revocation. [top](#)**

(a) The application shall be made to the City Manager. The City Manager shall make or cause to be made an investigation of the information contained in the application and prior to the issuance of a permit. In order for an application for an encroachment for the purpose of serving food and/or beverages as referenced in Subsection 23-82(b) to be approved, the applicant for the proposed encroachment, obstruction or other structure must be the fee owner of the real property directly adjoining the property upon which the encroachment is sought, or must have obtained and submitted with the application the written consent of such fee owner. In order for an application for an encroachment for wireless telecommunication equipment or facilities (as those terms are defined in Article 5 of the Land Use Code) to be approved, the applicant must show to the satisfaction of the City Manager that the applicable criteria contained in Section 3.8.13 of the Land Use Code have been met. Additionally, the proposed encroachment, obstruction or other structure shall not, in the judgment of the City Manager, constitute a nuisance or destroy or impair the use of the property by the public or constitute a traffic hazard. No permit shall be issued unless the City Manager determines that the

foregoing criteria have been met. In investigating the application, the City Manager may consult with such City departments as he or she deems necessary to determine whether the application should be approved. If the City Manager determines that the property proposed for the encroachment permit is not needed for use by the public and that all submittal requirements of the application are complete, the City Manager may issue the permit for such duration and upon such other terms and conditions as the City Manager determines are necessary to protect the public welfare. As a condition of the issuance of any permit for the purpose of serving food and/or beverages, as referenced in Subsection 23-82(b), the permittee shall annually provide to the City Manager proof of uninterrupted liability insurance coverage in the amount required in said Subsection, naming the City as an insured party.

(b) Modification of a permit shall be required of the applicant if there is any change in the size or configuration of the area that is the subject of the permit and/or any change to any structure that was required or specifically authorized by the City upon the issuance of the permit.

(c) At the time of issuance of a permit hereunder, and at the time of any modification of such permit, the applicant shall pay a fee to help defray the costs incurred by the City in processing and administering the permit including, without limitation, the cost of inspecting the premises that are the subject of the application. The amount of said fee shall generally be determined by the City Manager, pursuant to the provisions of Article I of Chapter 7.5; provided however, that the amount of the fee for encroachments for newsracks or other constitutionally protected speech shall be fixed at ten dollars (\$10.) per year.

(d) Encroachment permits issued pursuant to this Division are authorized under Article XI, Section 10 of the Charter. Accordingly, any such permit shall be revocable at the pleasure of the City Council or the City Manager, whether or not such right to revoke is expressly reserved in such permit. The applicant shall not be entitled to the refund of any fee upon such revocation.

(e) If the encroachment is for newsracks, the City Manager's decision whether to issue or deny issuance of the permit shall be made within fifteen (15) days following the date that a complete application was submitted to the City. With the exception of newsracks, no privately owned, unattended displays designed or intended to convey a meaning or message shall be permitted as encroachments under this Division.