

Chapter 74 STREETS, SIDEWALKS AND OTHER PUBLIC PROPERTY*

***Charter reference(s)**--Power to regulate and control public ways, ch. XII, § 4.

Cross reference(s)--Any ordinance dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street, sidewalk or alley saved from repeal, § 1-11(a)(11); any ordinance establishing the grade of any street or sidewalk saved from repeal, § 1-11(a)(12); buildings and building regulations, ch. 10; moving of buildings, § 10-221 et seq.; cemeteries, ch. 14; community development, ch. 18; environment, ch. 26; historical preservation, ch. 38; parks and recreation, ch. 58; planning, ch. 66; subdivisions and other land divisions, ch. 78; telecommunications, ch. 90; traffic and vehicles, ch. 92; utilities, ch. 94; vegetation, ch. 98; vehicles for hire, ch. 102; waterways, ch. 106; franchises, app. A.

ARTICLE I. IN GENERAL

Sec. 74-1. Penalty for violation of this chapter.

Any person who violates any provision of this chapter shall be responsible for a civil infraction.

(Code 1975, § 18-29)

Sec. 74-2. Erection of utility poles and wires.

- (a) No person shall erect any telegraph, telephone or electric light pole or wire within any street, alley or other public ground of the city without first obtaining a permit therefor. All such poles and wires shall be erected under the supervision of the city engineer, but no wires shall be erected over the fire alarm telegraph wires, nor shall any wires be erected or placed within 25 feet of the ground in any street, alley or other public place in the city.
- (b) The provisions of this section shall not be construed as granting any right to the maintenance of any poles and wires already erected in the streets, alleys or other public grounds of the city, except such rights as have heretofore been granted by the city commission, and the right to compel the removal or change of any such poles and wires is reserved.

(Code 1975, § 18-1)

Cross reference(s)--Utilities, ch. 94.

Sec. 74-3. Posting advertising matter on utility poles.

No person shall hang, post, place, paste or put up any handbill, bill, notice, advertisement, sign, placard, card or any other advertising device or matter on any telegraph, telephone or electric light pole erected in any street, alley or other public place in the city, except signs by any government authority.

(Code 1975, § 18-2)

Sec. 74-4. Signs or signposts on streets; signs at Muskegon Mall.

- (a) No person shall place or cause to be placed any sign or signpost upon any sidewalk, terrace, parkway or other portion of any public street in the city, except traffic control devices and street markers installed and maintained by the city or state, and except signs of churches and other nonprofit organizations approved by the city manager and installed and maintained under the supervision and control of the police department.
- (b) No sign shall be erected within Muskegon Mall or any approach thereto without first obtaining a building permit and an encroachment agreement when necessary which may be issued by the building official.
 - (1) All signs must be parallel to the face of the building.
 - (2) Projection into the mall or approach thereto shall not exceed 12 inches with a minimum height of ten feet above the mall floor. No sign shall be erected above the lower extreme of the soldier course.
 - (3) Average size of letters extending into the mall shall not exceed three feet. Capital letters and those lower case letters which extend above or below the normal letter heights may be excepted from the three-foot limitation.
 - (4) No sign shall be of an intermittent or flashing type.
 - (5) There shall be no height or size limitations where the entire sign is within private property lines.

(Code 1975, § 18-3)

Sec. 74-5. Placing goods, wares, etc., on or over sidewalks.

- (a) Except as otherwise specifically provided, no person shall place or suffer to remain any goods, wares, merchandise, boxes or other articles or thing in front of any store or shop on or above the sidewalk, except awnings and signs.
- (b) Persons may use the sidewalks of the city in receiving or delivering goods, wares and merchandise, provided a clear passageway of at least six feet is left and maintained on the sidewalk for the use of pedestrians. No person receiving or delivering such goods, wares or merchandise shall suffer such goods to be or remain upon a sidewalk for a period of more than six hours.

(Code 1975, § 18-4)

Sec. 74-6. Leaving building materials on sidewalks.

No person owning, building or repairing any house or other building shall permit any lumber, brick, plaster, mortar, earth, clay, cement, stone or other material to remain on the sidewalk after sunset of the day on which it was placed there, without a permit from the city.

(Code 1975, § 18-5)

Cross reference(s)--Buildings and building regulations, ch. 10.

Sec. 74-7. Removal of snow and ice from sidewalks.

No owner, occupant, agent or person having charge of any lot or premises in the city shall permit any snow or ice to remain on the sidewalk abutting such lot or premises after the hour of 9:00 a.m., and such owner, occupant, agent or person having charge or control of such lot or premises shall remove any snow or ice immediately after 9:00 a.m. or upon being requested so to do by any police officer. If such snow and ice shall not be removed within six hours after notice so to do, the snow and ice may be removed by the city at the expense of such owner, occupant, agent or person having charge of such lot or premises and the expense thereof may be recovered from such owner, occupant, agent or person in an action of assumpsit, or may be charged as a special assessment against such lot or premises.

(Code 1975, § 18-8(a))

Sec. 74-8. Snow and ice from private property not to be placed on street or sidewalk.

No person shall move, or cause to be moved, any snow or ice from any private property upon any public sidewalk pavement, alley or roadway in the city.

(Code 1975, § 18-9)

Sec. 74-9. Deposit of wastewater or flammable liquids on streets or sidewalks.

No person shall throw, or cause to be thrown, any wastewater, or cause or permit flammable liquids, oil or grease to flow or be washed into or upon any public street or sidewalk of the city.

(Code 1975, § 18-10)

Cross reference(s)--Fire prevention and protection, ch. 30; sewers and sewage disposal, § 94-131 et seq.

Sec. 74-10. Leaves, grass, etc., in public ways prohibited.

- (a) No person shall cause to be placed any grass clippings, leaves, lawn rakings, tree or bush trimmings, tree trunks, stumps, ashes, soil dirt or household debris in or on any public sidewalk, pavement, gutter, drain, ditch, alley or roadway in the city.
- (b) No materials may be used in the improvement of streets, alleys or roadways without permission therefor first being obtained from the city manager or the director of public works, and the use thereof shall be under the direction and supervision of the director of public works.
- (c) Persons placing tree trimmings, tree trunks, stumps or household debris on any terrace or parkway shall cause such material to be removed within 48 hours thereafter.

(Code 1975, § 18-11)

Sec. 74-11. Entrances or stairs projecting on sidewalks.

Every entrance or flight of stairs projecting beyond the building line on the sidewalk and descending into any cellar or basement story shall be enclosed with a permanent iron railing on each side, not less than three feet high, with a gate opening into the entrance or stairs, and such entrance and stairs shall be thoroughly lighted to prevent accidents, and such projection shall not occupy more than one-fifth of the width of the sidewalk.

(Code 1975, § 18-12)

Sec. 74-12. Uncovered cellars or excavations.

Any cellar or other excavation left uncovered by the burning or removal of the buildings therefrom shall be enclosed by the owner or occupant of the premises with a sufficient fence or barrier to prevent accidents.

(Code 1975, § 18-13)

Sec. 74-13. Gates projecting onto public ways.

- (a) No person shall construct, hang, place or maintain any gate upon any premises owned, controlled or occupied by him in the city, nor suffer such work to be done, in such manner as to project over or obstruct any part of the sidewalk or street adjacent to the premises. Provided, however, that nothing in this section shall be held to apply to gates at railroad crossings or elsewhere when placed or maintained by competent authority.
- (b) All gates in the city shall be so constructed that such gates cannot swing outwards into the public ways of the city.
- (c) Any person who violates any provision of this section shall, upon conviction, be punished by a fine of not more than \$25.00 or by imprisonment for a term not to exceed ten days, or both.

(Code 1975, § 18-14)

Sec. 74-14. Excavating, filling, paving, etc., on public property.

- (a) No person shall cart or deposit any wood, stone or other substance into any of the drains or sewers of the city, cause such deposit to be done, cause obstruction or damage in or to such drains or sewers, or hinder or obstruct the making or repairing of any pavement, sidewalk or crosswalk, drain or sewer being constructed or repaired under any ordinance or any resolution of the city commission.
- (b) No person, by permit or otherwise, shall dig or tear up any pavement, sidewalk or crosswalk or dig any hole, ditch, drain or sewer, or deposit any sand, mortar, gravel, earth, timber or building material of any nature, in any street, alley or public place or on any property abutting any public place, unless such property shall be well and sufficiently guarded by a railing, fence or barrier at least three feet in height at all times and in such manner as to prevent accidents or injury to persons or property. There shall also be placed and kept upon such railing or barrier suitable and sufficient colored lights, showing a bright yellow color, from sunset to sunrise during the time such excavation, hole, drain or sewer remains

uncovered or unfilled, and during the time such sand, mortar, gravel, earth, timber or other building material remains in such street, alley or public place.

- (c) Fences or barriers required by this section shall be constructed of good and sufficient boards, planks or scatlings nailed or fastened to strong uprights secured to the ground in such a manner as to render them firm and solid. It shall be the duty of the department of public works to insert in all contracts for the performance of public works in any street, lane or public place in the city a covenant requiring the contractor to carefully and securely guard such work during its progress and to keep and save the city harmless and indemnified against all loss or damage by reason of any negligence or carelessness in the manner of doing such work.

(Code 1975, § 18-16)

Secs. 74-15--74-30. Reserved.

ARTICLE II. CONSTRUCTION, REPAIRS, IMPROVEMENTS AND ALTERATIONS

DIVISION 1. GENERALLY

Sec. 74-31. Definitions concerning landscaping.

- (a) The terms "major landscaping" and "landscaped changes" mean the planting of trees, shrubs growing over three feet in height, landscaping activities which create vision obstructions or overhanging or encroachment into the street. The terms "major landscaping" and "landscaped changes" do not include damaging, destruction, excavation, removal or filling of earth or stone, paving, changing grades by filling or removing substances.
- (b) The terms "major landscaping" and "landscaped changes" do not include the normal planting of low lying flowers and shrubs or planting of grass.

(Code 1975, § 18-19(5))

Cross reference(s)--Definitions generally, § 1-2.

Sec. 74-32. Traffic control.

All persons granted a permit under this article must comply with the guidelines for traffic control in accordance with the state manual of uniform traffic control devices. The city shall inspect the work site to ensure compliance with the established guidelines.

(Code 1975, § 18-22)

Cross reference(s)--Traffic and vehicles, ch. 92.

Sec. 74-33. Restoration.

All persons performing any construction, excavation, repair or improvement on the public ways must restore the property to its original condition or better. Restoration measures shall be included and specified in the plan submitted to the city for a permit,

and shall be followed.

(Code 1975, § 18-23)

Sec. 74-34. Liability.

The permittee is liable to the city for any resulting damage to any public property that is caused by the permittee's activities or failure to comply with the guidelines as established by the city and the state manual of uniform traffic control devices. The permittee shall indemnify the city against any loss or damage it may sustain by reason of the permittee's activities, including the payment of all claims and damages determined against the city, as well as costs associate with such claims including, but not limited to, fees, court costs, and legal expense of any kind.

(Code 1975, § 18-24)

Secs. 74-35--74-50. Reserved.

DIVISION 2. PERMIT

Sec. 74-51. Construction, repairs, improvements and alterations.

The following acts are prohibited unless the individual, franchise, business entity or any other person first obtains a permit from the city. In all cases there must be compliance with Public Act No. 53 of 1974 (MCL 460.701 et seq.). Bonds must be posted as required by resolution.

- (1) *Construction.*
 - a. *Driveway.* No person shall begin construction or modification of a driveway without first obtaining a permit.
 - b. *Sidewalks.* No person shall begin construction or modification of a sidewalk without first obtaining a permit.
- (2) *Excavation, alteration.* No person shall damage, destroy or make any excavation in any pavement, sidewalk or crosswalk, drain or sewer or any part thereof, make any excavation in any public street, remove any earth or stone therefrom, perform major landscaping or landscape changes in terraces or boulevards, pave any street or public way or change the grade of any street or public way by filling in any earth, stone, sand or gravel, or by removing any substance therefrom, without first having obtained a permit.
- (3) *Alleys and other rights-of-way.* No person shall make any construction, excavation, grade changes, filling, paving, or removal of any earth or stone from any alley or other right-of-way without first having obtained a permit.
- (4) *Public utilities.* No person shall install, remove or repair public utilities on city streets, sidewalks, alleys or rights-of-way without first obtaining a permit.

(Code 1975, § 18-19(1)--(4))

State law reference(s)--Mandatory that city require compliance with Public Act No. 53 of 1974, MCL 460.706.

Sec. 74-52. Permits and bonds; right of review and inspection.

- (a) All permits for any work as described in section 74-51 must be obtained from the city. Before a permit is granted, the person requesting to repair, construct, excavate, etc., shall submit plans to the city engineering department for review. The city shall review and approve or reject those plans within 30 days. If the city rejects the proposed plan, written reasons must be given.
- (b) Permit application fees will be set by type of project as determined by resolution. Fees shall be established by resolution which may include the following criteria: application fee, additional fees based on lineal feet, additional fees based on each pole or structure placed in the public way, complexity of the project, type of restoration, amounts based on the potential damage to the surrounding lands, streets and public improvements.
- (c) All persons other than public utility franchises are required to file with the city clerk a bond, in a sum to be determined by resolution and approved by the city manager, to indemnify the city against any loss or damage it may sustain by reason of such construction, repair or excavation, etc. If, upon approval, a bond is required, the bond must be posted before any work begins. The bond amounts may be based on the following criteria: complexity of the project, type of restoration, potential damage to the surrounding lands and public ways, length of project, amount of permit fee. The city may require insurance depending on the size of the project. Criteria for insurance coverage shall be determined by resolution.
- (d) All construction, repairs, excavations, etc., must be done in accordance with the guidelines established by the city. The guidelines shall be provided to the person applying for a permit upon approval of the permit. The city shall inspect the construction, repair, excavation, etc., to determine if there is compliance.

(Code 1975, § 18-20)

Sec. 74-53. Emergencies.

If an emergency requires immediate repair, the person or public utility performing the repair must obtain a permit within five working days of the emergency. Failure to obtain a permit within five working days of the emergency subjects the person or utility to an additional fee of 50 percent of the original permit fee amount.

(Code 1975, § 18-21)

Secs. 74-54--74-80. Reserved.

ARTICLE III. SIDEWALK IMPROVEMENTS

Sec. 74-81. Sidewalk maintenance.

All sidewalks within the city shall be kept and maintained in good repair by the

owner of the land adjacent to and abutting upon it. If any owner shall neglect to keep and maintain the sidewalk along the front, rear, or side of the land owned by him in good repair and safe for the use of the public, the owner shall be liable to the city for any damages recovered against the city sustained by any person by reason of such sidewalk being unsafe and out of repair.

(Code 1975, § 18-31)

Sec. 74-82. Authority of city commission to order work done.

The city commission may, by resolution, order the grading, constructing, raising, lowering, relaying or repairing of any sidewalk required to be graded, constructed, raised, lowered, relaid or repaired in the city, and the city commission may, by resolution, at any time alter or change the grade of any sidewalk in the city whenever, in its judgment, a change in grade is required.

(Code 1975, § 18-32)

Sec. 74-83. Establishing grades.

- (a) Whenever the city commission shall order any sidewalk to be graded, constructed, raised, lowered, relaid or repaired, and the street on which such work is to be done has not been graded, the city manager shall cause such a grade to be established and shall present a profile estimate and specifications to the city commission of the sidewalk to be raised, lowered, relaid or repaired, in accordance with the resolution of the city commission.
- (b) If the street upon which a sidewalk is to be built, repaired, relaid, lowered or raised has been surveyed and the grade of the sidewalk established, all such sidewalks shall be built, repaired, relaid, lowered or raised according to such grade as already established, and no other survey shall be required.

(Code 1975, § 18-33)

Sec. 74-84. Authority to assess costs against owner of abutting property.

All sidewalks in the city may be graded, constructed and repaired, and the expense thereof, except where the work is done by the owner, agent or occupant of the premises contiguous thereto, shall be assessed to, levied upon and collected from the owner of the premises abutting such sidewalk.

(Code 1975, § 18-35)

Charter reference(s)--Special assessments, ch. XIII, §§ 1--28.

Sec. 74-85. Notice to owners or occupants of property contiguous to defective sidewalk.

- (a) The city may, in its discretion, give written notice to the owner, or the person or persons listed on the tax rolls that a sidewalk contiguous to a certain property is defective or in need of repair. The letter shall set a time before which the repair must be accomplished by the owner or occupant, and shall inform the addressee that the specifications for repair and a permit must be obtained from the city.

- (b) The notice shall further inform the owner, occupant or person on the tax roll that the city, after the deadline date has passed, may perform the work and assess all appropriate costs thereof, including assessment costs, against the property.

(Code 1975, § 18-36)

Sec. 74-86. Work by city.

If the owner, occupant or person named on the tax roll fails, refuses or neglects to build, repair, raise, lower or relay the sidewalk within the time specified in the notice, the city commission may then cause the work to be done, create a special assessment and levy such assessment against the property.

(Code 1975, § 18-37)

Secs. 74-87--74-110. Reserved.

ARTICLE IV. STREET NUMBERS FOR BUILDINGS*

*Cross reference(s)--Buildings and building regulations, ch. 10.

Sec. 74-111. Required.

All buildings erected or fronting on any street, lane, alley or other public place in the city shall be numbered in accordance with the plan provided in this article.

(Code 1975, § 18-50)

Sec. 74-112. Plan on file; inspection.

The numbers upon all buildings, as required by section 74-111, shall be in accordance with the plan prepared by the city engineer and on file in his office, and the books containing such plan shall be public records and open for inspection at all reasonable times to all persons.

(Code 1975, § 18-51)

Sec. 74-113. Duty of city engineer to furnish numbers.

It shall be the duty of the city engineer to furnish each owner or occupant of any building with a written copy of the correct number by which such building is designated.

(Code 1975, § 18-52)

Sec. 74-114. Duty of owner to affix numbers.

It shall be the duty of the owner or agent of any building, within 30 days after receiving the copy of the building number provided for in section 74-113, to cause to be placed upon such building, in a conspicuous place in front of such building, the proper number or numbers specified in plain and legible figures of at least two inches in length.

(Code 1975, § 18-53)

Sec. 74-115. Display of unofficial number prohibited.

It shall be unlawful for any person to display any number other than the official number upon any building.

(Code 1975, § 18-54)

Sec. 74-116. Penalty for violation of article.

Any person violating any of the provisions of this article shall be responsible for a civil infraction.

(Code 1975, § 18-55)

Secs. 74-117--74-140. Reserved.

ARTICLE V. PUBLIC AND PRIVATE UTILITY FRANCHISES*

***Cross reference(s)**--Utilities, ch. 94; franchises, app. A.

Sec. 74-141. Definitions.

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:

Applicant means a utility company which has applied for a utility franchise pursuant to this article.

Energy means electricity, natural gas and all similar forms of energy or substances which are used for lighting, heating, cooling and similar purposes.

Energy utility means a person or company which transports, delivers or sells energy to one or more customers through the use of facilities located in the public ways including highways, streets, alleys and bridges, or who otherwise transact business in the city for the transportation and/or delivery of electric, natural gas, or similar energy.

Facilities means any plants, works, systems, improvements and equipment owned, leased or used by a utility, including poles, wires, fixtures, underground circuits, conduits, cables, towers, masts, transformers and other property used or installed in the public ways, which facilities are necessary or convenient for the sale, transmission or distribution of energy or other included utility services to a customer or customers.

Public ways means all public ways or rights-of-way within the city which are owned or controlled by the city, either as an easement or in fee simple, and including without limitation streets, highways, sidewalks, alleys and bridges, but not including parks or lands which are not used nor intended for transportation or passage by the public.

Utility franchise means a franchise granted to any person or company

transporting, delivering or selling utility services, including without limitation, energy utilities, which franchise is granted to operate a utility in the city and/or to transact business in the city.

(Ord. No. 1158, § 18-60, 4-14-1998)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 74-142. Utility franchise required.

No person may transport, deliver or sell utilities or energy utilities to one or more customers through the use of facilities located in the public ways of the city, nor may it otherwise transact business in the city for the transportation and/or delivery of utilities unless and until the utility has been granted a franchise by the city commission.

(Ord. No. 1158, § 18-61, 4-14-1998)

Sec. 74-143. Standards for granting of franchise.

All franchises granted by the city shall be granted in the form of an ordinance. Such ordinance shall contain provisions which are reasonably designed to protect the health, safety and welfare of the inhabitants of the city, including, without limitation, the protection of the safety of persons, vehicles or property located or passing in the vicinity of the facilities, the protection of surrounding properties, including property values, appearance, screening and other such measures, and location within the rights-of-way so as not to interfere with other utilities, public use and vehicular use of the public ways. Franchises shall be granted only under the conditions set forth in and authorized by the Constitution and laws of the state and the ordinances of the city. No franchise shall be granted without a public vote, unless the franchise is revocable at will by the city. No franchise shall be granted for a period in excess of 30 years.

(Ord. No. 1158, § 18-62, 4-14-1998)

Sec. 74-144. Application for franchise.

A utility company which wishes to obtain a franchise from the city shall submit an application to the city clerk. The city may provide forms for use by the applicant. All applications, whether or not on a form, shall be in writing and shall include a detailed description of the facilities intended to be erected, and the public ways, if limited, which will be utilized by the utility. All applications must be accompanied by a nonrefundable application fee of \$1,000.00.

(Ord. No. 1158, § 18-63, 4-14-1998)

Secs. 74-145--74-199. Reserved.

ARTICLE VI. ENCROACHMENTS

Sec. 74-200. Definitions.

The term ENCROACHMENT as used in this subchapter shall mean any of the following which is located on, over, in or under any roadway, sidewalk, alley or other

public right of way: architectural projection including belt course, planter, mansard, cosmetic wall covering, roof cornice and wall buttress; awning; canopy; cellar entrance; coal hole; fence; manhole; marquee; sidewalk elevator; step or stair; fire escape; standpipe or sprinkler connection; sign; subgrade spread footing; underground conduit, cables and/or wires (private); wall; loading dock, platform or facility; hoistway opening; sidewalk vault; street vault; elevated craneway or walkway; any device or object, or anything specifically permitted by the Commission and designated by it as an Encroachment subject to the provisions of the subchapter. The term ENCROACHMENT as used in this subchapter shall not include overhead electric and telephone lines, poles and appurtenances; underground electric, telephone, gas and steam lines, together with tunnels and conduits owned by a public utility, a public utility permitted by the City and for which the utility company has agreed to hold the City harmless, or monitoring wells or testing of soils or groundwater for environmental purposes which are permitted by the City Commission and/or City Engineer.

(Ord. No. 2298, 8-9-2011)

Sec. 74-201. Permits required.

It shall be unlawful for any person to erect, build, maintain or relocate any Encroachment as defined in this subchapter, without first obtaining a permit from the City Clerk or by Commission approval as provided under Sec. 74-205, paying the permit fee as required under Sec. 74-206, and furnishing the necessary insurance certificate as defined under Sec. 74-208, if applicable.

(Ord. No. 2298, 8-9-2011)

Sec. 74-202. Application for permit.

Applications for Encroachment Permits (either existing or proposed) shall be made on a form provided by the City Clerk and shall include the following information:

- (A) Name, address, and telephone number of applicant;
- (B) Location and type of the existing or proposed Encroachment, building to which attached or abutting lot which Encroachment serves, or if not abutting a privately owned lot, the location of Encroachment in street, alley or public way;
- (C) Blueprints or ink drawings showing the plans and specifications of the proposed or actual Encroachment, if requested by the City Clerk;
- (D) Such other information as the City Clerk shall require in order to insure compliance with this subchapter and all other ordinances of the City and laws of the State of Michigan.

(Ord. No. 2298, 8-9-2011)

Sec. 74-203. Encroachment permit classifications.

Upon receipt of an application for an Encroachment Permit, the City Clerk shall determine whether or not such Encroachment, because of its nature, shall or shall not require regular inspections due to public safety and/or potential liability issues the Encroachment may present. Those Encroachments not requiring routine inspections

shall be graded Class I Encroachments and those requiring routine inspections shall be graded Class II Encroachments, and fees shall be set accordingly as defined in Sec. 74-206.

(Ord. No. 2298, 8-9-2011)

Sec. 74-204. Existing encroachments.

All existing Encroachment permit holders shall be required to complete an application for permit as defined in Sec. 74-202, including those permitted by special written agreement.

(Ord. No. 2298, 8-9-2011)

Sec. 74-205. Approval of encroachments by city.

- (A) It shall be the duty of the City Clerk to review the proposed or actual Encroachment to ensure it does not pose an adverse affect to public safety, inconvenience the public or interfere with public usage and where appropriate, shall order any necessary repairs, alterations or removal.
- (B) When the Encroachment meets all the requirements of this and any other ordinance of the City and the laws of the State of Michigan, the City Clerk shall then issue an Encroachment Permit, provided the applicant pays the required fee as defined in Sec. 74-206 and furnishes the necessary Certificate of Insurance as defined in Sec. 74-208, if applicable. In the event the City Clerk does not believe granting the Encroachment Permit would be in the best interest of the City, the City Clerk may deny the granting of a permit.
- (C) If the applicant does not concur with the decision of the City Clerk either to make repairs, alterations or removal, or the City Clerk's decision to deny the application, the application shall be transmitted to the City Commission for approval or disapproval. The decision of City Commission shall be final.

(Ord. No. 2298, 8-9-2011)

Sec. 74-206. Permit fees.

Each applicant shall pay an application fee as provided in the Fee Structure established by the City Commission.

A separate permit and fee will be charged for each encroachment on any one parcel. Application fees are not prorated and are non-refundable. All permits for Encroachments now existing or issued prior to the effective date of this ordinance shall expire on August 31, 2011. All Encroachment Permits shall require renewal on or before September 1st of each year.

(Ord. No. 2298, 8-9-2011)

Sec. 74-207. Late payment penalty.

Non-compliance of this Ordinance may result in additional fees as established by

the City Commission.

(Ord. No. 2298, 8-9-2011)

Sec. 74-208. Insurance requirement.

- (A) Prior to the issuance of any Encroachment Permit, the Licensed Inspector shall determine if such Encroachment may present possible claims for personal injury, bodily injury or property damage due to its nature, and as a result may require the applicant to provide proof of liability insurance in an appropriate amount by a company authorized and acceptable to do insurance business in the State of Michigan, specifically naming the City of Muskegon, its agents, employees and elected officials, as additional insured and loss payee for any such claims.
- (B) In the event such proof of liability insurance is required, it shall be updated and provided to the City annually at the time of renewal.

(Ord. No. 2298, 8-9-2011)

Sec. 74-209. Inspection.

The City Clerk shall inspect, at such time as he or she deems necessary, each Encroachment Permit granted to determine whether it is in need of repair or removal, and the permit fee shall be deemed to cover the costs of this inspection whether inspection be made annually or at other intervals.

(Ord. No. 2298, 8-9-2011)

Sec. 74-210. Permit revocable at any time.

All rights and privileges acquired under the provisions of this subchapter or any amendment thereto are mere licenses, revocable at any time by the City Clerk or City Commission under the terms and provisions of this subchapter and all such permits shall contain this provision.

(Ord. No. 2298, 8-9-2011)

Sec. 74-211. Removal of encroachment upon failure to apply for permit, pay permit fee, or maintain liability insurance.

Upon failure of any person to make application for an Encroachment Permit where required, to pay the permit fee or maintain liability insurance, if applicable, the City Clerk shall have the authority to remove said Encroachment immediately. Any item(s) confiscated pursuant to the provisions of this section shall be held by the City for a period of thirty (30) days. During the thirty (30) day holding period, the owner of said item may request the return of the item on a form provided by the City Clerk. The City Clerk shall check the inventory of confiscated items and if the item is found to be held by the City the applicant may pay a \$25.00 recovery fee for each item held at which time the City Clerk shall return the item to the owner. After thirty (30) days have passed, the City Clerk may dispose of said item(s) either by disposal in an appropriate landfill or by sale.

(Ord. No. 2298, 8-9-2011)

Sec. 74-212. Removal of unsafe encroachments.

Any Encroachment which has become unsafe or presents a hazard to the general public by reason of deterioration, dilapidation, lack of repair or maintenance, interferes with any future city passage of the area or city project, or any other cause which results in a limitation by the general public in its use of the public right-of-way, is hereby declared to be a public nuisance and shall be abated in the manner provided for removal of dangerous structures.

(Ord. No. 2298, 8-9-2011)

Sec. 74-213. Temporary encroachments.

Applications and permits for temporary or intermittent Encroachments shall be obtained in the same manner as applications and permits are obtained for permanent Encroachments.

(Ord. No. 2298, 8-9-2011)

Sec. 74-214. Delegation of authority.

Wherever in this subchapter an act or duty is required to be performed by the City Clerk, said act or duty may be delegated by the City Clerk to any employee of the City.

(Ord. No. 2298, 8-9-2011)