

Councilman Virciglio moved that an ordinance introduced on May 24, 2010, entitled and reading as follows, be taken up and enacted, seconded by Councilman Wendt:

O-101

AN ORDINANCE TO AMEND §96.45-96.59, "ENCROACHMENTS," OF CHAPTER 96 "STREETS AND SIDEWALKS," OF TITLE IX, "GENERAL REGULATIONS," OF THE CITY OF SAGINAW CODE OF ORDINANCES O-1.

The City of Saginaw ordains:

Section 1. §96.45-96.59 of Chapter 96, "Streets and Sidewalks," of Title IX, "General Regulations," of the City of Saginaw Code of Ordinances, O-1, are hereby amended to read as follows:

ENCROACHMENTS

§ 96.45 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 (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 Council and designated by it as an Encroachment subject to the provisions of this subchapter. The term *ENCROACHMENT* as used in this subchapter shall not include any of the following facilities owned by a public utility; overhead electric and telephone lines, poles and appurtenances; underground electric, telephone, gas and steam lines, together with tunnels and conduits therefore; nor shall said term include any Encroachment by a public utility permitted by the City and for which the utility company has agreed to hold the City harmless.

§ 96.46 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 Licensed Inspector of the Inspections Division or by Council approval as provided under § 96.50(B), paying the permit fee as required under § 96.51, and furnishing the necessary insurance certificate as defined under § 96.53, if applicable.

§ 96.47 APPLICATION FOR PERMIT.

Applications for Encroachment Permits (either existing or proposed) shall be made on a form provided by the Licensed Inspector of the Inspections Division 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 Encroachment, if requested by the Licensed Inspector;

(D) Such other information as the Licensed Inspector shall require in order to insure compliance with this subchapter and all other ordinances of the City and laws of the State of Michigan.

§ 96.48 ENCROACHMENT PERMIT CLASSIFICATIONS.

Upon receipt of an application for an Encroachment Permit, the Licensed Inspector 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 § 96.51

§ 96.49 EXISTING ENCROACHMENTS.

All existing Encroachment permit holders shall be required to complete an application for permit as defined in § 96.47, including those permitted by special written agreement.

§ 96.50 APPROVAL OF ENCROACHMENTS BY LICENSED INSPECTOR.

(A) It shall be the duty of the Licensed Inspector to review the proposed Encroachment to ensure it does not pose an adverse affect to public safety or convenience 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, including but not limited to §150.20-§150.21, referred to as the *Sign Code*, and the laws of the State of Michigan, the Licensed Inspector shall then issue an Encroachment Permit, provided the applicant pays the required fee as defined in § 96.51 and furnishes the necessary Certificate of Insurance as defined in § 96.53, if applicable. In the event the Licensed Inspector does not believe granting the Encroachment Permit would be in the best interest of the City, he may deny the granting of a permit.

(C) If the applicant does not concur with the decision of the Licensed Inspector either to make repairs, alterations or removal, or the Licensed Inspector's decision to deny the application, the application shall be transmitted to the City Council for approval or disapproval. The decision of City Council shall be final.

§ 96.51 PERMIT FEES.

Each applicant shall pay an application fee as follows:

Class I Encroachment Permit: \$25.00 Annually (Routine Inspections Not Required)

Class II Encroachment Permit: \$50.00 Annually (Routine Inspections Required)

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 June 30, 2010. This includes all Encroachment Permit issued at any time during the prior three-year (3) license term. All Encroachment Permits shall require renewal on or before June 30th of each year.

§ 96.52 LATE PAYMENT PENALTY

An additional late charge of fifty (50%) percent of the permit fee shall be incurred as a result of the following:

- (A) Failure to pay the initial Encroachment Permit fee within fifteen (15) days of application.
- (B) Failure to apply for an Encroachment Permit within fifteen (15) days of date of notice.
- (C) Failure to renew any/all Encroachment Permits within fifteen (15) days of permit expiration.

§ 96.53 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 accepted to do insurance business in the State of Michigan, specifically naming the City of Saginaw 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.

§ 96.54 INSPECTION.

The Licensed Inspector 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.

§ 96.55 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 Licensed Inspector or City Council under the terms and provisions of this subchapter and all such permits shall contain this provision.

§ 96.56 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 Licensed Inspector 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 Licensed Inspector 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 Licensed Inspector shall return the item to the owner. After thirty (30) days have passed, the Licensed Inspector may dispose of said item(s) either by disposal in an appropriate landfill or by sale.

§ 96.57 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, or any other cause which results in an unsafe condition to 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 as provided in the Ordinances for Abatement of Dangerous Buildings, Structures or Parts thereof.

§ 96.58 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.

§ 96.59 DELEGATION OF AUTHORITY.

Wherever in this subchapter an act or duty is required to be performed by the Licensed Inspector of the Inspections Division, said act or duty may be delegated by the Licensed Inspector to any employee of said Division.

Section 2. This Ordinance shall become effective June 17, 2010.
Enacted: June 7, 2010.
Adopted unanimously.

Gregory L. Branch
Mayor

Diane M. Herman
City Clerk