



ILLINOIS STATE BAR ASSOCIATION

REAL PROPERTY

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Beware the public way

By Donna J. Pugh and Michael Cassata

Maximizing property value through interior and exterior maintenance and upgrades is constantly on the minds of real estate owners and managers. There always seem to be windows in need of replacement or HVAC systems that need to be upgraded.

And while owners and managers are conscientious of this type of work, they sometimes overlook another important element of property management—use of the public way (also called encroachments.) Some common examples include awnings and decorative pavers, which require public way approval from the City of Chicago.

In many cases, owners and managers may be unaware that permits have been issued for existing uses and, thus, do not know they are required to make payments or renew these approvals. Even if they are aware of permits, they may not fully understand the extensive approval process, which can last up to six months.

Sidewalks, streets, alleys, highways and other public thoroughfares are considered to be the public way as defined by the Chicago Municipal Code. In addition to its definition, it is important to understand the history of public way regulation and the reason why encroachments sometimes attract City officials' attention.

The root of the public way ordinance can be found in the public trust doctrine, which states that public land cannot be used for private purposes. Temporary uses that do not interfere with the public good are allowed with an approval granted by

the City Council. Although private uses can sometimes create public nuisances, as in the case of an unkempt or unsightly sign, City officials recognize the opportunity encroachments present to increase the government coffers. Annual fees can run anywhere from \$50 for a grease basin to \$50,000 for skybridges.

Government officials also recognize the harm these uses sometimes bring and have exercised the City's right to revoke approvals unilaterally. For example, in recent years some Chicago aldermen have used the temporary privilege status to justify the need, in their estimation, to crack down on signs and other types of clutter congesting the public way. Areas targeted for crack-downs have included tourist corridors, such as Chicago's Mag Mile or State Street.

Understanding the process is imperative for developers, property owners, and managers applying for new approvals or renewing existing ones. Some examples of above-grade encroachments that require approvals are canopies/awnings, signs, light fixtures, balconies and banners. At-grade examples include planters, decorative pavers, bollards, windscreens, kiosks and sidewalk cafes. Below-grade examples include vaults, conduit (encased wiring), caissons (foundation), earth retention systems and irrigation systems.

The first step in the approval process is to fill out an application, which can be obtained by downloading a copy at <www.cityofchicago.org/businessaffairs> or calling 312-74-GOBIZ. New business owners

may request an application when applying for a business license in the Department of Business Affairs and Consumer Protection (BACP) Business Assistance Center at 121 N. LaSalle St. City Hall Room 800.

Application requirements vary, but information that may be requested by the city includes applicant information, public way use information, photographs, plan/diagram(s), general liability insurance and permit fee. Applications, which are submitted to the BACP Public Way Use Unit, must include the signature of the alderman of the ward in which the public way use is taking place.

Once the alderman signs off on an application, an applicant will need to obtain the approval of approximately four city divisions before being formally submitted to the City Council. After it is submitted, the application is considered by the city's Committee on Transportation and Public Way at the next available hearing date, approximately one month later. Once successfully overcoming this hurdle, the City Council officially approves the ordinance establishing the public way privilege.

However, it is not truly official until the ordinance is published in the City's *Journal of Proceedings*, which occurs approximately one month after City Council approval. At that time, the city mails the applicant an acceptance letter requiring proof of insurance and payment for the first year. Once these items are submitted and processed, the city then mails the official Public Way Privilege Permit.

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After a public use approval is issued, fees are due annually. Fees may be assessed on a flat rate basis ranging from \$50 to \$400 per year or calculated according to square footage, real estate value and whether the use is on, over or under the public way. Some approvals are valid for five years and others for three years. They must be renewed by going through the same application process as those seeking new permits.

Illegal encroachments are subject to removal orders and fines ranging from \$25 to \$200 per use, with the exception of sidewalk café violations, which face \$200 to \$500 fines per use.

To be fully prepared to handle the responsibilities of property maintenance, owners and managers must be aware of public way uses related to their property and the arduous process for obtaining or

renewing a permit. ■

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