

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: August 19, 2021

CALENDAR NO. 33,423

NO. 28796 MAYOR COUNCIL SERIES

BY: COUNCILMEMBER GIARRUSSO

AN ORDINANCE to amend and reordain Section 146-7 and to ordain Article XIII of Chapter 146 of the Code of the City of New Orleans, to reserve Section 146-7 and to create applications, procedures, fees, and requirements regarding encroachments onto, over, or upon City property; and to provide otherwise with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That Section 146-7, and Article XIII of Chapter 146 of the Code of the City of New Orleans, be, and the same are hereby amended and reordained, and ordained, respectively, to read as follows:

“Sec. 146-7 – Reserved.

Chapter 146 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

\*\*\*

Article XIII – Encroachments upon City Property

Sec. 146-766 – Definitions

*Air Rights* means the exclusive right to the use of a defined portion of the air space above the earth’s surface that is connected with part of a particular tract of land.

*Class I - Minor Encroachment* means outward swinging doors, projecting signs – other than A-frame signs and similar displays governed by Section 146-531 *et. seq.*, and other similar structures that minimally intrude onto or over the City’s property and are easily moved or repositioned.

*Class II - Partially Restrictive Encroachment* means awnings with open sides or other similar items which are removable in nature.

*Class III- Restrictive Encroachment* means major structures tending to form architectural elements of an adjacent building, including balconies, galleries, porches, overhangs, foundations, steps, railings, and landings.

20 *Class IV- Exclusive Encroachment* means fenced in or enclosed areas with no public access but  
21 that do not otherwise restrict access to the public sidewalk or street.

22 *Class V- Permitted Encroachment* means raised sidewalks, handicap ramps, bicycle racks, bicycle  
23 stations, benches, planters, EV Charging Stations, and sidewalk cafés.

24 *Class VI - Pedestrian Walkway* means all bridges, elevated walkways, and skyways built for  
25 pedestrians, and all other passageways for pedestrians on, above or beneath any street, alley or  
26 other public way in the city, provided, however, the provisions of this ordinance shall not apply to  
27 sidewalks at ground level.

28 *Class VII- Prohibited Encroachment* means a type of encroachment which will not be considered  
29 by application as provided in Sec. 146-769 or which is deemed not to meet the application criteria  
30 as outlined in Sec. 146-776.

31 *Lease* for purposes of this section means a contract establishing personal rights and obligations  
32 between the City and Lessee and may constitute an incorporeal immovable if entered into in  
33 conjunction with the use and enjoyment of immovable property.

34 *Servitude* for the purposes of this section, means a predial servitude acquired by an adjacent  
35 property owner for the land occupied by an encroachment upon payment of compensation for the  
36 value of the servitude, or a limitation on the City's ownership of the public right-of-way ownership  
37 established for the benefit of a particular person or persons.

38 **Sec. 146-767 – Express Authorization Required**

39 The encroachment of any structure in, onto, upon, or over City property shall be unlawful  
40 without express written authorization by the City as provided herein. The granting of  
41 permission to construct, install, or place an encroachment on public property is a privilege, not  
42 a right, and requires the payment of fair market value for the use of the property.

43 **Sec. 146-768 – Application Process**

44 All applications for encroachments defined herein shall be submitted to the Department  
45 of Safety and Permits along with an application fee of Class I – Minor Encroachment - \$75.00;  
46 (b) Class II- Partially Restrictive Encroachment - \$475.00; (c) Class III- Restrictive Encroachment  
47 - \$475.00; (d) Class IV – Exclusive Encroachment - \$1,400.00; Class V – Permitted Encroachment  
48 – In Accordance with the applicable fees according to the Department of Safety & Permits  
49 Building Permit Fee schedule or Department of Public Works Permit Fee schedule, whichever is  
50 applicable; Class VI – Pedestrian Walkway - \$1,675.00.

51 The ultimate determination of appropriate application classification shall be by the  
52 Director of the Department of Property Management or his/her authorized designee.

53 **Sec. 146-769. Prohibited Applications for Encroachments on City Property.**

54 The following encroachments are prohibited by the City and will not be considered by  
55 application:

- 56 a) any enclosed living or livable area (living space, display windows, bay windows);
- 57 b) stormwater management Best Management Practices, as defined in Section 121.4  
58 of the Building Code;
- 59 c) private equipment (including, but not limited to, fuel tanks, dumpsters, HVAC  
60 equipment, outward swinging gates or fencing, and generators);
- 61 d) encroachments of any kind onto the City's dedicated parks; or
- 62 e) all other encroachments that are deemed not to meet the application criteria as  
63 outlined in Section 146-776.

64 **Section 146-770 Class I -Minor Encroachment**

- 65 a) If an application is deemed by the Department of Property Management to involve a  
66 minor encroachment, said application shall be forwarded to the Department of Public  
67 Works, and CPC/HDLC/VCC if applicable, for review and approval.
- 68 b) The review shall ensure that the encroachment does not, in any way, impede, interfere, or  
69 obstruct the use and enjoyment of City property or damage City property as provided in  
70 Section 146-776.
- 71 c) If the encroachment is in a historic district, additional evaluation criteria shall be as  
72 provided by applicable law.
- 73 d) The encroachment must be able to be removed.
- 74 e) If all reviewing departments approve the application request pursuant to the criteria  
75 provided in this Article the applicant shall execute a City approved hold harmless  
76 agreement.
- 77 f) Unless and until the hold harmless agreement is executed by the applicant, no permits  
78 will be issued for the municipal address(es) or lots associated with the encroachment.

79 **Sec. 146-771. – Lease requirement – Class II - Partially restrictive encroachment**

- 80 a) If an application is deemed by the Department of Property Management to involve a  
81 partially restrictive encroachment, said application shall be reviewed by the

- 82 Encroachments Working Group as provided in Section 146-780 at the next practical open  
83 meeting.
- 84 b) The review shall ensure that the encroachment does not, in any way, impede, interfere, or  
85 obstruct the use and enjoyment of City property or damage City property as provided in  
86 Section 146-776.
- 87 c) If the encroachment is in a historic district, additional evaluation criteria shall be as  
88 provided by applicable law.
- 89 d) The encroachment must be able to be removed.
- 90 e) If all reviewing departments approve the application request pursuant to the criteria  
91 provided in this Article, the partially restrictive encroachment may be authorized via  
92 lease of air rights agreement for fair market value.
- 93 f) Prior to the drafting of the lease agreement, the applicant will be required to submit:
- 94 1. Adequate Proof of Insurance in the form of an ACCORD form or equivalent sufficient  
95 document evidencing required additional insured endorsement in favor of the City of New  
96 Orleans;
- 97 2. A Tax Clearance Certificate;
- 98 3. Proof of Good Standing with Louisiana Secretary of State;
- 99 4. Authorization for the signatory acting on behalf of applicant if it is an entity;
- 100 5. First annual payment; and
- 101 6. A payment for recording of any required agreement.
- 102 g) Unless and until the lease agreement is executed by the applicant in a format acceptable  
103 to the City, no permits will be issued for the municipal address(es) or lots associated with  
104 the encroachment.
- 105 h) An authorizing ordinance is required by law. Unless and until the lease agreement is  
106 executed by the applicant, the Division of Real Estate will not submit it to City Council  
107 for an authorizing ordinance.
- 108 **Sec. 146-772. – Servitude requirement -Class III- Restrictive encroachment**
- 109 a) If an application is deemed by the Department of Property Management to involve a  
110 restrictive encroachment, said application shall be reviewed by the Encroachments  
111 Working Group as provided in Section 146-780 at the next practical open meeting.

- 112 b) The review shall ensure that the encroachment does not, in any way, impede, interfere, or  
113 obstruct the use and enjoyment of City property or damage City property as provided in  
114 Section 146-776.
- 115 c) A field inspection and structural report regarding the condition of the encroachment,  
116 certified (stamped and signed) by a Louisiana licensed professional civil engineer shall be  
117 submitted to the City on an annual basis beginning on the first day of the year after the  
118 completion of the improvements. The report should be comprehensive and describe  
119 damages identified by inspections and repairs made to mitigate damages. The report shall  
120 have a clearly stated conclusion based on findings on whether the encroachment is safe to  
121 remain for the year in question or not. The encroachment should be able to be removed in  
122 accordance with the provisions of the servitude and/or lease agreement. If the  
123 encroachment is in a historic district, additional evaluation criteria shall be as provided by  
124 applicable law.
- 125 d) The encroachment must be able to be removed.
- 126 e) If all reviewing departments approve the application request pursuant to the criteria  
127 provided in this Article, the partially restrictive encroachment may be authorized via  
128 servitude agreement for fair market value and the resulting annual payment shall be  
129 subject to upward adjustment of 10%, from the previous year's sum, following the  
130 expiration of every fifth year throughout the useful life of the encroachment.
- 131 f) Prior to the drafting of the servitude agreement, the applicant will be required to submit:
- 132 1. Adequate Proof of Insurance in the form of an ACCORD form, or and  
133 equivalent sufficient document, evidencing required additional insured  
134 endorsement in favor of the City of New Orleans;
  - 135 2. A Tax Clearance Certificate;
  - 136 3. Proof of Good Standing with Louisiana Secretary of State;
  - 137 4. Authorization for the signatory acting on behalf of applicant if it is an entity;
  - 138 5. First annual payment; and
  - 139 6. A payment for recording of any required agreement.
- 140 g) Unless and until the servitude agreement is executed by the applicant in a format acceptable  
141 to the City, no permits will be issued for the municipal address(es) or lots associated with  
142 the encroachment.

143 h) An authorizing ordinance is required by law. Unless and until the servitude agreement is  
144 executed by the applicant, the Division of Real Estate will not submit it to City Council  
145 for an authorizing ordinance.

146 **Sec. 146-773. – Lease requirement -Class IV- Exclusive encroachment**

147 a) If an application is deemed by the Department of Property Management to involve an  
148 exclusive encroachment, said application shall be reviewed by the Encroachments  
149 Working Group as provided in Section 146-780 at the next practical open meeting.

150 b) The review shall ensure that the encroachment does not, in any way, impede, interfere, or  
151 obstruct the use and enjoyment of City property or damage City property as provided in  
152 Section 146-776.

153 c) If the encroachment is in a historic district, additional evaluation criteria shall be as  
154 provided by applicable law.

155 d) The encroachment should be able to be removed.

156 e) If all reviewing departments approve the application request pursuant to the criteria  
157 provided in this Article, the exclusive encroachment may be authorized via a lease  
158 agreement for fair market value and the resulting annual payment shall be subject to  
159 upward adjustment of 10%, from the previous year's sum, following the expiration of  
160 every fifth year throughout the useful life of the encroachment.

161 f) Prior to the drafting of the lease agreement, the applicant will be required to submit:

162 1. Adequate Proof of Insurance in the form of an ACCORD form, or an equivalent  
163 sufficient document, evidencing required additional insured endorsement in favor of  
164 the City of New Orleans;

165 2. A Tax Clearance Certificate;

166 3. Proof of Good Standing with Louisiana Secretary of State;

167 4. Authorization for the signatory acting on behalf of applicant if it is an entity;

168 5. First applicable payment.

169 6. A payment for recording of any required agreement.

170 g) Unless and until the lease agreement is executed by the applicant in a format acceptable  
171 to the City, no permits will be issued for the municipal address(es) or lots associated with  
172 the encroachment.

173 h) An authorizing ordinance is required by law. Unless and until the lease agreement is  
174 executed by the applicant, the Division of Real Estate will not submit it to City Council  
175 for an authorizing ordinance.

176 **Sec. 146-774. – Permit requirement -Class V- Permitted Encroachment**

177 If an application is deemed by the Department of Property Management to involve a permitted  
178 encroachment, said application shall be reviewed by the Department of Public Works and/or  
179 Department of Safety and Permits. If all reviewing departments approve the application request  
180 pursuant to the criteria provided in this Article, the permitted encroachment may be issued a permit  
181 for that specific encroachment only.

182 **Sec. 146-775. – Lease requirement -Class VI- Pedestrian Walkway**

- 183 a) If an application is deemed by the Department of Property Management to involve a  
184 pedestrian walkway, said application shall be reviewed by the reviewed by the  
185 Encroachments Working Group as provided in Section 146-780 at the next practical open  
186 meeting.
- 187 b) Any new applicant must be a hospital or educational institution.
- 188 c) Any new applicant must provide:
  - 189 (1) A demonstration of how at-grade crossing is not adequate through a traffic study  
190 completed by a licensed transportation engineer;
  - 191 (2) Provide a Plan for Use (that will actually eliminate pedestrian at-grade crossing);
  - 192 (3) Proof of Financial/Budgetary Capacity to carry all required insurance on the  
193 proposed pedestrian walkway as determined by the City's Risk Manager for the  
194 walkway's useful life.
  - 195 (4) A field inspection and structural report regarding the condition of the  
196 encroachment, certified (stamped and signed) by a Louisiana licensed professional  
197 civil engineer shall be submitted to the City on an annual basis beginning on the  
198 first day of the year after the completion of the improvements. The report should  
199 be comprehensive and describe damages identified by inspections and repairs  
200 made to mitigate damages. The report shall have a clearly stated conclusion based  
201 on findings on whether the encroachment is safe to remain for the year in question  
202 or not. The encroachment should be able to be removed in accordance with the  
203 provisions of the servitude and/or lease agreement.

204 b) If all reviewing departments approve the application request pursuant to the criteria  
205 provided in this Article, the exclusive encroachment may be authorized via a lease  
206 agreement for fair market value subject to upward adjustments based on a formula  
207 negotiated by the parties throughout the useful life of the encroachment.

208 c) Prior to the issuance of the lease agreement, the applicant will be required to submit:

- 209 1. Adequate Proof of Insurance in the form of an ACCORD form or an  
210 equivalent sufficient document, evidencing required additional insured  
211 endorsement in favor of the City of New Orleans;
- 212 2. A Tax Clearance Certificate;
- 213 3. Proof of Good Standing with Louisiana Secretary of State;
- 214 4. Authorization for the signatory acting on behalf of applicant if it is an  
215 entity;
- 216 5. First applicable payment.
- 217 6. A payment for recording of any document.

218 d) Unless and until the lease agreement is executed by the applicant, no permits will be  
219 issued for the municipal address(es) or lots associated with the encroachment.

220 e) An authorizing ordinance is required by law. Unless and until the lease agreement is  
221 executed by the applicant, the Division of Real Estate will not submit it to City Council  
222 for an authorizing ordinance.

223 *Sec. 146-776. – Criteria for issuance – all applications*

224 In reviewing encroachment applications, all reviewing departments shall evaluate the application  
225 pursuant to the following criteria. If any department determines the encroachment implicates  
226 one of the below factors, a denial by the Department of Property Management shall be issued.

227 a) The encroachment creates an unsafe condition or poses a danger to the public,  
228 including, but not limited to: impedes or restricts sight lines, impedes normal access,  
229 obstructs vision of traffic or pedestrians, or creates operational conflicts or creates  
230 hazards.

231 b) The encroachment inappropriately diminishes the public’s right of usage, including,  
232 but not limited to: impeding the public’s passage and/or access along a travelled  
233 portion of a road, or interfering or obstructing normal pedestrian or bicycle use.

234 c) The encroachment enlarges an existing non-conforming structure.



- 235 d) The encroachment adversely affects municipal operations, work, plans, efforts or  
236 initiatives of the City to maintain municipally owned lands or undertake capital works  
237 projects.
- 238 e) The encroachment interferes with any utility or other similar installation located on  
239 City owned lands including underground infrastructure.
- 240 f) The encroachment creates a situation that is contrary to any Municipal law, policy or  
241 resolution or any State or Federal regulation or legislation.
- 242 g) The encroachment is constructed in such a way that removing it would cause  
243 structural damage or fire safety to city property.

244 **Sec. 146-777. – Enforcement**

245 If an unpermitted encroachment is identified, the City may require the encroachment to be  
246 removed and the land returned to its original state to the satisfaction of the City. All costs related  
247 to the removal of the encroachment shall be at the encroaching party’s expense. If the City  
248 requires the land for municipal purposes including, but not limited to, the construction of capital  
249 projects or installation of services, the encroaching party shall be notified of the construction  
250 timeline and the encroachment shall be removed either by encroaching party in a timely manner.  
251 The cost to remove an encroachment that has not been approved by the City may be enforced  
252 against the encroaching party via the adjudication process in Chapter 6 of the City Code.

253 **Sec. 146-778. - Encroachments in historic districts – additional review**

254 Existing historic encroachments within HDLC, CBDHDLC or VCC jurisdiction, or existing  
255 historic encroachments outside HDLC, CBDHDLC or VCC jurisdiction whose historic  
256 contribution is verified by HDLC, CBDHDLC or VCC, may remain without a permit, lease, or  
257 servitude agreement – as the case may be - or the fair market value payment required, provided  
258 that these historic encroachments contribute to New Orleans' distinct character and their  
259 preservation serves a public purpose. For purposes of this subpart, existing historic encroachments  
260 may include the reconstruction of historic encroachments that were previously removed upon  
261 verification by the HDLC, CBDHDLC, or VCC or by the executive director of the HDLC or VCC  
262 of its previous historic existence and contributing nature, provided that any subsequent  
263 architectural alterations to previously verified encroachments governed by this subpart shall be  
264 subject to prior approval by HDLC, CBDHDLC, VCC or by the executive director of the HDLC  
265 or VCC.

266 **Section 146-779 – Prescription Inapplicable**

267 No property owner with an encroachment on, in, or over city property may claim  
268 by prescription title to City owned property. City owned property is a public thing dedicated to  
269 public use.

270 **Section 146-780- Encroachments Working Group**

271 (1) Purpose

272 It is necessary that the Mayor, City departments, and the City Council are able to understand and  
273 assess the effects a proposed encroachment could have on (1) the primary use of public right-of-  
274 way to facilitate free movement of pedestrians and traffic; (2) the use of public right-of-way for  
275 drainage, sewer, water, electricity and other utilities; and (3) on other property owners, if any. For  
276 these reasons, an Encroachments Working Group shall be formed to address proposed  
277 encroachments on the public right of way.

278 (2) Formation

279 The Encroachments Working Group will be formed to meet and advise on such technical issues,  
280 thereby gaining the mutual benefit of a coordinated opinion, which would work in the best interest  
281 of the City and the general public as a whole. The purpose of the Encroachments Working Group  
282 is to eliminate duplicated efforts, which occur when a proposed project is sent to various  
283 departments for comment on an individual basis, and to assist the public in determining the  
284 necessary department/agencies to meet with to resolve any technical problems that may need to be  
285 discussed/solved prior to consideration by the City Council. Such problems may include any  
286 compromise of the public purpose of the right-of-way or unreasonable interference with another  
287 property owner's right of access.

288 A. Membership

289 1. Voting Members shall include the Executive Directors of the following  
290 departments/agencies or their designees:

- 291 1. Department of Property Management – Division of Real Estate and Records
- 292 2. City Planning Commission
- 293 3. Department of Public Works
- 294 4. Sewerage and Water Board
- 295 5. Department of Safety and Permits
- 296 6. Sanitation Department

- 297           7. Department of Parks and Parkways  
298           8. New Orleans Recreation Department (if applicable)  
299           9. New Orleans Fire Department  
300           10. Historic District Landmarks Commission (if applicable)  
301           11. Vieux Carré Commission (if applicable)  
302           12. Entergy
- 303           2. Non-Voting Members – All other City departments/agencies and allied agencies (i.e.  
304           Levee Board, Port, DDD, etc.) are encouraged to attend Encroachments Working Group  
305           meetings, especially when there are items which may directly impact their agencies. They  
306           will be welcome to voice their concerns and engage in discussion of the agenda items but  
307           will not be voting members.
- 308    B.     The Encroachments Working Group shall meet to address issues of technical compliance  
309           with the rules, regulations, and laws governing the various City Departments/Agencies at stages  
310           early enough to make timely recommendations to the City Council, or the agency/department with  
311           appropriate jurisdiction, where required.
- 312           1.     Meeting Schedule:  
313           The Encroachments Working Group shall hold regular meetings enabling the review of all projects  
314           within its purview in a timely manner. The schedule will be set so as to avoid conflicts with the  
315           official meeting of each department involved, if possible.
- 316           2. Conducting Meetings
- 317           a. Parliamentary Procedure will prevail as per Robert's Rules of Order.  
318           b. Attendance will be recorded;  
319           c. An agenda with maps, drawings, surveys, plans, pictures, etc., will be sent to all Working  
320           Group voting members in advance, briefly describing the proposed projects to be reviewed.  
321           d. Minutes of the meeting will be recorded, and copies distributed to all committee  
322           members in a timely period;  
323           e. All meetings of the Encroachments Working Group shall be open to the public, with  
324           time allotted for public input and/or comment. Such comment may be limited in duration  
325           to no more than two minutes.

326 3. Election of Chair and Vice Chair  
327 Election of the Encroachments Working Group Chair and Vice Chair shall occur  
328 annually during the month of January at one of the two (2) regularly scheduled meetings  
329 and shall require a majority vote of the voting members present at that meeting.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS OCT 07 2021

**HELENA MORENO**

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON OCT 08 2021

APPROVED:

~~HELENA MORENO~~ OCT 13 2021

**LATOYA CANTRELL**

MAYOR

RETURNED BY THE MAYOR ON OCT 13 2021 AT -3:55 PM

**LORA W. JOHNSON**

CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Glapion, Nguyen - 6

NAYS: 0

ABSENT: Moreno - 1

RECUSED: 0

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
*Lora W. Johnson*  
CLERK OF COUNCIL