

Ordinance No. 979-2020**By Council Member:** McCormack

An emergency ordinance to amend Sections 3115.01, .03, .08 through .10, .13 and .18 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No.1116-A-85, passed February 10, 1986, and Section 411.011, as enacted by Ordinance No. 599-11, passed June 6, 2011, relating to protection of pedestrians and wheelchair riders on sidewalks, walkways and temporary pedestrian access routes through building operation work zones.

WHEREAS, the City seeks to promote temporary pedestrian access routes as a way to increase safety and accessibility for pedestrians and wheelchair riders traveling through building operation work zones; and

WHEREAS, Ohio pedestrian crashes make up 12.3% of all traffic deaths in Ohio with 145 fatal crashes and 2,644 injuries; of these, 17 fatalities and 1,159 injuries are work zone related, according to the Ohio Department of Public Safety; and

WHEREAS, the Ohio Department of Public Safety found that non-motorist fatalities happen in Ohio at the following locations: 8% at intersections, 2% at midblock locations, 60% in a travel lane, and 15% at the shoulder/roadside; and

WHEREAS, in Cuyahoga County in 2019, there were 15 pedestrian crash fatalities and 397 injuries; of those, 4 fatalities and 246 injuries were work zone related, according to the Ohio State Highway Patrol; and

WHEREAS, the City recognizes that protecting pedestrians and wheelchair riders using the public right-of-way through work zones will prevent harm and improve their overall experience; and

WHEREAS, the City also recognizes the need to protect bicyclists using the public right-of-way through work zones, and will provide for their safe accommodation in administrative rules and regulations; and

WHEREAS, other cities, including Columbus, Cincinnati, Pittsburgh, Houston, Seattle, and the District of Columbia have enacted ordinances and policies that require safe, temporary sidewalk, walkway, and re-routing or detour access for pedestrians and wheelchair riders during construction and maintenance work as conditions of a permit to obstruct the public right-of-way; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That Sections 3115.01, .03, .08 through .10, .13, and .18 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 1116-A-85, passed February 10, 1986, and Section 411.011, as enacted by Ordinance No. 599-11, passed June 6, 2011, are amended as follows:

Section 3115.01 Scope and Application; Compliance Standard

The provisions of this chapter shall apply whenever buildings or other structures are demolished, moved or removed in whole or in part, and whenever buildings or other structures are erected, altered, or repaired. All work of demolition or moving or removing of buildings or other structures or parts thereof, and all precautions during erection, alteration, or repair of buildings or other structures shall be in conformity with the provisions of this chapter and in conformity with accepted safe practice. When deemed necessary, ~~the Director of Public Service~~ the Director of Public Works may promulgate rules or regulations limiting or restricting the use of public property and the Board of Building Standards and Building Appeals may promulgate rules or regulations defining accepted safe practice. In the absence of such rules or regulations the provisions of NFIPA Standard 241, "Safeguarding Building Construction and Demolition Standards" as listed in Section 3101.07, shall be deemed to establish and define accepted safe practice, and the Commissioner may require conformity with any provision of such Standard where deemed necessary by him or her for safety to life or property. The Directors of Capital Projects and Public Works shall promulgate rules and regulations establishing the criteria for traffic and pedestrian maintenance plans, according to Ohio Manual of Uniform Traffic Control Devices (OMUTCD) standards, required for a street obstruction permit under Section 411.011 for construction and rehabilitation projects in the public right-of-way. The Director of Building and Housing or designee shall refer such project plans to the Director of Capital Projects for the Division of Engineering and Construction to approve such permit, in consultation with the Division of Traffic Engineering.

Section 3115.03 Use of Public Property

(a) *Approval of Director of ~~Public Service~~ Capital Projects Required.* Public property shall not be used for the storage of materials or equipment or for the operation of equipment, nor shall any fence, railing, barricade, walkway, canopy, shed, scaffold or other construction or protection be erected on public property without the approval of the Director of ~~Public Service~~ Capital Projects. Any permit issued for such use of public property shall be valid only while such use is maintained safe and non-hazardous. The City authority issuing such permit shall revoke any such permit when unsafe conditions are not promptly corrected.

(b) *Limitations and Restrictions.* The use of public property for storage of material or for other uses incidental to demolition, house moving, alterations or building operations shall conform to the limitations and restrictions imposed by the Director of ~~Public Service~~ Capital Projects, as deemed necessary by him or her for safety to life and property and the maintenance of traffic on sidewalks and roadways.

(c) Any permit issued for the use of public property shall terminate with the completion of the operations for the performance of which it was procured.

Section 3115.08 Storage and Handling of Material and Equipment

(a) No material or equipment shall be stored or placed so as to be a hazard to the public, workmen, adjoining property, or to the structure on which it is placed.

(b) No fire hydrant, police or fire alarm box, public utility box, catch basin, or manhole shall be obstructed or rendered inaccessible, and every tree, lightpole, and utility pole shall be protected and maintained free from damage; and no material shall be piled, or equipment or structure placed, so as to interfere with proper drainage of street, or other public property.

(c) No material shall be handled, worked upon, or prepared so that public property may be damaged thereby.

(d) No sidewalk or walkway shall be severed and/or moved for activities such as storage of equipment or parking of vehicles related to construction.

Section 3115.09 Maintenance of Walkways

(a) A safe walkway, not less than four (4) feet wide and of greater width where deemed necessary by the Director of ~~Public Service-Capital Projects~~, shall be maintained as a continuation of abutting sidewalks at all demolition and building operations, as directed or approved by such Director. Existing sidewalks should be preserved in urban areas. If passage on the existing sidewalk is not possible, a convenient and accessible pedestrian walkway shall be provided that replicates as nearly as practicable the existing sidewalk. Sidewalk closure with an alternative re-route or detour is a last resort. Signs shall be provided to direct pedestrian traffic.

(b) Whenever a sidewalk vault is being constructed, or whenever the Director approves the temporary obstruction of a sidewalk, such walkway may be constructed outside of the curb line and abutting thereto, and shall be a durable walking surface of plank or other suitable approved material with a substantial guardrail along the outer edge. No walkway shall be maintained outside the curb line for a period longer than absolutely necessary for the operations being performed, and such walkway shall be re-located inside the curb line as soon as practicable.

(c) Sidewalks, walkways, and alternative pedestrian re-routes or detours shall be accessible in accordance with the Americans with Disabilities Act and Ohio Building Code Section 11.

Section 3115.10 Protection for Pedestrians and Wheelchair Riders on Sidewalks and Walkways in Connection with Building Operations

(a) Protection for pedestrians and wheelchair riders on sidewalks or walkways from travel lanes and construction hazards shall be provided and maintained in conformity with this section during all times when they might be endangered by building operations. Such protection shall consist of barricades, fences, ~~or canopies~~, construction railings, barriers, covered walkways as set forth in the following Table, in accordance with Ohio Building Code Section 3306, Protection of Pedestrians, except that an approved ~~canopy~~ covered walkway shall be provided and maintained whenever material is being moved over the sidewalk or walkway by derrick, hoist or chute.

Table of Required Sidewalk or Walkway Protection

Height of Construction (Feet)	Distance from Construction to Nearest Edge of Walkway Lot Line	Protection Required
12 8 or less	Less than 6 5 feet	Barricade or Fence <u>Construction railings</u>
	6-5 feet or more	None
More than 12-8	Less than 1/4 height of construction or less than 6 feet <u>Less than 5 feet</u>	Canopy <u>Barrier and covered walkway</u>
	More than 1/4 height of construction and 6 feet or more, but less than 1/2 height of construction <u>5 feet or more, but not more than one-fourth the height of construction</u>	Fence* <u>Barrier and covered walkway</u>
	1/2 height of construction or more <u>5 feet or more, but between one-fourth and one-half the height of construction</u>	None <u>Barrier</u>
	5 feet of more, but exceeding one-half the height of construction	<u>None</u>
* In Urban District, protection may be omitted or barricade substituted, as approved by the Director of Public Service		

(b) *Barricades.* Pedestrian traffic shall be protected by a directional barricade where the walkway extends into the street. Barricades shall be substantially built and shall be not less than three (3) feet in height.

(c) *Fences.* Fences shall be substantially built with tight boards, plywood, or other suitable similar material applied on the outer face, and shall be not less than six (6) feet

in height. When openings are required for access to the premises, they shall be equipped with sliding or inswinging doors or gates.

(d) Construction railings. Construction railings shall be not less than forty-two (42) inches in height and shall be sufficient to direct pedestrians around construction areas.

(e) Barriers. Barriers shall be not less than eight (8) feet in height and shall be placed on the side of the walkway nearest the construction. Barriers shall extend the entire length of the construction site. Openings in such barriers shall be protected by doors that are normally kept closed.

~~(d)~~ (f) Canopies. Covered Walkways.

(1) Protection ~~canopies~~ covered walkways shall provide a clear height of not less than eight (8) feet above the sidewalk or walkway as measured from the floor surface to the canopy overhead.

(2) The roofs of such ~~canopies~~ covered walkways shall be constructed of planks not less than two (2) inches thick or of approved equivalent material, water tight and covered with exterior grade fire resistant plywood, and every ~~canopy~~ covered walkway shall be designed to support all imposed loads, and capable of safely sustaining a load of ~~one hundred fifty (150)~~ two hundred (200) pounds per square foot; except that when material is stored thereon, canopies shall be capable of sustaining a load of at least three hundred (300) pounds per square foot.

(3) Every required ~~canopy~~ covered walkway shall be of adequate width and length to protect pedestrians and unless otherwise approved by the Commissioner shall extend for the full length of the street or alley line of the building or other structure being erected.

(4) When materials are prepared or work performed on the roof of any such ~~canopy~~ covered walkway, the ~~canopy~~ covered walkway roof shall be enclosed on exposed sides and ends with a tight barricade not less than three (3) feet in height, or with a substantial railing not less than three (3) feet high with solid toe boards not less than six (6) inches high.

(5) Unless the top deck of the ~~canopy~~ covered walkway is built solidly against the face of the building or other structure in such manner that no material can fall on the sidewalk or walkway, the side of the ~~canopy~~ covered walkway toward the building or other structure shall have a tight wood fence or other suitable tight fence extending to the underside of the ~~canopy~~ covered walkway, which may be equipped with sliding or inward-swinging doors or gates.

~~(6) Whenever the work performed is of a minor nature and the Commissioner determines that the public will be protected adequately thereby, thrust out or catch platforms, or other suitable approved protection may be substituted for canopies, fences, or barricades during alterations or under other conditions which, in the~~

~~Commissioner's judgment, permit such substitution. Thrust-out or catch platforms shall not be used for the storage of material, shall be designed and arranged to adequately protect the public and the workmen, and shall be subject to the approval of the Commissioner and the Director of Public Service Works.~~

Section 3115.13 Required Illumination and Obstruction Marking

(a) All sidewalks, ~~and walkways under canopies,~~ covered walkways, and alternative pedestrian access re-routes, or in other locations where customary street illumination is temporarily obstructed, shall be illuminated so that there will be not less than three (3) foot candles at the sidewalk or walkway level at all times. Artificial illumination shall be provided whenever and wherever natural illumination or street lighting does not provide the intensity specified in this section.

(b) All barricades, fences, ~~canopies,~~ construction railings, barriers, covered walkways, alternative pedestrian access re-routes, or equipment erected outside of the street or alley line; all material or debris piled outside of such lines; and all pits, excavations and obstructions outside of such lines shall be marked, after dark, with flares, red lanterns or red electric light bulbs, to warn pedestrians and operators of vehicles of the presence of such obstructions, pits or excavations.

(c) At least one (1) obstruction light shall be provided at each end of every obstruction or hazard. Where the obstruction or hazard is irregular in shape or where the obstruction or hazard is more than fifty (50) feet in length, additional lights shall be provided to adequately indicate the perimeter and extent thereof.

Section 3115.18 Cleaning Debris; Permit, Deposit and Fee

Prior to the commencement of any demolition of any structure or of any grading, excavating or constructing on any private property by any person, firm or corporation other than the owner of the property himself or herself, the owner or lessee of the property or the contractor engaged in such work shall obtain a permit from, and make a deposit of two hundred dollars (\$200.00) cash or certified check with the Division of Streets. Such permit and deposit shall be in addition to any other requirement. During the period of demolition, excavation, grading or construction, the street pavement, tree lawns, ~~and sidewalks, walkways, and alternative pedestrian access re-routes~~ shall be kept clean of all dirt and other debris caused by or arising from such work. The permittee shall also remove snow from sidewalks, walkways, and alternative pedestrian access re-routes. In default thereof, and after reasonable notice to the permittee, the City shall perform such cleaning and charge the cost thereof to the deposit hereinbefore provided. After completion of such work and upon a determination by the Division of Streets that such areas are free of dirt and other debris, such deposit, less the cost of cleaning work performed by the City and less a ten dollar (\$10.00) permit fee, shall be returned to the depositor thereof.

Section 411.011 Street Obstruction Permits

(a) No person shall place or cause to be placed any object or property so as to obstruct the public's use of any highway, lane, road, street or alley without first obtaining a street obstruction permit from the Director of Capital Projects.

(b) An application for a street obstruction permit shall contain the following information:

- (1) The name of the applicant;
- (2) The location of the proposed obstruction;
- (3) The purpose of the obstruction;
- (4) Description of the obstruction;

~~(4)~~(5) The proposed commencement date, time and estimated duration of the obstruction; and

- ~~(5)~~(6) A traffic maintenance plan.

(c) An application for a street obstruction permit for construction and rehabilitation projects regulated by Chapter 3115, shall contain the information required in division (b)(1) through (5) above, and in addition shall include a traffic and pedestrian maintenance plan. Such plan shall be approved, subject to revision, by the Division of Engineering and Construction in consultation with the Division of Traffic Engineering, according to pedestrian safety criteria required by rules and regulations promulgated by the Directors of Capital Projects and Public Works based on Ohio Manual of Uniform Traffic Control Devices (OMUTCD) standards. In addition to the requirements of Chapter 3115, required criteria shall include the following:

(1) A plan for safe alternative re-routing of pedestrians and wheelchair riders, if the applicant presents specific reasons that the existing sidewalk cannot stay open or abutting walkway maintained with safety measures during construction;

(2) Pedestrians and wheelchair riders shall not be lead into conflict with vehicles, equipment, or operations moving through or around the work zone;

(3) Temporary pedestrian access re-routes or detours must be continuous, unobstructed, and protected from construction;

(4) Accessibility and compliance with the Americans with Disabilities Act (ADA);

(5) If a temporary pedestrian access re-route must involve crossing the roadway, a plan to direct pedestrians and wheelchair riders with advance signing directing them to the nearest official crosswalk; and

(6) A plan to erect appropriate signage notifying pedestrians and wheelchair riders of work zones in compliance with rules and regulations.

Such permit shall be posted at each approach to the work zone.

~~(e)~~(d) The application shall be accompanied with the fee established from time to time by the Board of Control and evidence of a public liability insurance policy issued by an insurer authorized to transact business in Ohio, in an amount not less than one million dollars (\$1,000,000.00), listing the City of Cleveland as an additional insured.

~~(d)~~(e) The Director may deny or revoke a street obstruction permit whenever the Director finds:

(1) The applicant has previously violated the provisions of a street obstruction permit or has submitted materially false or incomplete information on any street obstruction permit application; or

(2) The obstruction would unreasonably interfere with another obstruction for which a permit has been issued; or

(3) The time, place or size of the obstruction would unreasonably interfere with public convenience and safe use of the street;

(4) The obstruction would unreasonably interfere with the movement or service capability of emergency or service vehicles; or

(5) The obstruction would unreasonably interfere with a construction project.

~~(e)~~(f) Whoever violates division (a) of this section shall be fined not less than two hundred dollars (\$200.00).

~~(f)~~(g) This section shall not apply to any person that has been issued a permit under the following Chapters of the Codified Ordinances:

(1) Chapter 133 relating to special events;

(2) Chapter 411 relating to parades;

(3) Chapter 503 relating to street openings and maintenance; or

(4) Chapter 3109 relating to encroachment permits

§ 516.04 License Fee; Issuance

§ 516.06 License Conditions

Section 2. That Sections 3115.01, .03, .08 through .10, .13, and .18 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 1116-A-85, passed

February 10, 1986, and Section 411.011, as enacted by Ordinance No. 599-11, passed June 6, 2011, are repealed.

Section 3. That the provisions of this ordinance and rules and regulations promulgated by the Directors shall take effect 60 days after the effective date of this ordinance.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Referred to the Directors of Public Works; Capital Projects; Building and Housing; City Planning Commission; Finance; and Law; Committees on Development, Planning and Sustainability; and Finance.