

CITY OF BRIGANTINE
ORDINANCE 6-2024

**AN ORDINANCE TO AMEND CHAPTER 260 OF THE CODE OF THE CITY OF
BRIGANTINE, ENTITLED "STREETS AND SIDEWALKS" TO ADD ARTICLE
II "REVOCABLE LICENSE AGREEMENTS FOR ENCROACHMENTS"**

WHEREAS, a number of property owners, including residents and local businesses, have approached City Council to request a revocable license to allow said property owner to create or continue an existing encroachment upon municipal property; and

WHEREAS, the City of Brigantine (the "City") desires to provide a licensing process to allow property owners to obtain a revocable license, where such an encroachment is considered not to be a significant impairment to the City's use of the City property; and

WHEREAS, the encroachment will be removed at the sole cost and expense of the property owner should the Council determine, in its sole discretion, that such encroachment needs to be removed; and

WHEREAS, the City Council of the City of Brigantine believes it is in the best interest of the City residents to implement a checklist to be available to property owners in order to streamline the application process;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brigantine in the County of Atlantic, State of New Jersey, that Chapter 260 is amended and supplemented to add Article II as follows:

ARTICLE I. Add Article II to Chapter 260 as follows:

Chapter 260

ARTICLE II: REVOCABLE LICENSE AGREEMENTS FOR ENCROACHMENTS

§ 260-9 Revocable Licenses.

A. The Council, in its sole discretion, may grant a property owner of the City of Brigantine a revocable license, in writing, allowing for said property owner to create or continue an existing encroachment upon municipal property where such an encroachment is considered by the governing body not to be a significant impairment to the City's use of the City property, and will be removed at the sole cost and expense of the property owner should the Council determine, in its sole discretion, that such encroachment needs to be removed in order for the City to make use of or enter upon said City property, subject to approval by the State of New Jersey in those cases, and in those cases only, where state approval is required either because of Green Acres funding of public property or other state requirements. A revocable license is not a substitute for a building permit or a construction permit when either is otherwise required by this Code.

B. Any revocable license granted by the Council must be granted by resolution, be in a written form of agreement, approved by the City Solicitor and incorporate at least the following terms:

1. An indemnification and hold harmless clause protecting the municipality against any loss, injury, damage, or claim arising out of the use of the City property encroached upon;
2. A clause allowing for the termination of the revocable license upon notice of termination in the sole discretion of the Council and at the sole cost and expense of the property owner;
3. A clause discussing enforceability in case the property owner fails to comply with the aforesaid license agreement, by allowing the City to remove said encroachment at the sole cost and expense of the property owner; and
4. A term requiring the licensee to keep in place at all times personal injury liability insurance coverage, in the sum of at least \$100,000 (or other appropriate amount as required by the City), upon the owner's property and the encroachment or use, at the owner's sole cost, and ensuring that the City is named therein as an additional insured. The owner shall provide proof of such insurance coverage at the time of issuance of the license, and of the continuation of such coverage, on an annual basis, as required by the license or permit.

C. All license agreements shall be recorded in the Clerk's office of Atlantic County at the sole cost and expense of the property owner as set forth in Subsection E.

D. All license agreements shall be assignable to a new owner of the adjacent property served by the encroachment.

E. The property owner shall pay to the City a one-time application fee in the amount of \$300.00 in cash or check issued to the City of Brigantine submitted with the application, along with a deposit into the City's escrow account in the amount of \$500 which shall be used to pay for all costs associated with the solicitor's preparation of the revocable license agreement and the filing fee with the Atlantic County Clerk's office. In the event the cost of preparation and filing fees are less than \$500, the remaining funds shall be returned to the property owner. In the event that the legal fees exceed \$500, along with the filing fees, same shall be the responsibility of the property owner which shall be paid prior to the filing of the license.

§ 260-10: Application; Contents.

An application for a revocable license shall be filed in a manner and on forms provided by the City Clerk's office. The application form shall, at a minimum, contain the following information in a clear and legible manner suitable for recordation:

- A. A legal description, prepared by a New Jersey professional licensed surveyor, of the adjoining property deriving the potential benefit of the encroachment;
- B. Other identifying information, including the property street address and block/lot of

both the private and public property;

- C. A legal description, prepared by a licensed New Jersey professional surveyor, of the proposed encroachment both in the form of a narrative and supplemental drawings showing the type, nature, and extent of the encroachment;
- D. An acceptable current title report, excerpt or lot book report that establishes the legal ownership of the property in question;
- E. The identity and original, notarized signature(s) of the legal owner(s) of the adjoining property to be benefited as necessary to establish a legally binding agreement and covenant that shall run with the title of the land;
- F. Evidence that the requested encroachment cannot be reasonably accommodated on the applicant's own property and outside the City's right-of-way;
- G. Evidence that a hardship exists necessitating the encroachment and that the hardship was not created by the applicant or his/her agents;
- H. Any other information that, in the opinion of the City Clerk, code enforcement and/or the City Engineer is necessary to adequately evaluate the application, including, but not limited to, property line survey, topography, geotechnical reports, drainage studies and construction details of the proposed structure; and
- I. A nonrefundable application fee along with a check for all legal fees and filing fees as set forth more fully in § 260-9 of this chapter.

§ 260-11: Application; Procedure.

- A. Filing. An application for a revocable license into a planned or existing public right-of-way shall be filed by the owner of the property for which the revocable license is sought or by an authorized representative of the owner. Such application shall be made to the City Clerk and shall be on forms furnished by the City Clerk.
- B. Filing fee. A uniform fee, established by the Council under separate resolution, shall be required upon the filing and investigation of the application for revocable license or transfer of a revocable license to defray administrative costs incurred by the City in processing the application.
- C. Investigation. An investigation shall be conducted by all departments of the City having an interest in, or jurisdiction over, the matter. Upon the receipt of an application pursuant to the provisions of this article, the City Clerk shall transmit the application to all affected departments for written reports of findings and recommendations. All such written reports shall be submitted to the Director of Public Works for consideration when making a decision on the application.
- D. Criteria for evaluation and approval. A revocable license application may be approved when it can be reasonably demonstrated that the structure will not interfere with the present and prospective public use of a street or right-of-way and will generally conform to the following requirements:

- 1) It should be located in a manner that is not hazardous to the traveling public, including motorists, bicyclists and pedestrians;
- 2) It should be sufficiently set back from the edge of pavement or street center line to provide adequate travel, parking and walking lanes;
- 3) It should not conflict with preexisting public utility structures, especially hydrants, vault and service meters in any manner that necessitates relocation thereof at public expense or causes any other unacceptable interference, including impediments to the maintenance, relocation or repair of pipelines, conduits or substructures of any public utility;
- 4) It will not preclude public access, use or enjoyment of any area that has historically established such access, use or enjoyment;
- 5) It is not precedent-setting in nature to the extent that it creates a noticeable projection into the streetscape as established by existing construction and improvements on neighboring properties; and
- 6) It does not create structures of unusual or unacceptable appearance, form, shape or height that detract from the general quality of the streetscape.

§ 260-11: Licensee responsible for maintenance.

The licensee shall be solely responsible for the maintenance, repair, and upkeep of all structures and improvements, including landscaping, approved under a revocable license. Failure to maintain such facilities in good repair and to a reasonable prevailing standard, subject to the sole judgment of the City, may be sufficient cause for the City to order removal of such structure at the owner's expense upon 60 days' written notice.

§ 260-12: Licensee responsible for restoration.

Every licensee shall be responsible for restoring the site used pursuant to the license to its prior condition, upon the conclusion of said use or upon termination of the license, whichever occurs first. Any damage to the site or any trash, litter, or debris remaining on the site following said use shall be presumed to have been caused by the licensee, and, if the licensee fails to rebut said presumption or to repair the site or remove the materials, within five days of notice to do so, a charge may be levied upon the licensee, by the City, for the cost to remove the materials, plus an administrative surcharge of 25%.

§ 260-13: Violations and penalties.

A. Any person who violates any provision of this article shall, upon conviction thereof, be punished by a fine of not more than \$2,000. A separate offense shall be deemed committed on each day during or on which a new violation occurs or continues. The court, in its discretion, may order

the imposition of up to a maximum of 90 days of community service in addition to or as a substitute for any fine.

B. As an additional remedy, the construction or maintenance of any encroachment in violation of any provision of this chapter shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

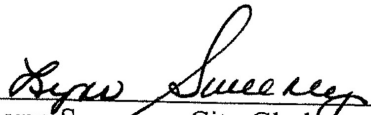
ARTICLE II. Repealer, Severability, and Effective Date.

A. Repealer. Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

B. Severability. In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the City Council hereby declares its intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the City to meet the goals of the Ordinance.

C. Effective Date. This Ordinance shall take effect upon proper passage in accordance with the law.

ATTEST:


Lynn Sweeney, City Clerk

BRIGANTINE CITY COUNCIL

Vince Sera, Mayor

Introduced: March 20, 2024

Adopted: April 3, 2024

RECORD VOTE OF COUNCIL ON FINAL PASSAGE				
COUNCIL MEMBERS	Y	N	NV	AB
SERA				✓
RIORDAN	✓			
KANE	✓			
BEW				
LETTIERI				✓
HANEY	✓			
DeLUCRY	✓			

X-INDICATES VOTE NV=NOT VOTING AB=ABSENT