

CHAPTER 6 – STREETS & PUBLIC PLACES

ARTICLE 5 - OBSTRUCTIONS ON STREETS AND PUBLIC PLACES

SECTIONS:

Sections 6-5-101 to 199, inclusive. Unlawful obstructions on streets and public places - general provisions.

Section 6-5-101. Unlawful to obstruct streets and public places.

Section 6-5-102. Unlawful to maintain building obstructing streets and public places.

Section 6-5-103. Unlawful to discharge water from roof or building upon sidewalk.

Section 6-5-104. Unlawful to leave merchandise on sidewalk - requirements and exceptions.

Section 6-5-105. Unlawful to obstruct streets and public places with awnings and signs.

Section 6-5-106. Vehicles and animals not permitted on sidewalks.

Section 6-5-107. Unlawful for railroads to obstruct streets for more than five minutes.

Section 6-5-108. Regulation of placement of news racks on public rights-of-way.

Section 6-5-109. Political candidate and election issue signs – placement and exceptions. (REPEALED)
Reference Section 12-14-101 to 199.

Section 6-5-110 to 199, inclusive. Reserved.

Section 6-5-201 to 299, inclusive. Permits required to maintain building materials and move buildings on streets and public places - general provisions.

Section 6-5-201. Permit required to maintain building materials on sidewalk, street, road or alley.

Section 6-5-202. Persons holding permits required to remove building materials and rubbish from public ways - flares required to mark building materials on public places.

Section 6-5-203. Permit required to move building on public street, road or alley.

Section 6-5-204. Amount to be deposited as a guarantee fund to protect city against loss or damage caused by persons moving buildings on a public street, road or alley.

Section 6-5-205. Issuance of building moving permit.

Section 6-5-206. Guarantee fund deposit returned to person holding building moving permit upon completion of examination of damage report by director of public works.

Section 6-5-207. Holder of building moving permit required to give notice to owners of electric, telegraph and telephone wires of intent to move building under or across wires.

Section 6-5-208 to 299, inclusive. Reserved.

Section 6-5-101 to 199, inclusive. Unlawful obstructions of streets and public places - general provisions.

Section 6-5-101 Unlawful to obstruct streets and public places.

No person shall place, leave or keep on any public street, road, alley, sidewalk or other public ground in the city any automobile, truck or other vehicle, except when the same shall be in actual use. Nor shall any person place, leave or keep on any public street, road, alley, sidewalk or other public ground in the city, any other article, substance or material which may obstruct the free use of said street, road, alley, sidewalk or public ground, except as hereinafter provided or as specifically permitted by the City Commission.

Source: R.O. Pierre, 1957, 13.0501; Ord. No. 1084, 1982.

Statutory reference: SDCL 9-30-2, public places - obstructions and encroachments.

Section 6-5-102 Unlawful to maintain building obstructing street or public places.

No person shall erect or maintain any building in such a position that the same shall stand in whole or in part upon any public street, road, alley or sidewalk in said city or so that any part of the building proper shall project into or over the street, road, alley or sidewalk; provided that jut windows, cornices, and other projections from the buildings above the first story may extend over an adjoining street, road, alley, or sidewalk but they shall not exceed eighteen inches. No person shall construct any step or other appurtenance to any building extending over or upon the sidewalk nor shall any person erect in any public street or road a flight of stairs or step leading to any floor of any building.

Provided, however, that the City Commission of the City of Pierre may, in their discretion and for good cause and upon application, grant easements permitting the use of any subsurface or overhead space by abutting owners for purposes in connection with the use and enjoyment of their premises.

Source: R.O. Pierre, 1957, 13.0507; Ord. No. 1002, 1978.

Statutory reference: SDCL 9-30-2, public places - obstructions and encroachments.

Section 6-5-103 Unlawful to discharge water from roof of building upon sidewalk.

No person shall place or maintain any pipe leading from the eaves of any building or any part of any building in such a position that the water discharged from the roof of the building will flow upon or over any public sidewalk in said City.

Source: R.O. Pierre, 1957, 13.0512.

Statutory reference: SDCL 9-30-2, public places - obstructions and encroachments.

Section 6-5-104 Unlawful to leave merchandise on sidewalk -requirements and exceptions.

It shall be lawful for any person to place on the sidewalk in front of his premises, for a period not exceeding ten hours, any goods or merchandise which he may be in the process of receiving or delivering. At no time shall such goods or merchandise occupy more than an area three feet in width on the sidewalk.

No person shall place any goods or merchandise for sale or exhibition upon any sidewalk except that for the purpose of loading or unloading, such articles may be placed upon the outer side of the sidewalk for such time as may be necessary to load or unload the same, but in no instance shall any such articles be left upon the sidewalk in the night time or in any such way as to obstruct the sidewalk.

Source: R.O. Pierre, 1957, 13.0510 and 9.0505.

Statutory references: SDCL 9-30-2, public places - obstructions and encroachments; and SDCL 9-30-4, sales in public places.

Section 6-5-105 Unlawful to obstruct streets and public places with awnings and signs.

No person shall set any post or other obstruction in the street right-of-way or alley for the purpose of fastening thereto any awning or sign, nor shall any person allow any awning to approach nearer the surface of the sidewalk than eight feet.

Provided, however, that the City Commission of the City of Pierre may, in their discretion, grant permission to erect or post signs upon application therefore by a non-profit civic group, and provided that the City Commission of the City of Pierre may, in their discretion, grant permission to erect and fasten flag holders on parking meter posts, also the placing of flags in such holders on such days as may be determined by said City Commission.

Exceptions for political signs and temporary road construction and warning signs in the public right-of-way are addressed in Section 12-14-109.

Source: R.O. Pierre, 1957, 13.0509; Ord. No. 876, 1973; Ord. No. 879, 1973; Rev. of Ord., 1990; Ord. No. 1351, 1994; Ord. 1383, 1996; Ord. No. 1451, 1999.

Section 6-5-106 Vehicles and animals not permitted on sidewalks.

No person shall ride, drive, or lead any animal upon any public sidewalk in the city or drive, operate or cause to be driven or operated, any motor vehicle upon any sidewalk except that the same may be driven across any sidewalk in entering or leaving the premises of any person if there shall be constructed a driveway across the sidewalk at the premises.

Source: R.O. Pierre, 1957, 13.0514.

Statutory references: SDCL 9-30-2, public places - obstructions and encroachment; and SDCL 9-30-4, traffic and sales in public places.

Section 6-5-107 Unlawful for railroads to obstruct streets for more than five minutes.

It shall be unlawful for any conductor, engineer or other person in charge of, or controlling any train of cars, railway cars, engine or other rolling stock of any railroad company, to permit such car or cars, engine or other rolling stock to stand or remain upon or across any street or public highway within the corporate limits of the city for a period of more than five minutes at any one time.

Source: R.O. Pierre, 1957, 13.0515.

Section 6-5-108 Regulation of placement of newsracks on public rights-of-way.

1. Purpose: The purpose of this Ordinance is to promote the public health, safety and welfare through the regulation of placement, appearance, servicing and insuring of newsracks on public rights-of-way so as to:

- a. Provide for pedestrian and driving safety and convenience;
- b. Restrict the unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into, or egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;
- c. Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes, and access to locations used for public transportation purposes;
- d. Encourage well designed and aesthetically compatible newsracks;

e. Reduce unnecessary exposure of the city to personal injury or property damage claims; and

f. Provide for and maintain the freedom of speech for newspapers or new periodicals using newsracks for distribution purposes.

2. Definition: For the purpose of this chapter, "newsracks" shall mean any type of unmanned device placed upon any public right-of-way for the vending of or free distribution of newspapers or news periodicals.

3. Permit Required: Notwithstanding any provisions of the City of Pierre Municipal Ordinances to the contrary, and subject to the provisions of this Ordinance, newsracks shall be allowed within the public right-of way in central business and local business districts as defined in the City Zoning Ordinances upon the issuance of a permit by the City Building Inspector.

4. Permit Application: An application for permit shall be filed with the City Building Inspector upon a form provided by him for that purpose and shall include the following information:

a. The name, address and telephone number of the applicant;

b. The name, address and telephone number of a responsible person whom the city may notify or contact at any time concerning the applicant's newsracks;

c. The number of newsracks, including any existing newsracks;

d. Site plan showing exact location of each newsrack and supporting or enclosing structure and sufficient information to determine that said location complies with Section 6 of this ordinance;

e. Such application shall also contain a statement that the applicant will, in consideration of being issued a permit for the use of space, agree to hold harmless the city of Pierre and the officers and employees of the city for any loss or damage arising out of the use, or the discontinuance of any use; that the applicant understands that the use of the space is to be temporary, on a day-to-day basis; that the applicant shall not acquire any right, title or interest in such space; that the applicant may be required by the city at any time to vacate all or any part of the space, the applicant has been given permission to use; that upon demand to vacate such space, the applicant will promptly remove any personal property placed thereon by such applicant, or reimburse the city for the cost of moving such property; and that the applicant shall have no recourse against either the city or its officers or agents, either for any loss or damage occasioned by the applicant being required to vacate all or part of the space which the applicant has been granted permission to use.

5. Maintenance of Newsracks:

- a. The applicant shall be responsible for any damage or repairs caused by the removal or installation of the newsracks;
- b. All installations shall be under the supervision of the City Building Inspector;
- c. Newsracks shall be maintained in good condition;
- d. The name, address and telephone number of a responsible party who may be contacted at any time concerning the newsrack shall be displayed on the hood of the newsrack in such manner as to be readily visible and readable to a prospective customer thereof;
- e. Each newsrack shall be maintained in accordance with the terms of this ordinance and the approved permit.

6. Placement of newsracks:

- a. Newsracks on public rights-of-way shall only be placed either (1) not more than one foot back from the face of the curb, or (2) not more than six inches from a public utility pole or a traffic sign pole located near the curb, or (3) parallel to the wall of a building and not more than six inches from the wall. Newsracks placed near the curb shall be placed so that the opening through which newspapers or news periodicals are dispensed does not face the curb line;
- b. No newsrack shall be located (1) within five feet of any fire hydrant, fire or police alarm box or other emergency facility; (2) within five feet of a display window or building entrance; (3) within two feet of any marked cross-walk or any driveway or alley; (4) on any handicapped access ramps; (5) in such a manner as to reduce the clear space for the passageway of pedestrians on sidewalks to a continuous and unobstructed width of less than eight feet; (6) at a street corner within the area bounded by the extension of the property lines;
- c. No newsrack shall be placed where it would unreasonably obstruct the rights of travel which the general public has on any public property or would unreasonably interfere with or impede the flow of pedestrian or vehicular traffic.

7. Size of news racks: No newsrack shall exceed (1) a height of four and one-half feet measured from the surface of the sidewalk or ground; (2) a depth of two feet; and (3) a length of two and one-half feet.

8. Insurance: The applicant shall at all times maintain a policy of liability insurance in a minimum amount of three hundred thousand dollars (\$300,000.00) for the injury or death of any number of persons per occurrence, and one hundred thousand dollars (\$100,000.00) for property damage per occurrence. Such coverage will name the City of Pierre as an additional insured. All such policies and certificates of insurance shall be issued by companies authorized to do business in the State of South Dakota and shall be approved as to form by the city attorney before the commencement of such use and shall provide that it cannot be cancelled until ten (10)

days written notice of such cancellation shall have been filed with the city finance officer. Any termination or lapse of such insurance will automatically revoke any permit issued pursuant to this ordinance.

9. Expiration and Renewal: All permits shall expire on the 31st day of December following issuance. After the initial approval of a permit by the Building Inspector for a specific location, renewal of such permits shall be made for one year by application to the Building Inspector. The permit fee shall be \$10.00 per permittee for each year or part thereof.

10. Revocation Hearing: If at any time it is determined by the City Building Inspector that any newsrack for which a permit has been issued, is not in compliance with the requirements of this chapter, a "notice of intent to revoke" the permit shall be issued, in writing, to the permittee. Said notice shall set forth the violation or violations which constitute the basis of said proposed revocation. Said notice shall contain the date, time and place for which a hearing before the Pierre City Commission is to be had on such charges, said hearing to be held not less than ten (10) days from the time of service of said notice. The permittee may, prior to said hearing, file a written response to said notice specifically setting forth the reason or reasons said permit should not be revoked; or in the alternative, the permittee shall cause said violation or violations to be corrected. If at such hearing, the Pierre City Commission shall determine that the violations as charged are true and accurate and that the permittee has not caused said violation or violations to be corrected, or if the permittee fails to appear at said hearing and can present no justifiable excuse for said nonappearance, a "notice of revocation" shall issue. If however, said violation or violations have been corrected, as evidenced by a verified statement of correction by the permittee and upon inspection by the City Building Inspector, no "notice of revocation" shall issue.

11. Impoundment of Newsracks: The City Building Inspector may cause any newsrack to be impounded under the following circumstances:

- a. Where its installation, use, or maintenance endangers the safety of persons or property;
- b. Where its installation, use, or maintenance unreasonably interferes with or impedes the flow of vehicular or pedestrian traffic;
- c. Where it has been installed without a valid permit;
- d. Where the permit has been revoked pursuant to Section 10 of this ordinance.

Whenever any newsrack is impounded, except when the permit has been previously revoked pursuant to Section 10 of this ordinance, a hearing shall be held pursuant to Section 10. The owner of any validly impounded newsrack shall be responsible for the expense of removal and storage of said newsrack. Should the newsrack fail to be claimed or the owner fail to pay any money due the city, such newsrack shall be deemed to be unclaimed property and may be disposed of pursuant to law.

12. City Building Inspector Enforcing Officer: It shall be the duty of the City Building Inspector to enforce the provisions of this chapter. Each day's continuance of a violation shall be considered a separate offense.

13. Validity of Ordinance and continuation: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Commission hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases hereof be declared invalid or unconstitutional.

Source: Ord. No. 1255, 1990, Rev. of Ord., 1990.

Section 6-5-109 Political candidate and election issue signs placement and exceptions. (REPEALED) Reference Section 12-14-101 to 199.

Source: Ord. No. 1383, 1996; Ord. No. 1451, 1999.

Statutory reference: SDCL 9-30-2, public places – obstruction and encroachments.

Sections 6-5-110 to 199, inclusive. Reserved.

Sections 6-5-201 to 299, inclusive. Permits required to maintain building materials and move buildings on streets and public places - general provisions.

Section 6-5-201 Permit required to maintain building materials on sidewalk, street, road or alley.

The Board of Commissioners is authorized to grant permission in writing to any person to deposit and keep lumber, stone, brick or other building materials in any public sidewalk, street, road or alley adjacent to the building to be erected or repaired, but such permission shall not excuse the obstruction or occupancy of more than an area one-third the width of any sidewalk, street, road or alley.

Source: R.O. Pierre, 1957, 13.0502.

Section 6-5-202 Persons holding permits required to remove building materials and rubbish from public ways - flares required to mark building materials on public ways.

Every person to whom permission may be granted to place and keep building materials in the street, road or alley shall cause such material and the rubbish resulting therefrom to be removed from

such sidewalk, street, road or alley at the expiration of the time granted in the permit, unless the time shall be extended by the Board of Commissioners. Any person depositing and keeping any building material on such sidewalk or in such street, road or alley under a permit from the Commission shall keep one or more lighted flares so placed that such material may be easily seen by persons passing along such public ways.

Source: R.O. Pierre, 1957, 13.0503.

Statutory reference: SDCL 9-30-2, public places - obstructions and encroachments.

Sections 6-5-203 Permit required to move building on public street, road or alley.

Anyone desiring to move any building on any public street, road or alley within the city shall first apply in writing for permission to do so at the office of commissioner of streets and public property fully stating the name of the applicant, the name of the owner of the building, the description of the lot on which such building is standing and the lot to which it is to be moved, the street along which it is proposed to move such building, the time when such removal will take place and the size of the building. The application shall be accompanied by the sum of at least one hundred dollars (\$100.00) to be deposited with the city finance officer as a guarantee fund to protect the city against loss or damage to crossings, sidewalks or other public or private property or to pay the expense of protecting such property against the injuries that may be caused by the removal of the building. The deposit or the balance thereof, after deducting the amount of damages or expenses, if any, caused by such removal shall be returned to the person depositing the same.

Sources: R.O. Pierre, 1957, 13.0517; Rev. of Ord., 1990.

Statutory reference: SDCL 9-30-2, public places - obstructions and encroachments; and SDCL 9-30-4, traffic and sales in public places.

Section 6-5-204 Amount to be deposited as a guarantee fund to protect city against loss or damage caused by persons moving buildings on a public street, road or alley.

Whenever the Director of Public Works shall decide from an examination of the application and from such other information as he may obtain, that the sum of one hundred dollars (\$100.00) is not sufficient as a guarantee fund for ample protection of the city against the damages and expenses that may be caused by the removal of such building, it shall be his duty to require a deposit of a larger sum.

Source: R.O. Pierre, 1957, 13.0518, Rev. of Ord., 1990.

Section 6-5-205 Issuance of Building Moving Permit.

Upon deposit of the guarantee fund with the finance officer, the city building inspector shall issue to the applicant a permit in writing for the moving of such building on the streets, roads or alleys as designated by the Director of Public Works.

Source: R.O. Pierre, 1957, 13.0519; Rev.of Ord., 1990.

Section 6-5-206 Guarantee fund deposit returned to person holding building moving permit upon completion of examination of damage report by Director of Public Works.

Prior to refunding the guarantee fund or any part thereof, it shall be the duty of the Director of Public Works to pay out of said fund or set aside the amount claimed or ascertained as damages for injuries to public or private property, including the expenses for electric, cable T.V. and telephone wires caused or occasioned by the removal of such building.

Source: R.O. Pierre, 1957, 13.0520; Rev. of Ord., 1990.

Section 6-5-207 Holder of building moving permit required to give notice to owners of electric, cable T.V. and telephone wires of intent to move building under or across wires.

If a building moving permit designates streets, roads or alleys on which are located electric, cable T.V. or telephone wires, it shall be the duty of the holder to notify in writing the resident manager or managing agent or officer of the public service corporation or other owner of said wires at least twenty-four hours before the commencement of such work of his intent to move a building under or across such wires and of the approximate time for doing the same.

Source: R.O. Pierre, 1957, 13.0521; Rev. of Ord., 1990.

Sections 6-5-208 to 299, inclusive. Reserved.