

6.17 Closures of Public Rights of Way

(1) **Definitions.** In this Section, the following terms have these meanings:

- (a) Applicant means an owner or tenant of a parcel of real property adjacent to a Public Right of Way; the City or City departments; educational institutions within the City of Waukesha; or the Common Council member representing the district in which the Closure will take place, who submits an application under this Section, ~~for a permit to close that adjacent Public Right of Way.~~ Individuals or entities that are not owners or tenants of parcels of real property adjacent to a Public Right of Way, the City or City departments, or educational institutions in the City of Waukesha may only obtain a Closure permit under this Section by having the Common Council member representing the district in which the Closure is desired make the application. Common Council members are not required to make such applications, and may refuse to do so.
- (b) Arterial means a Public Right of Way that is designated as an Arterial by the Fire Department, Police Department and Public Works Department, as a main route for emergency vehicles across the City.
- (c) Block means the distance between intersections on a City street, or ~~125-200~~ yards, whichever is shorter.
- (d) Closure means the partial or complete barricading or occupation of a specified area of a Public Right of Way, or the placement of immobile or stationary physical objects in a Public Right of Way, such that it is not available for its normal use for vehicle traffic. ~~For purposes of this Section,~~ Closure does not include such activities done by the City, and does not include closures of pedestrian or recreational trail crossings.
- (e) Partial Closure means a closure of a Public Right of Way that still allows vehicle traffic to pass; for example, the closure of only a parking lane, or the closure of only one driving lane where there are multiple driving lanes in that direction.
- (f) Permitted Closure means a Closure for any of the following reasons:
 - (i) Parades and Demonstrations, as defined in Municipal Code §6.16.
 - (ii) Special Events, as defined in Municipal Code §6.18.
 - (iii) Uses by ~~public elementary, middle, or high schools~~ educational institutions within the City of Waukesha.
- (g) Public Right of Way means all public rights of way identified by the Department of Public Works as such, and ~~also~~ includes for purposes of this Section public streets, sidewalks, parking lots, ~~pedestrian paths, bicycle paths,~~ and similar City vehicle ways over which the public has a right to travel. For purposes of this Section, Public Right of Way does not include recreational trails and paths designated for pedestrian and bicycle use only.
- (h) Section means this Municipal Code §6.17.
- (i) Street Uses Panel means an *ad hoc* panel consisting of the City Administrator, the Common Council President, and the alderman of the district in which the Closure will take place. If the Common Council President is the alderman of that district, then an alderman from an adjacent district shall be designated by the Mayor and also be included in the panel.

- (2) **Purpose and Applicability.** Public Rights of Way are held by the City in trust for the public. The City has a duty to maintain Public Rights of Way for their intended purposes as ways for vehicle and pedestrian traffic. However, the City may authorize the temporary Closure of Public Rights of Way, subject to reasonable regulation and control. The purpose of this Section is to provide for certain Permitted Closures of Public Rights of Way, and the regulation of activities within closed Public Rights of Way for the safety and well-being of participants and the public. Closure of Public Rights of Way is not a right of citizens, and the City may refuse to issue a permit, revoke an issued permit, or otherwise pre-empt the rights of any other party to close or use any Public Right of Way, for reasons of public purpose. The City may close streets at any time in its sole discretion without complying with this Section. Closure of Public Rights of Way pursuant to this Section is not required for Parades and Demonstrations taking place under Municipal Code §6.16, however, if the organizers of a Parade or Demonstration desire a Closure of a Public Right of Way in conjunction with their Parade or Demonstration, then the requirements of this Section must be met. This Section does not apply to block parties under Municipal Code §6.185, street excavations under Municipal Code §6.03, ~~or~~ storage of construction materials and equipment under Municipal Code §6.14, or closures of Public Rights of Way within properties under the jurisdiction of the Department of Parks, Recreation and Forestry.
- (3) **General Rules.**
- (a) No Closure of a Public Right of Way shall take place unless a permit is first issued under this Section or the closure is authorized by other applicable law.
 - (b) Permits shall be issued only to Applicants, as defined in subsection (1)(a) and only for Closure of Public Rights of Way adjacent to properties of which the Applicants are owners or tenants.
 - (c) Permits shall be issued only for Permitted Closures, as defined in subsection (1)(f). If permits required for the events associated with the Permitted Closures are not obtained by Applicants, then the Closure application may be denied or already-granted permits may be revoked.
 - ~~(d) Permits for Closures are not exclusive, all closed Public Rights of Way shall remain open to the public at all times. Closures are to vehicle traffic only.~~
- (4) **Application for Permit.** Applications shall be made on forms provided by, and shall be submitted to, the City Clerk. Only one application shall be submitted per requested Closure area, regardless of the number of days on which Closures are requested by the Applicant. ~~The application and~~ shall contain at least the following information:
- (a) The names, addresses and telephone numbers of the Applicant requesting the Closure.
 - (b) The date, time and duration of the requested Closure.
 - (c) The location of the requested Closure.
 - (d) The purpose of the Closure, with a detailed description of the event for which the Closure is requested, including the expected number of participants and attendees, and whether the activities will involve vehicles or animals.
 - (e) Any other information reasonably requested on the application form.
- (5) **Timing of Applications.** Applications for Closures shall be filed no earlier than 420-270 days before the date of the planned Closure, and no later than 35 days before the date of the planned

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Closure. Applications may not be amended after filing. Applications will be processed in the order in which they are received.

- (6) **Fees.** The Fee for filing an application shall be \$50 per block or portion of blocks to be closed, or per parking lot to be closed, up to a maximum of \$350.00 [alternative: The Fee for filing an application shall be \$50, or \$150 if more than 7 blocks of street are to be closed]. Fees shall be paid at the time of filing of applications. Fees shall not be refundable, except that half of fees paid shall be refundable if the City denies an application, or revokes an issued permit without cause. The retained portion shall be an administrative fee for review of the application.
- (7) **Distribution of Application, Recommendations of Departments.** Copies of Applications submitted to the City pursuant to subsection (4) shall immediately be distributed to the Police Department, the Fire Department, the Department of Public Works, the Department of Parks, Recreation and Forestry, Waukesha Metro Transit, the Buildings and Grounds Committee (if the application is for Closure of a parking lot), and the City Attorney; and the departments and committee shall respond within 10 days in writing to the City Clerk and the City Attorney, indicating their approval of the Application or their bases for denial as listed in subsection (8). Recommendations for denial shall describe the bases for denial in reasonable detail, and shall describe possible alternatives or conditions which, if adopted by the Applicant, would remove the bases for denial.
- (8) **Standards for Department Recommendations.** Departments to which the Application is distributed may recommend denial for the following reasons:
 - (a) In the determination of the Police Department, at the time and place of the Closure indicated in the application there will not be a sufficient number of officers available to control traffic and provide security and protection for persons in and near the Closure, considering the nature of the activities to be held within the Closure area and other demands for police protection at the proposed time and location of the Closure.
 - (b) In the determination of the Buildings and Grounds Committee, Police Department, Fire Department, Department of Public Works, Department of Parks, Recreation and Forestry, or Waukesha Metro Transit, the size, place or time of the Closure indicated in the application will substantially and unnecessarily interfere with traffic in the area of the Closure or will substantially and unnecessarily interfere with City-conducted activities, and there are no reasonable alternatives or conditions that could be placed on the Closure to mitigate the interference.
 - (c) In the determination of the Fire Department, the Closure, as described in the application, would substantially and unnecessarily interfere with adequate fire or ambulance service in the area of the City near the Closure.
 - (d) In the determination of the Department of Public Works ~~or the Buildings and Grounds Committee~~, the area for which a Closure application is made will be under construction or repair, or that the Closure will substantially and unnecessarily interfere with repairs, construction or other City work in areas near the Closure.
 - (e) Any other reason rationally related to an articulated, legitimate public purpose.
- (9) **Public Notice and Opportunity for Objection.** Notice of the filing of applications shall be posted immediately upon their receipt on the City's web site and on the notices bulletin board at City Hall. Owners and tenants of properties adjacent to the Public Rights of Way proposed to be closed may file their written objections to the closure within 7 days of the posting of the notice. If objection is

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made, then the objection shall be referred to the Street Uses Panel, which shall conduct an investigation and shall determine whether the closure would be an unreasonable interference with the rights of the objecting parties. If the Street Uses Panel finds that the closure would be an unreasonable interference, then it shall recommend conditions to the closure to mitigate the interference. The Street Uses Panel may only recommend denial of the application if it finds that there are no reasonable conditions which would sufficiently mitigate the interference. The Street Closure Panel shall make its recommendation to the City Clerk either to deny the application, approve the application, or approve the application with conditions, within 5 days of the filing of the objection.

(10) City Clerk Action. The City Clerk shall act upon applications no later than 14 days after the filing of the applications, as follows:

- (a) The City Clerk shall deny the application if any of the following occur:
 - (i) If the Application is incomplete or is not accompanied by the required fees.
 - (ii) If the Application indicates that the Closure would be in violation of any part of subsection (11) of this Section.
 - (iii) If the reason for the Closure is not a Permitted Closure.
 - (iv) If there is a previously-issued permit for simultaneous closure of any of the Public Rights of Way that are the subject of the application.
- (b) If the City Clerk does not deny the application under subsection (10)(a), then the City Clerk shall further act on the application as follows:
 - (i) If any City department to which an application is distributed or the Street Uses Panel recommends denial of the application, then the City Clerk shall deny the application.
 - (ii) If all City departments to which an application is distributed and the Street Uses Panel, if necessary, approve the application without conditions, then the City Clerk shall approve the application and issue the permit.
 - (iii) If any City department to which an application is distributed or the Street Uses Panel recommends approval of the application with conditions, and no departments or the Street Uses Panel recommend denial of the application, then the City Clerk shall approve the application and issue the permit subject to the recommended conditions.
- ~~(c) The City Clerk shall notify the applicant of the action taken in writing within 3 business days of the action.~~

(11) Notice of Action, Conditions and Alternatives. The City Clerk shall notify Applicant in writing of the action taken on the application within 3 days of the action. Notifications shall be delivered to Applicant by email at the email address shown on the application or by first-class US Mail to the address shown on the application. Denials of applications shall explain the bases for denial in sufficient detail for the Applicant to evaluate possible revisions, alternatives or conditions that would address the bases for denial, and the Applicant shall be given the opportunity to revise the application to include such revisions, alternatives and conditions, and to re-submit the application. Denials of re-submitted applications shall be done similarly, and Applicants may revise and re-submit as many times as they wish to.

~~(11)~~(12) **Notification of Permit Issuance to Residents and Common Council Member.** The City Clerk shall notify the Common Council member representing the district in which permitted Closures are to take place of the issuance of permits, promptly after issuance. Applicants shall deliver written notice of the Closure to all property owners and tenants adjacent to the Public Right of Way being closed, within 3 days of issuance of permits.

~~(12)~~(13) **Appeal of Denial.** An Applicant may appeal a denial of an application by filing a written notice of appeal with the City Clerk, no later than 5 business days after the date the written denial is delivered to the Applicant, which shall be determined by the postmark, if notice is delivered by US Mail, or by the date of the email, if notice is delivered by email. If an appeal is not so filed within the stated time period, then the denial shall be final. The appeal shall be conducted by the Mayor or the Mayor's designee, who shall hold a hearing within 5 business days of receipt of the notice of appeal by the City Clerk, and either affirm or reverse the denial. The decision of the Mayor or the Mayor's designee shall be appealable to circuit court by certiorari. If an appeal hearing is not held by the Mayor or Mayor's designee within 5 business days of receipt of the notice of appeal by the City Clerk, then the Application shall be deemed approved, and a permit shall be issued.

~~(13)~~(14) **Additional Regulations.** Closures of Public Rights of Way are subject to the following regulations:

- (a) Closures may not take place between the hours of 10:00 p.m. and 6:00 a.m.
- (b) Arterials shall not be closed, unless specifically approved by the Police Department, Fire Department and Public Works Department.
- (c) Closures are at all times subject to cancellation or modification due to emergencies, in the City's sole discretion.
- (d) A path of at least 15 feet in width, having no obstacles within it other than pedestrians, must be maintained through closed areas at all times, to allow for passage of emergency vehicles.
- (e) Closures, and all activities and participants within closed areas, are at all times subject to the direction and orders of police.
- (f) Organizers and participants shall comply with the direction of police officers controlling traffic and security.
- (g) Closures are not exclusive, all closed Public Rights of Way shall remain open to the public at all times. Closures are to vehicle traffic only.
- (h) Closures may not take place, and shall be terminated if already underway, if an emergency requires that police officers required for traffic controlling and security respond and leave the site of the Closure, such that there remains inadequate traffic control or security, in the City's sole discretion.

~~(14)~~(15) **Penalty.** Any person violating any of the provisions of this Section or a permit issued hereunder shall be subject to forfeiture as provided by Municipal Code §25.05.