

ORDINANCE NO.: 2019-085

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 11, Licenses, Permits and Miscellaneous Business Regulations, Article II, Contractors, Sec. 11-71, Permit, indemnification and insurance requirements for work affecting streets or other public property to add (e) Outdoor dining encroachments

BE IT ORDAINED by the Mayor and Council this 3rd day of December, 2019 that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 11, Licenses, Permits and Miscellaneous Business Regulations, Article II, Contractors, Sec. 11-71 Permit, indemnification and insurance requirements for work affecting streets or other public property is amended to add (e) Outdoor dining encroachments, to read as follows:

Sec. 11-71. Permit, indemnification and insurance requirements for work affecting streets or other public property.

(a) *Permit required; indemnification of city.* Any person who proposes to perform any activity which requires excavation, encroachment, the possibility of encroachment, or temporary use or disruption of any street, easement, public right-of-way or other property owned by or under the control of the city shall be required to obtain a permit before conducting such activity. As a condition for the issuance of such permit, the permittee shall be required to indemnify the city and its agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the permitted activity, whether such activity is conducted by the permittee or its agents, employees, contractors or subcontractors, and to comply with the requirements of subsection (b) of this section.

(b) *Liability insurance.*

(1) To ensure the indemnification required by subsection (a) of this section, each permittee, except utility companies regulated by the state public service commission, shall provide the city, prior to the issuance of any permit, proof of liability insurance as follows:

a. An owner's and contractor's protective liability policy issued in the name of the owner for whom the activity is to be performed, with the city named as an additional insured, in an amount not less than \$300,000.00 per occurrence limit for bodily injury, personal injury and property damage, with an aggregate liability not less than \$600,000.00 (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form) applicable to such policy;) and

b. A separate general liability policy naming the contractor or other person who will be performing the activity as insured and also naming the city as an additional insured in an amount not less than \$300,000.00 per occurrence and \$600,000.00 aggregate limit for bodily injury, personal injury and property damage. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy.)

(2) An applicant for a permit may elect not to provide an owner's and contractor's protective liability policy as required by subsection (b)(1)a of this section, but if such election is made the limits of liability required on the general liability policy required by subsection (b)(1)b of this section shall be no less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate limit for bodily injury, personal injury and property damage.

(3) An applicant for a permit may further elect not to provide any proof of liability insurance to the city as required by subsection (b)(1) or (2) of this section, but if such election is made an indemnity surety bond in an amount not less than \$4,000,000.00 and approved as to surety and form by the city attorney shall be filed in lieu of the required insurance.

(4) Any insurance policy provided to the city in satisfaction of the requirements of this subsection (b) shall specifically provide that the insurer provide written notice to the city at least 30 days prior to cancellation, termination or modification of the coverage provided to the city.

(5) If it appears that the proposed activity poses unusual hazard or danger to the public, the city manager may require such additional amounts of insurance coverage as he shall deem appropriate.

(6) The insurance requirements of this section shall supersede all other such provisions in this Code.

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(c) *Contractors working for city.*

(1) Contractors performing construction, maintenance or repair work for the city are required to provide proof of liability insurance as follows:

a. An owner's and contractor's protective liability policy issued in the name of the city, in an amount not less than \$2,000,000.00 per occurrence limit for bodily injury, personal injury and property damage, with an aggregate liability not less than \$2,000,000.00. (Coverage shall be at least as broad as provided for in the most current version of the insurance services office form applicable to such policy);

b. A separate general liability policy naming the contractor or other person who will be performing the activity as insured and also naming the city as an additional insured in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate limit for bodily injury, personal injury, property damage and products completed operations. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy); and

c. An excess liability policy naming the contractor or other person who will be performing the activity as insured and also naming the city as an additional insured in an amount not less than \$2,000,000.00 for bodily injury, personal injury, property damage and products completed operations. (Coverage shall be at least as broad as provided for in the most current version of the Insurance Services Office Form applicable to such policy.)

(2) Any insurance policy provided to the city in satisfaction of the requirements of this subsection (c) shall specifically provide that the insurer provide written notice to the city at least 30 days prior to cancellation, termination or modification of the coverage provided to the city.

(3) The city manager, or his designee, may require such additional amounts of insurance coverage as he shall deem appropriate under the particular circumstances of the construction, maintenance or repair work to be performed.

(4) Contractors are also required to comply with any other or additional indemnification or insurance requirements as may be stated in the bid documents or their contract with the city.

(d) *Continuing encroachments.* Continuing encroachments into, over or under the streets, rights-of-way or other property owned or controlled by the city shall be authorized only by ordinance duly enacted by the city council. Insurance and indemnification requirements for such continuing encroachments shall be as specified in each authorizing ordinance; provided, however, that for encroachments granted by ordinance prior to December 1, 1987, each such ordinance is hereby amended to require proof of continuous general liability insurance naming the city as an additional insured in an amount not less than \$600,000.00 per occurrence.

(e) *Outdoor dining encroachments.* The city manager is authorized to approve outdoor dining encroachments as set out by the policy and procedures for outdoor dining as adopted by City Council.

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 11/25/2019

Final Reading: 12/3/2019