

0006.900000
WSS/gjz
10/16/09
R:11/17/09gjz
R:2/4/10gjz
R:2/9/10 gjz
R:3/9/10gjz

ORDINANCE NO. 3790

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 18.70 RELATING TO STREET USE AND ENCROACHMENT PERMITS TO PROVIDE CHANGES AND CLARIFICATIONS REGARDING THE ISSUANCE OF PERMITS AS THEY RELATE TO OUTDOOR DINING AND ARTWORK IN THE PUBLIC RIGHT OF WAY, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, in an effort to develop and encourage tourism, enliven the streetscape of Edmonds and provide for business development within the downtown area, the City of Edmonds has enacted provisions relating to outdoor dining, and private and public artwork installed in the right of way; and

WHEREAS, legitimate concerns have been raised regarding the use of the public right of way; and

WHEREAS, the City Council deems it to be in the public interest to clarify the provisions relating to outdoor dining in order to ensure that public sidewalks remain open and available for foot traffic, their primary purpose and that adequate compensation is received; and

WHEREAS, the streetscape can also be enhanced by private and public art within the right of way, so long as the artwork does not impair the public's use of the right of way for travel, by foot, bicycle and motor vehicle, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN

AS FOLLOWS:

Section 1. Chapter 18.70 Street use and encroachment permits is hereby repealed and reenacted to read as follows:

Chapter 18.70
STREET USE AND ENCROACHMENT PERMITS

18.70.000 Permits required.

18.70.010 Exemptions.

18.70.020 Applications.

18.70.030 Review.

18.70.040 Revocation.

18.70.050 Fees.

18.70.000 Permits required.

No person shall use or encroach upon any public place without obtaining a permit from the Development Services Director or City Engineer.

A. Encroachment Permit. An Encroachment Permit is required to encroach upon any portion of City public space, right-of-way or easement area with permanent structures. To encroach means to construct, erect or maintain in, over or under any public place, right-of-way, easement, roadway, parking strip and/or sidewalk, including the airspace above them, any structures permanent in nature, including but not limited to, building extension, marquee, fence, retaining wall, artwork, or any other building or structure.

B. Street Use Permit. A Street Use permit is required to use any portion of public space or city right-of-way for objects which are temporary in nature.

1. To "use" means to place or maintain in, over or under any public place, right-of-way, roadway, parking strip and/or sidewalk, including the air space above them, any temporary or movable object.

2. "Temporary in nature", in reference to street use permits, means not having or requiring permanent attachment to the ground, or involving structures which have no required permanent attachment to the ground.

3. "Temporary object" for the purposes of this chapter

refers to all objects placed in the right of way that are temporary in nature including but not limited to chairs, tables, planters, sandwich boards, benches, stanchions, rope, and fencing.

None of the above definitions shall be interpreted to prohibit the parking of a properly licensed vehicle within the parking strip adjacent to their property line of sight, and street plantings.

18.70.010 Exemptions.

This chapter shall not apply to:

A. Any noncommercial use (such as residential, churches, schools, etc.) in areas zoned residential, which does not involve a building or structure. This exemption shall not be construed to grant any vested right of use or to permit the continuation of such use and such uses are hereby deemed and declared to be permissive and shall be promptly removed upon the order of the City of Edmonds.

B. Installation of fences across City utility easements, if the City's easement is not for vehicular access and a point of access (e.g. gate) is provided to allow the City a point of entry to the easement area. Fences shall be permitted in accordance with this chapter and the provisions of this code prior to their installation.

18.70.020 Applications.

Applications for Street Use or Encroachment permits shall contain, in addition to the information required under any other applicable city code, the following information:

A. Street Use Permit.

1. Architectural Design Board approval, when applicable.
2. Complete application requirements for Edmonds Art Commission, when applicable.
3. Certificate of insurance.
4. Complete Street Use permit application.

B. Encroachment Permit.

1. Critical Areas determination, when applicable.

2. Complete application requirements for Edmonds Art Commission, when applicable.
3. Architectural Design Board approval, when applicable.
4. Partial site plan, to be recorded with Snohomish County, clearly showing proposed encroachment, private property lines, all existing structures and driveways, easements and/or public property (developed or undeveloped).
5. Legal Description, including copies of all recorded easements on the property.
6. Elevation view or side view of the proposed encroachment.
7. Ownership. Evidence showing the applicant to be the agent record owner of the property immediately adjoining the public place or right-of-way. An application to place art work in the public right of way will be exempt from this requirement.
8. Certificate of insurance.
9. Complete Encroachment Permit application.
10. Complete Encroachment Agreement, to be recorded with Snohomish County.

C. Such other information as the City Engineer or designee of the Development Services Director shall require.

D. The Encroachment Agreement shall require prompt removal of the encroachment by the applicant at his/her/its expense upon reasonable demand by the City Engineer and be legally adequate for recording in the land records of Snohomish County and the chain of title of the applicant's property. Such encroachment agreements may be executed as acknowledged on behalf of the City by the City Engineer and recorded by the City Clerk following approval as to form by the City Attorney.

18.70.030 Review.

A. Architectural Design Board. Any application for a permit to construct, erect or maintain an awning, marquee, sign or any structure in a public place may be referred by the Development

Services Director or his/her designee to the Architectural Design Board. If referred to the board, the board shall review the plans and specifications as they relate to Chapter 20.10 ECDC.

Applications for mobile street vending units shall be reviewed in accordance with ECC 4.12.055 by the Architectural Design Board.

B. Edmonds Arts Commission. Applications for an Encroachment permit or a Street Use Permit to install art in the public right of way shall be subject to the review and recommendation of the Edmonds Arts Commission. No art shall be permitted in the public right of way except as expressly permitted herein. Artwork that is reviewed under an Encroachment permit shall be exempt of the requirements of Chapter 18.70.020 B sections 5, 6, 7 and 10.

1. The terms "art" or "art work" as used in this section shall refer only to a work of visual art existing in a single copy or in multiple copies of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author.
2. The terms "art" or art work" do not include:
 - a. Any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
 - b. Any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container.
 - c. Architectural details such as masonry, ironwork, or other building fixtures or materials;
 - d. Any portion or part of any item described in subparagraphs (A), (B) or (C);
 - e. Any work not subject to copyright protection under the Visual Artists Rights Act, as codified under federal copyright law, Title 17, as the same exists or is hereafter amended.
3. An Encroachment permit or Street Use permit requires determination of public benefit. The Edmonds Arts Commission (EAC) is mandated in Chapter 10.20 ECC to advise the City on matters pertaining to art. When the proposed encroachment or street use is art, EAC will review and make written recommendations to the

Community Services Director and City Engineer for use and consideration in permit issuance. (See C below.)

4. The public right of way is a traditional forum for public expression. By this permit program the City acknowledges that it is approving uses in a limited public forum. Art, like other exercises of First Amendment rights, may be limited by reasonable time, place and manner restrictions. In this case, these criteria will be utilized to protect the safety of the public who use the right of way for pedestrian or vehicular traffic and to insure that the City provides for accessibility for the disabled. No recommendation or denial shall be based upon the content or message expressed by an artist or in a work of art as long as there is no commercial content. Applicants are encouraged to coordinate their artwork with the design of the building and the historic and pedestrian oriented character of the downtown area.

5. Specific submission requirements for EAC review include, but are not limited to:

- a. Site plan sketch showing locations of artwork;
- b. Minimum 1/4 inch scale rendering of the art concept or art component, including at least one elevation showing the art in context or comparable photographs of actual artwork in context;
- c.. Material/color samples;
- d. Model (optional);
- e. Written proposal: 7 copies of a written proposal in 8 1/2 x 11 inch format to include:

- A description and summary of a final design proposal for the artwork for the proposed project;
- Detailed maintenance requirements;
- Schedule for development, fabrication, and completion;
- Artists' resume/background
- Evidence of assumption of liability by applicant or designee;

For proposal to be reviewed at next scheduled EAC meeting, a complete submission of all requirements must be received a minimum of 10 days prior to the date of the meeting

Additional requirements may be requested based on staff input or information sought by EAC members.

6. Review Criteria.

Art in public places may be art standing alone, modifiers or definers of space, functional, or used to establish identity. The use of art as an integral part of the structure and function of building is encouraged e.g. the interpretation of light fixtures, benches, hardware, doors, surface finishes, walkways, gates, and other features with the artwork or as a part of the artwork, although only some of these elements would occur in the public right of way.

The criteria for review of Encroachment or Street Use Review artwork submissions are as follows:

- a. Constructability of proposed artwork. No artwork shall impair disabled accessibility and barrier free design requirements.
- b. Artist's credentials and recognition.
- c. Durability and craftsmanship in fabrication and production quality - quality of the work is a high priority.
- d. Due consideration shall be given to the structural and surface soundness of artworks, and to their permanence, including ability to withstand age, theft, vandalism, weathering, and maintenance and possible related repair costs. Careful consideration shall be given to the materials used and the appropriateness of those materials for the conditions of the site.
- e. Coordination of the artwork with the design of the building and the historic and pedestrian oriented character of the downtown area is encouraged.
- f. Maintenance/conservation plan.
- g. Relationship to other existing artwork in vicinity.
- h. No commercial content - artwork shall not be used as signage (see definition of

signage).

C. Issuance by the Development Services Director or City Engineer. The Development Services Director, City Engineer or their respective designee, may administratively, without hearing, approve a Street Use or Encroachment permit if:

1. The proposed use shall not interfere with vehicular or pedestrian traffic, including but not limited to the following requirements:

a. No portion of the public right-of-way designed and intended for vehicular traffic or parking shall be permanently occupied;

b. Requirements of the State Building Code, including but not limited to all provisions relating to disabled accessibility and barrier-free design requirements shall be met;

c. Any mobile vending units shall be properly licensed pursuant to Chapter 4.12 ECC;

d. Permit application fees have been paid. (see section 18.70.050 of this chapter);

e. A "Clear Zone" must be maintained on public sidewalks or walkways. A Clear Zone refers to an area 7 feet in height and 5 feet in width providing a level, safe walking surface along the public sidewalk. Clear zone on sidewalks shall not include any curbing, planting strips or ramps. For tables and chairs placed in the public right of way, the Clear Zone can be reduced to 4 feet in width in front of obstacles (trees, street lights, sign posts, etc).

f. All temporary objects shall be removed from the right of way on twenty four hours notice to accommodate public events. Temporary objects are subject to removal in the event of an emergency; and

g. All temporary objects, excluding approved awnings and wall signs, that project more than 36 inches into the right of way shall be removed each day at the close of business.

2. Exclusive Bistro and Outdoor Dining. In an effort to enhance street life of the city and serve both an economic development purpose as well as enhance the livability of the City's urban core, Exclusive Bistro and Outdoor Dining shall be allowed pursuant to ECDC 17.70.040.

a. For purposes of this section the following terms are defined as;

i. "Exclusive Bistro and Outdoor Dining" shall refer to a properly zoned and licensed food or beverage service establishment that uses the public right of way to serve only its customers at the exclusion of the general public.

ii. "Barrier" shall refer to any temporary object or objects (e.g. stanchion, rope, fencing, planters) used to establish an exclusive Bistro and Outdoor Dining area.

b. All conditions and requirements set forth in this chapter have been met and adequate compensation for the exclusive use of the public right of way and applicant fees pursuant to ECDC 18.070.050 have been paid.

c. All barriers shall be removed each day from the right of way at the close of business.

d. The design and use shall comply with all requirements of State law, City ordinance and City policy including but not limited to:

i. Washington State Liquor Control Board (WSLCB) and Snohomish County Health Division (SCHD). When applicable the business shall provide a written approval from the WSLCB and/or SCHD for use of public rights of way;

ii. ECDC Section 17.70.040 Bistro/Outdoor Dining; and

iii. All litter and nuisance regulations, including but not limited to RCW 70.93.060 and ECC Chapter 6.40.

3. The Design Board has reviewed and approved any

proposal which includes a request to construct, erect or maintain an awning, building, sign or any building or structure;

4. The proposal will not unreasonably interfere with the rights of the public; and

5. The proposal (if for an Encroachment permit) either benefits the public interest, safety or convenience (e.g. supports or protects the city street, reduces pedestrian hazards) or is an accessory structure such as a fence normally associated with residential use of the property and fully complies with the requirements of subsections (B) (1) through (3) of this section.

D. Bay Windows, Decks, and Related Architectural Features. In an effort to allow for more creative designs and a better overall appearance in the downtown area, bay windows, decks, and related architectural features may encroach into the public right-of-way within the central business district or any other zone in which no setback from the lot line is required, subject to the following requirements:

1. All conditions and requirements set forth in this chapter have been met and adequate compensation has been paid;

2. The encroachment shall not occur over alleys;

3. The building encroachment shall not project more than two feet (24 inches) into the right-of-way;

4. The encroachment shall not exceed 30 percent of the length of the facade on any one side of the building;

5. The encroachment shall provide for a minimum clearance height of eight feet over any pedestrian right-of-way and a minimum clearance height of 11 feet over any vehicular right-of-way, whichever is greater;

6. The encroachment shall be approved by the Architectural Design Board as contributing to a modulated facade design which enhances the variation and appearance to the public of the overall building design and public streetscape.

E. Appeal. The decision of the Development Services Director, City Engineer, or their respective designees, may be appealed to the hearing examiner as a Type II proceeding under the procedures set forth in Chapter 20.06, provided, however, that the establishment of compensation for use of the public right-of-way is

a legislative decision of the city council and is not subject to judicial review.

F. **Insurance Requirement.** When the application is for use or encroachment unto a public right-of-way including but not limited to, streets, roads, alleys, trails, sidewalks, bike paths, pedestrian easements, and any other easement intended for the use of the public, the applicant who operates a business or commercial operation shall be required to provide and continually maintain during the term of the permit a certificate of insurance naming the city as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. The policy must contain the additional insured statement, coverage amounts and cancellation notification indicated on the sample insurance form provided by the city. In addition, a business and commercial applicant, as well as all residential or non-profit applicants shall sign a covenant to hold harmless and indemnify the city which will be recorded and run with the land in a form approved by the city attorney.

G. Nothing herein shall be interpreted to permit the base or ground support for any sign to be located upon or attached to the ground within the public right-of-way.

18.70.040 Revocation.

A. Except as provided below, all permits approved under this chapter shall be temporary, shall vest no permanent right and shall be issued and may in any case be revoked at the sole discretion of the city upon 30 days' notice, or without notice, in the event any such use or occupation shall become dangerous; any structure or obstruction so permitted shall become insecure or unsafe; shall become a public nuisance; or shall not be constructed, maintained or used in accordance with the provisions of this chapter. The determination by the City Engineer that a structure is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter shall be conclusive.

B. Permits shall also be revoked if;

1. Following written notice of the lapse of an insurance policy required to be maintained by ECDC 18.70.030(F), the permittee fails to supply a valid certificate of insurance; or

2. Following written notice of the lapse of an annual application fee, renewal fee, or fees for the exclusive use of the right of way by ECDC 18.70.050 (B), the permittee fails to bring fees/account current.

C. Permits issued for architectural features pursuant to ECDC 18.70.030(D) shall be issued for an initial term of 10 years. A permit for an architectural feature may be revoked at any time as provided in subsection A of this section. If revoked before the end of the 10-year term, at the will of the city, the holder of the permit shall be reimbursed for any consideration provided for the permit. Reimbursement shall not be required if the permit is revoked due to its having become dangerous, a public nuisance, unsafe or is not constructed in accord with the terms of permit issuance. Permits for architectural features shall be automatically renewed, if not revoked by the city, for additional 10-year terms subject to such additional consideration as the city may require.

D. If any such structure, obstruction, use or occupancy is not discontinued on notice to do so by the city engineer and within the time period designated, the city engineer may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

18.70.050 Fees.

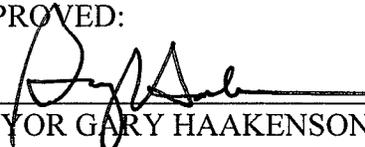
A. Application fees for Street Use or Encroachment permits are those established by the city council by resolution in its sole legislative discretion. Application fees shall be paid to the city prior to issuance of any permit.

B. Fees for the exclusive use of the public right of way are those established by the city council by resolution in its sole legislative discretion.

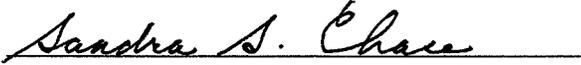
C. There shall be no judicial appeal from a determination of the compensation to be paid for the use of public right-of-way.

Section 2. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

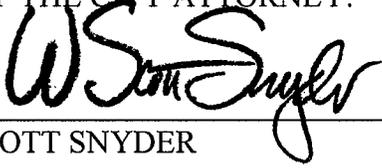
APPROVED:


MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	04-16-2010
PASSED BY THE CITY COUNCIL:	04-20-2010
PUBLISHED:	04-26-2010
EFFECTIVE DATE:	05-01-2010
ORDINANCE NO. <u>3790</u>	

SUMMARY OF ORDINANCE NO. 3790

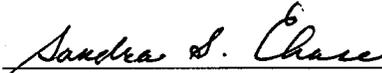
of the City of Edmonds, Washington

On the 20th day of April, 2010, the City Council of the City of Edmonds, passed Ordinance No. 3790. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 18.70 RELATING TO STREET USE AND ENCROACHMENT PERMITS TO PROVIDE CHANGES AND CLARIFICATIONS REGARDING THE ISSUANCE OF PERMITS AS THEY RELATE TO OUTDOOR DINING AND ARTWORK IN THE PUBLIC RIGHT OF WAY, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 21st day of April, 2010.



CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.



SUMMARY OF ORDINANCE NO. 3790
of the City of Edmonds, Washington

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3790

Street Use and Encroachment Permits

On the 20th day of April, 2010, the City Council of the City of Edmonds, passed Ordinance No. 3790. A summary of the content of said ordinance, consisting of the title, provides as follows:
AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 18.70 RELATING TO STREET USE AND ENCROACHMENT PERMITS TO PROVIDE, CHANGES AND CLARIFICATIONS REGARDING THE ISSUANCE OF PERMITS AS THEY RELATE TO OUTDOOR DINING AND ARTWORK IN THE PUBLIC RIGHT OF WAY, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.
DATED this 21st day of April, 2010.

CITY CLERK, SANDRA S. CHASE

Published: April 26, 2010.

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

April 26, 2010

and that said newspaper was regularly distributed to its subscribers during all of said period.

Jody Enohl

Principal Clerk

Subscribed and sworn to before me this 26th

day of April, 2010

[Signature]

Notary Public in and for the State of Washington residing at Everett, Snohomish County.

RECEIVED

APR 29 2010

EDMONDS CITY CLERK

