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ORDINANCE NO. 3485

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, CHAPTER 18.60 REGARDING RIGHT-OF-WAY CONSTRUCTION PERMITS AND CHAPTER 18.70 RELATING TO STREET USE AND ENCROACHMENT PERMITS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the Development Services Department has recommended technical correction to Chapters 18.60 and 18.70 relating to right-of-way construction permits and street use and encroachment permits in order to streamline and make more effective the operation of the permit process; and

WHEREAS, the City Council deems it to be in the public interest to do so, as well as to set fees by separate fee resolution; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. The Edmonds Community Development Code, Chapter 18.60 Right-of-Way Construction Permits is hereby amended to read as follows:

Chapter 18.60
RIGHT-OF-WAY CONSTRUCTION PERMITS

Sections:
18.60.000 Permits required.
18.60.010 Exemptions.
18.60.020 Applications
18.60.030 Repaving.
18.60.040 Fees.

18.60.000 Permits required.

No person shall enter the City right-of-way for the purpose of excavation, construction, maintenance or repair without first obtaining a permit from the development services director or city engineer. City rights-of-way include all easements, licenses or other rights of entry owned by the City.

18.60.010 Exemptions.

Street or utility maintenance or improvement work performed by the city; street or sewer installation or water installation or improvement work authorized by permit or ordinance.

18.60.020 Applications.

Applications for right-of-way construction permits shall contain, in addition to the information required under any other applicable city code, the following information:

- A. Site Plan, showing the location of construction, maintenance or repair, proposed construction, existing utilities and improvements, and proposed methods of final site restoration.
- B. Traffic Control Plan. Must meet minimum Manual on Uniform Traffic Control Devices (MUTCD) requirements.
- C. Complete Right-of-Way Permit application. Application must be signed by a licensed and bonded contractor, unless otherwise approved by the development services director or city engineer.
- D. Such other information as the city engineer or designee of the development services director shall designate.

18.60.030 Repaving.

Final restoration of an open cut shall be accomplished at the discretion and direction of the public works director. The public works director shall have the option of directing the final surface restoration to be accomplished by the city or he may waive the city restoration requirement for special projects where the type of work eliminates the need for city patching requirements. The public works director will issue a current rate schedule to the contractor for city patching costs, which schedule shall be a part of the permit application.

18.60.040 Fees.

Application and inspection fees shall be as set in Chapter 15.00 ECDC, established by the city council resolution in its sole legislative discretion.

Section 2. The Edmonds Community Development Code is hereby amended by the repeal and reenactment of Chapter 18.70 Street Use and Encroachment Permits in its entirety to read as follows:

**Chapter 18.70
STREET USE AND ENCROACHMENT PERMITS**

Sections:

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 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.

Neither 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. Certificate of insurance.

3. Complete Street Use Permit application.

B. Encroachment Permit.

1. Critical Areas determination, when applicable.

2. Architectural Design Board approval, when applicable.

3. 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).

4. Legal Description, including copies of all recorded easements on the property.

5. Elevation view or side view of the proposed encroachment.

6. Ownership. Evidence showing the applicant to be the agent record owner of the property immediately adjoining the public place or right-of-way.

7. Certificate of insurance.

8. Complete Encroachment Permit application.

9. 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 designate.

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. [Ord. 3367 1, 2001].

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. Issuance by 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; and

d. Adequate compensation has been paid for use of the public right-of-way (see subsection D of this section);

2. The architectural 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;

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

4. The proposal (if for an encroachment) benefits the public interest, safety or convenience. (e.g. supports or protects the City street, reduces pedestrian hazards)

C. 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.

D. Appeal. The decision of the development services director, city engineer, or their respective designees, may be appealed to the hearing examiner under ECDC 20.105.030; 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.

E. 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, bikepaths, pedestrian easements, and any other easement intended for the use of the public, the applicant will 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, the applicant 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.

F. 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. [Ord. 3367 1, 2001].

18.70.040 Revocation.

A. (1) 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.

(2) Permits shall also be revoked, if following written notice of the lapse of an insurance policy required to be maintained by ECDC 18.70.030(E), the permittee fails to supply a valid certificate of insurance.

B. Permits issued for architectural features pursuant to ECDC 18.70.030(C) 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.

C. 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.

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

Section 3. 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:	01/16/2004
PASSED BY THE CITY COUNCIL:	01/20/2004
PUBLISHED:	01/27/2004
EFFECTIVE DATE:	02/01/2004
ORDINANCE NO. <u>3485</u>	

SUMMARY OF ORDINANCE NO. 3485

of the City of Edmonds, Washington

On the 20th day of January, 2004, the City Council of the City of Edmonds, passed Ordinance No. 3485. 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 THE EDMONDS COMMUNITY DEVELOPMENT CODE, CHAPTER 18.60 REGARDING RIGHT-OF-WAY CONSTRUCTION PERMITS AND CHAPTER 18.70 RELATING TO STREET USE AND ENCROACHMENT PERMITS, 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 January, 2004.

CITY CLERK, SANDRA S. CHASE