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**ORDINANCE NO. 3729**

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, VACATING A PORTION OF THE PLATTED BUT UNBUILT RIGHT-OF-WAY OF AN ALLEY LOCATED BETWEEN EIGHTH AVENUE NORTH AND NINTH AVENUE NORTH, NORTH OF DALEY STREET, RESERVING AN EASEMENT FOR CONSTRUCTION PURPOSES AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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WHEREAS, on July 24, 2008, the City Council enacted Resolution No. 1178 initiating the vacation of unopened alley right-of-way between Eighth Avenue North and Ninth Avenue North, one block in length commencing north of Daley Street; and

WHEREAS, a public hearing was held on July 22, 2008; and

WHEREAS, objections were raised at that hearing and the matter was continued to September 16, 2008; and

WHEREAS, based upon the record of the proceeding and the records of the City, the City Council determines:

1. No property would be deprived of direct access by reason of the vacation.

All properties located on the alley have direct access to a City street, including properties located within the three-lot short plat for Thuesen Customs Homes, incorporated at page 70 of the City Council packet of September 16, 2008.

2. The aforementioned short plat shows access for Lot 2 lying entirely within the plat. Based upon Mr. Thuesen's assertions in the vacation hearing of the practical difficulties associated with installation of a driveway and retaining wall, which are shown as being located entirely within the short plat, the City deems it to be appropriate to retain a temporary construction easement contemporaneous with the life of the preliminary plat, to wit, five years.

3. Mr. Thuesen also asserts that he has a vested right to use of the alley. The City Council finds and determines that the vested rights doctrine is limited to the application process and that Mr. Thuesen's rights have vested in accordance with the approvals granted by the preliminary short plat for his property. There is no vested right to the continued use of the City street which may be vacated in accordance with law and ordinance.

4. Finally, Mr. Thuesen asserts that he is the owner of 50% of the abutting property or part thereof to be vacated. The City Council finds that Mr. Thuesen owns less than 50% of the abutting property for the proposed alley vacation. To interpret City ordinance based on Mr. Thuesen's theory would be an improper delegation of City Council legislative authority, render the provision meaningless in that every abutting property owner abuts one half of a street or alley by definition and the clear meaning of the provision read in light of the other provisions of City ordinance and state law leads to the conclusion that the term "part thereof" refers to the portion of the entire street or alley to be vacated and not to any limited portion of a proposed vacation.

5. The City Council finds it to be in the public interest to vacate the property without compensation, given its small size (7 1/2 feet in width), its lack of value and utility to the City, the fact that it, except as provided herein, serves no public purpose, and that returning the property to the tax rolls provides a benefit to the City.

NOW, THEREFORE,

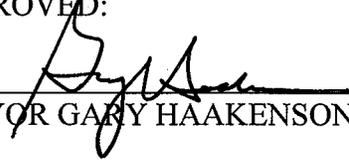
THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. The right-of-way of a platted but unbuilt public alley lying between the 700 block of Eighth Avenue North and Ninth Avenue North and parallel to and north of Daley Street in Edmonds, Washington, and legally described on the attached Exhibit A is hereby vacated; provided, however, that the City Council hereby reserves a temporary construction easement for the installation of a driveway and retaining wall on property lying north of the alley and east of Eighth Avenue North. The area covered by temporary construction easement is shown on the attached Exhibit B. The temporary construction easement shall be void five years from the date this Ordinance is effective or upon installation of the retaining wall, whichever shall first occur. Construction pursuant to this easement by a private party shall be undertaken only in accordance with best engineering practices and the subdivision engineering requirements to the City of Edmonds and pursuant to a right-of-way construction permit. The retaining wall to be constructed on the property north of the construction easement shall be located entirely upon private property to the north, and the slope of the surface area within the construction easement shall be graded, packed, and seeded in accordance with City engineering requirements.

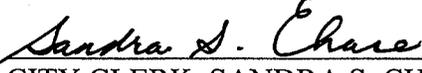
Section 2. The City Clerk is hereby directed to file a copy of this Ordinance and the Exhibits thereto in the land records of Snohomish County.

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 the approved summary thereof consisting of the title.

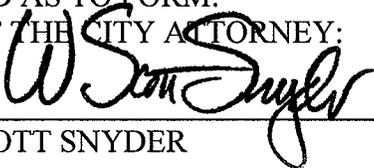
APPROVED:

  
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:	03/13/2009
PASSED BY THE CITY COUNCIL:	03/17/2009
PUBLISHED:	03/22/2009
EFFECTIVE DATE:	03/27/2009
ORDINANCE NO. <u>3729</u>	

**SUMMARY OF ORDINANCE NO. 3729**

of the City of Edmonds, Washington

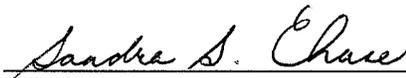
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On the 17th day of March, 2009, the City Council of the City of Edmonds, passed Ordinance No. 3729. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, VACATING A PORTION OF THE PLATTED BUT UNBUILT RIGHT-OF-WAY OF AN ALLEY LOCATED BETWEEN EIGHTH AVENUE NORTH AND NINTH AVENUE NORTH, NORTH OF DALEY STREET, RESERVING AN EASEMENT FOR CONSTRUCTION PURPOSES AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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

DATED this 18th day of March, 2009.

  
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CITY CLERK, SANDRA S. CHASE

**EXHIBIT A**

That portion of unopened alley right-of-way located between 8<sup>th</sup> Avenue North and 9<sup>th</sup> Avenue North in the City of Edmonds, situated in the County of Snohomish, State of Washington more particularly described as follows:

The 7.5 feet of alley right-of-way as dedicated per the Plat of the City of Edmonds recorded in Volume 2 of Plats, Page 39 records of Snohomish County, Washington lying northerly of and immediately adjacent to Lots 20 through 38, Block 82 of said plat.

## **EXHIBIT B**

### Temporary Construction Easement Reservation

A temporary construction is easement is reserved over that portion of unopened alley right-of-way located between 8<sup>th</sup> Avenue North and 9<sup>th</sup> Avenue North in the City of Edmonds, situated within the County of Snohomish, State of Washington more particularly described as follows:

The 7.5 feet of alley right-of-way as dedicated per Plat of the City of Edmonds recorded in Volume 2 of Plats, Page 39 records of Snohomish county, Washington lying northerly of and immediately adjacent to Lots 36 through 38, Block 82 of said plat.

# Affidavit of Publication

STATE OF WASHINGTON,  
COUNTY OF SNOHOMISH

} S.S.

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



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The full text of this Ordinance will be mailed upon request.  
DATED this 18th day of March, 2009.

CITY CLERK, SANDRA S. CHASE

Published: March 22, 2009.

Summary of Ordinance NO. 3729

Vacating a Portion of the Platted but Unbuilt Right-of-Way...

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:

March 22, 2009

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

*Jody Groll*

Principal Clerk

Subscribed and sworn to before me this 23rd

day of March, 2009

*Robert J. Alf*

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

