

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2198

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON,
AMENDING CHAPTER 12.14 OF THE SNOHOMISH MUNICIPAL
CODE, "STREETS AND SIDEWALKS," AND PROVIDING
REGULATIONS SPECIFIC TO NON-COMMERCIAL USE OF PUBLIC
SIDEWALKS**

WHEREAS, the City has adopted regulations for the use and alteration of rights-of-way during construction, which are set forth in Title 12 of Snohomish Municipal Code; and

WHEREAS, with approval of Ordinance 2194 on August 17, 2010, the City enacted regulations for short-term or long-term use of the sidewalk or right-of-way within the Historic District, with such regulations being codified as Chapter 12.14 SMC; and

WHEREAS, following approval of Ordinance 2194, the City Council directed staff to develop additional provisions that would allow certain minor uses or improvements within the right-of-way through a simplified permit approval process; and

WHEREAS, the provisions contained within this ordinance are substantively similar to the amendments contained within Ordinance 2194 for which notification was provided to the Washington State Department of Commerce as called for by RCW 36.70A.106; and

WHEREAS, the City Planner, acting as the City's SEPA Responsible Official, reviewed the proposed code amendment contained within this ordinance and subsequently determined that those amendments are procedural in nature and are therefore categorically exempt from SEPA threshold determination and EIS requirements as provided by WAC 197-11-800(19);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Chapter 12.14 of the Snohomish Municipal Code as set forth in Ordinance 2194 is hereby amended as provided by Exhibit A to this Ordinance.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such a decision or preemption shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other persons or circumstances.

Section 3. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 21st day of June, 2011.

CITY OF SNOHOMISH

By _____
KAREN GUZAK, MAYOR

ATTEST:

APPROVED AS TO FORM:

By _____
TORCHIE COREY, CITY CLERK

By _____
GRANT K. WEED, CITY ATTORNEY

EXHIBIT A

**Chapter 12.14
SIDEWALK USE PERMIT**

Sections:

- 12.14.010 Purpose
- 12.14.020 Activities Regulated
- 12.14.030 Definitions
- 12.14.040 Permit Required
- 12.14.050 Fees
- 12.14.060 Application Materials
- 12.14.070 Regulations, Limitations, and Conditions
- 12.14.080 Permit Review Process, Term, Revocation, and Appeal
- 12.14.090 Indemnity and Insurance

12.14.010 Purpose. It is the purpose of this Chapter to establish provisions by which the City can evaluate and authorize private use of public streets and sidewalks while preserving the public's health, safety, and welfare.

12.14.020 Activities Regulated.

- A. This Chapter pertains to the temporary use of public sidewalks and similar areas of public rights-of-way by persons or entities other than public agencies. Regulated uses include temporary and permanent fixtures and furnishings non-commercial in nature; activities, fixtures, and furnishings of a commercial nature; outdoor dining areas; display of merchandise; mobile vendors; public performances and exhibitions conducted with an expectation of financial compensation; and similar uses within public streets and sidewalks within the Historic Business District.
- B. This Chapter is not intended to regulate, abridge, or curtail the following:
 - 1. Uses, improvements, or activities of the City of Snohomish, or
 - 2. Rights and privileges guaranteed by state or federal law.

12.14.030 Definitions. The following words and phrases when used in this ordinance shall have the following meanings:

- A. Non-commercial fixture or furnishing means a temporary feature, amenity, or improvement not owned or provided by the City of Snohomish that is provided for the general public's use and enjoyment while not identifying, advertising, or promoting a particular business. Examples include flower baskets, flower pots, seating available to the general public, civic announcements, public art, street clocks, etc.

~~((A-))~~ **B.** Permit means a sidewalk use permit issued by the City Planner.

~~((B-))~~ C. Sidewalk means that portion of the right-of-way adjacent and parallel to the street, designated for pedestrian use. For the purposes of this chapter, “sidewalk” may include the area between a street curb and the outer extent of the right-of-way.

~~((C-))~~ D. Sidewalk cafe means a portion of a public sidewalk on which tables and chairs are placed for the use of patrons while consuming food and/or beverages served by a cafe, restaurant, or tavern located on the abutting property.

12.14.040 Permit Required. It shall be unlawful to occupy or engage in a regulated activity within the sidewalk or right-of-way without a valid sidewalk use permit issued by the City Planner. Violation of this section shall be considered a civil violation pursuant to SMC 1.01.080 and Chapter 1.14 SMC, except as otherwise provided therein.

12.14.050 Fees.

A. Application review fee. At the time of filing the application for a sidewalk use permit, the applicant shall pay to the City an application review fee as established by resolution.

B. Sidewalk use fee. Prior to the issuance of a sidewalk use permit for a commercial (for-profit) use or activity, the applicant shall pay to the City a sidewalk use fee as established by resolution. No sidewalk use fee shall be required for non-commercial fixtures or furnishings as defined by this chapter.

12.14.060 Application Materials. Applications for sidewalk use permit shall include the following information and documents:

A. Name, address, and telephone number of the applicant.

B. Written authorization provided by the property owner and occupant/tenant of the adjacent private property.

C. Drawing to scale depicting the following:

1. The specific location and dimensions of the proposed sidewalk use.
2. Location(s) of ingress/egress to the sidewalk use and to the adjacent properties.
3. Proposed location of fixtures, furniture, and other obstructions.
4. Nearby on-street parking areas and crosswalks.
5. Existing objects/obstructions such as street lights, traffic signs and signals, fire hydrants, solid waste receptacles, postal boxes, etc.
6. Sidewalk area proposed for unobstructed use by the general public.

D. Hours of operation.

- E. Written description of the proposed sidewalk use, including alcohol service, amplified music, lighting, signs, security, etc.
- F. Written description of whether the proposed sidewalk use is provided for the use and enjoyment of the general public or whether use and enjoyment of the proposed sidewalk use will be available only to business patrons.
- ~~((F-))~~ G. Written description of the means of securing/anchoring fixtures, furniture, and other obstructions.
- ~~((G-))~~ H. Written description of fixtures, furniture, and other obstructions to remain in the sidewalk during non-business hours.
- ~~((H-))~~ I. Written description of the proposed sidewalk use during special community events.
- ~~((I-))~~ J. Written description of how the sidewalk area will be maintained in a clean and sanitary condition during and following the sidewalk use, and how the sidewalk area will be restored to its original condition.
- ~~((J-))~~ K. During review of a sidewalk permit application, the City Planner may require additional information as needed to evaluate the application.

12.14.070 Regulations, Limitations, and Conditions. Sidewalk use permits shall be subject to the following provisions:

- A. All sidewalk uses.
 1. An unobstructed sidewalk area not less than six feet in width shall be maintained for public use. The sidewalk area reserved for the public's use shall be free of obstructions, except for those fixtures required for public safety, such as traffic signal standards, fire hydrants, street light standards, etc. In instances where such obstructions exist, the minimum width of unobstructed public sidewalk shall be 4.5 feet.
 2. Use of the public sidewalk shall not obstruct required sight distances for motorists and pedestrians.
 3. Use of the public sidewalk shall not obstruct required ingress-egress to nearby properties.
 4. Use of the public sidewalk shall not obstruct access to public facilities such as traffic signals, fire hydrants, etc.
 5. When the City determines that access to the public sidewalk is required for work relating to infrastructure or utilities, the permittee shall suspend use of the public sidewalk and vacate the area as directed by the City Planner or City Engineer. In the event of an emergency, the City may remove or move fixtures and furniture authorized by a sidewalk use permit. The City shall not be liable for any damage to any fixtures or furniture located upon a public sidewalk.

6. Unless specifically authorized by the City, (~~Fixtures~~) fixtures, furniture, enclosures, etc. may not be hung from or fastened to City or utility improvements (sign posts, street light standards, etc.).
7. Use of the public sidewalk shall comply with all applicable local, state, and/or federal laws and regulations.
8. The permit applicant shall agree to defend, indemnify, and hold harmless the City of Snohomish as provided by SMC 12.14.090.
9. The permittee shall maintain insurance coverage required by this chapter for the duration of the use of the public sidewalk.
- ~~((9-))~~ 10. The City Planner may approve sidewalk use permits for signs for civic and community events authorized by special event permit. No other signs or advertising shall be permitted under this Chapter.
- ~~((10-))~~ 11. The City Planner may, at his/her discretion, require a bond or other surety to ensure the provisions of this Chapter are satisfied.
- ~~((11-))~~ 12. The City Planner may, at his/her discretion, attach other special conditions to a sidewalk use permit. Such conditions shall be necessary to satisfy the purpose of this Chapter and to protect the public's health, safety, and welfare.

B. Sidewalk cafes.

1. The sale, service, and consumption of alcoholic beverages at sidewalk cafes is prohibited unless permitted by the Washington State Liquor Control Board and done in compliance with all applicable local, state, and federal regulations and laws.
2. Additionally, alcohol service may be provided only by establishments offering food prepared onsite for onsite consumption.
3. The hours of operation for sidewalk cafes shall be limited to 7:00 a.m. to 10:00 p.m.
4. Commercial signs, banners, pennants, etc. for sidewalk cafes are prohibited unless otherwise authorized under Chapter 14.245 SMC.

12.14.080 Permit Review Process, Term, Revocation, and Appeal.

- A. Permit review process. Sidewalk use permits shall be processed as a Type I Land Use Permit as provided by Title 14 SMC.
- B. Term of permit. Unless specifically authorized by the City Planner, sidewalk use permits shall be valid for a period of one year from the date of permit issuance.
- C. Revocation.

1. All permits approved under this chapter shall be temporary, shall vest no permanent right, and may be revoked at the sole discretion of the City upon the 30 days' written notice from the City Planner to the permit holder, or without notice in the event that after consultation with the City Engineer and the Chief of Police, the City Planner determines that a sidewalk use or activity has posed, or is likely to pose, a threat to the public's health, safety, or welfare.
2. Permits shall also be revoked by the City Planner if:
 - a. The permittee fails to maintain insurance in accordance with SMC 12.14.090; or
 - b. After written notice from the City, the permittee fails to pay any required use or other applicable fees; or
 - c. The permittee fails to comply with the terms and/or conditions of the permit, and/or fails to comply with any provision of this Chapter.
3. The decision to revoke a sidewalk use permit is conclusive.

D. Appeals. An appeal of the City Planner's determination regarding whether to issue a sidewalk use permit shall be made and processed in accordance with the provisions of Chapter 14.75 SMC.

12.14.090 Indemnity and Insurance.

A. Indemnity. Prior to issuance of a sidewalk use permit, the applicant shall execute and deliver to the City, upon a form supplied by the City Planner, a written agreement to defend, indemnify, and hold harmless the City and its officers, elected officials, employees, and agents from any and all claims, actions, or damages of every kind and description which may accrue to, or be suffered by, any persons and/or entities by reason of or related to the sidewalk use for which the permit is sought.

B. Insurance.

1. Prior to the issuance of a permit, the applicant shall provide the City Planner with a certificate of public liability insurance, and where liquor is authorized to be served, liquor liability insurance. The permittee shall maintain said insurance coverage during the entire term of the sidewalk use permit, any extensions or renewals thereof, and during any period of holdover where the permittee is using a public sidewalk but does not have a valid permit.
2. The public liability insurance shall be written on an occurrence basis, shall name the City as an additional insured, and shall contain a provision prohibiting cancellation of the policy except upon not less than 30 days' prior written notice to the City.
3. The public liability insurance shall have the following minimum insurance limits coverage: \$1,000,000 commercial general liability insurance per occurrence combined with single limits, and \$2,000,000 aggregate.