

ORDINANCE 637
CITY OF DAYTON, OREGON

An Ordinance Adding Section 3.9 Temporary Closure of Streets and Ways for Special Events, and 3.10 Sidewalk Vendors and Cafes to the Dayton Municipal Code, and Repealing Resolution 08/09-42 Approving a Resolution directing the City Manager to implement an application for Encroachment Permit and Encroachment License Agreement and associated fees.

WHEREAS, the City Council desires to add Section 3.9 Temporary Closure of Streets and Ways for Special Events, and 3.10 Sidewalk Vendors and Cafes to the Dayton Municipal Code as attached in Exhibit A; and

WHEREAS, the City Council desires to repeal Resolution 08/09-42 Approval of a resolution directing the City Manager to implement an application for Encroachment Permit and Encroachment License Agreement and associated fees; and

WHEREAS, the City Council considered said additions in a public meeting on November 7, 2016; and

WHEREAS, on November 7, 2016, the City Council considered the information provided by staff and deliberated on the proposed action.

The City of Dayton ordains as follows:

Section 1. The City Council hereby adopts Ordinance 637; and

Section 2. The City Council adopts the additions of sections 3.9 and 3.10 to the Dayton Municipal Code attached as Exhibit A and incorporated by reference herein; and

Section 3. The City Council hereby repeals Resolution 08/09-42 Approval of a resolution directing the City Manager to implement an application for Encroachment Permit and Encroachment License Agreement and associated fees, as of the effective date of Ordinance 637.

PASSED AND ADOPTED by the City Council of the City of Dayton on this 5th day of December, 2016.

Mode of Enactment:

Date of first reading: November 7, 2016 by title only.

Date of second reading: December 5, 2016 by title only.

X No Council member present at the meeting requested that the ordinance be read in full.

 A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

Final Vote:

In Favor: **Bixler, Collins, Taylor, Wytoski**

Opposed: **None**

Absent: **Frank, Marquez, Price**

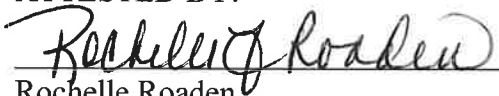
Abstained: **None**



Mayor

 12/7/16
Date of Signing

ATTESTED BY:



Rochelle Roaden
City Recorder

 12/5/2016
Date of Enactment

Exhibit A

(additions in italics and deletions in strikethrough)

CHAPTER 3

3.9 TEMPORARY CLOSURE OF STREETS AND WAYS FOR SPECIAL EVENTS

3.9.1 Purpose. *These regulations are designed to allow for the orderly and safe closure of streets and other public ways under the city's jurisdiction, minimize potential adverse impacts on transportation-dependent activities and ensure appropriate access is maintained for the needs of public works, public safety and emergency vehicle response.*

3.9.2 Definitions. *When not clearly otherwise indicated by the context, the following words and phrases used in this section have the following meanings:*

(1) *"Adverse impacts" includes impacts to city residents, real property, traffic management and flow and the environment resulting from an event or seasonal event.*

(2) *"Applicant" means the person who has filed a written application for a permit on behalf of themselves, an organization or group.*

(3) *"City manager" or "manager" means the Dayton city manager or designee. Designee implies a code enforcement officer or on-duty police officers who may revoke the permit based on observations at the time of the event. In this case, the police officer will confer with his/her immediate supervisor prior to revoking the permit.*

(4) *"City" means the city of Dayton, Oregon.*

(5) *Event. See "Temporary event" or "Seasonal event."*

(6) *"Permit" is an actual form signed by the appropriate parties showing approval of the event as defined in the street closure permit application.*

(7) *"Permittee" means the person granted a permit pursuant to this section 3.9.*

(8) *"Person" means an individual, firm, partnership, corporation, association, or other entity.*

(9) *"Plan" is a drawing detailing the closure and must include (at a minimum) streets to be closed, alternative streets to be used by vehicles and pedestrians to allow unrestricted access, fire hydrant locations, impacted residents along with addresses, visitor parking plan, and any other information relevant to the street closure request.*

(10) "Reimbursable costs" means those costs and expenses incurred by the city associated with the granting of a permit including, without limitation, the following:

(a) Utility services provided for the event or seasonal event including all costs of installation, maintenance, connection, and removal;

(b) Repair, maintenance and removal of facilities in the event of a failure of the applicant to comply with the permit;

(c) Repair of streets, alleys, sidewalks, parks, and other public property resulting from the event;

(d) Garbage cleanup and disposal resulting from the fault of permittee to clean up the area after the event;

(e) Other direct and indirect costs associated with issuance of the street closure permit.

(11) "Seasonal event" is a periodic event occurring on an ongoing seasonal basis such as farmers' markets, holiday craft fairs, and the like.

(12) "Temporary event" is an event lasting for a limited time of not more than 12 hours in any one day nor exceeding seven consecutive days and not occurring more than two times within any 365-day period.

(13) "Street closure" means the permitted traffic and/or parking restriction on an affected street, way, alley, or other public way.

(14) "Street closure permit" or "permit" means written approval entitling permittee to a street closure.

3.9.3 Authority and administration.

(a) The city manager is authorized to review applications for street closures and approve, approve with conditions, or deny applications consistent with this section 3.9.

(b) The manager may adopt and utilize procedures and forms necessary to implement this section 3.9.

(c) All other permits or orders required by law for activities conducted in conjunction with or as part of an event must be applied for and obtained separately from any street closure permit.

3.9.4 Exemptions. This section 3.9 does not apply to any street or right-of-way closure initiated by the city or a public utility for a special event or in order to repair public or public utility infrastructure, construct public or public utility infrastructure or limit access as a result of an event or situation necessitating the presence of public safety or emergency personnel and/or vehicles.

3.9.5 Street closure permit application requirements.

(a) Applicants wishing to temporarily close or otherwise limit access to a public street, road, pathway or the like within the city for an event shall apply for and obtain a permit. An applicant shall file with the city manager an application on a form approved by the manager and submitted not less than 30 days prior to the date of the requested closure. Failure to meet the 30-day limitation is sufficient to deny issuance of the permit and is not appealable to the city council.

(b) Applications submitted more than 30 days prior to the date of the requested closure are eligible for appeal rights described in this Code under Section 3.9.11

3.9.6 Application process and approval criteria.

(a) Upon receipt of a completed application, the city manager may forward a copy thereof to the fire chief, police, community development and public works departments for their review and comment as the manager deems necessary. Those departments shall, within five working days, complete said review and thereupon offer recommendations as to the application's approval, approval with conditions, or denial. The manager may, in addition, seek comment from neighbors of the proposed event and require submission of additional information by applicant as the manager deems necessary.

(b) The manager may approve, approve with conditions, or deny the street closure application consistent with the standards set out in subsection (c) of this section.

(c) The following criteria must be met by applicant:

(1) All temporary structures and other artifices erected for the event shall be removed at the end of the event, leaving the site in the same general condition as it was prior to the placement of the structure(s) or artifice. All structures or artifices shall meet applicable Oregon Building and Fire Code regulations. No obstruction shall be erected or maintained within a 15-foot radius of any fire hydrant within the area of the event.

(2) Provision for adequate vehicle and pedestrian access and circulation shall be shown on a plan which shall then be reviewed and approved by the city. The plan will show how the access requirements of the Americans with Disabilities Act (ADA) are to be met.

(3) Street closures where the processing and/or sale of goods, services, and other commodities take place shall be conducted and maintain business hours not disruptive to use of adjacent or nearby residential properties. "Block parties" and/or similar social gatherings are not to be commenced prior to 8:00 a.m. nor after 10:30 p.m.

(4) Advertising of any kind in the public right of way or the sidewalk permit area is prohibited other than in accordance with the sign code in section 7.2.111.07 of the Dayton Municipal Code.

3.9.7 Permit fees and deposits. *Fees shall be set by resolution of the city council and the manager may, in addition, require payment of deposits prior to the issuance of any permit.*

3.9.8 Indemnification and insurance requirements. *An applicant shall, prior to the receipt of a permit, execute an agreement in a form approved of by the city manager and city attorney to indemnify, defend and hold harmless the city against all claims of injury or damage to persons or property, whether public or private, arising as a result of a temporary event. In addition, an applicant shall produce evidence of general liability and property damage insurance for the event in an amount of not less than \$1,000,000 covering the event's sponsor and naming the city, and the city's officers, agents and employees as additional insured. The insurance is to cover any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the event or street closure. A certificate of insurance evidencing these requirements including an endorsement naming the city, the city's officers, agents and employees as an additional insured must be presented to the city along with the permit application. Failure to provide evidence of insurance may result in delay or denial of an application. This requirement may be reduced or waived by the city manager after consultation with the city attorney.*

3.9.9 Permit denial.

(a) The manager may deny a street closure permit if:

(1) permit has been granted for another event at or near the same place and at or near the same time;

(2) The event will occupy road(s) not under the sole jurisdiction of the city or will violate local, state or federal law;

(3) A street closure may disrupt the orderly flow of vehicular and other traffic and no reasonable alternative means of addressing the disruption is, in the opinion of the manager, available;

(4) Applicant fails to provide assurances satisfactory to the city manager that they will be able to provide for protection of participants, maintenance of public order, crowd security and/or emergency vehicle access;

(5) Applicant makes a false statement of material facts on an application;

(6) Applicant fails to provide proof that they have obtained all applicable license(s) or permit(s) required for conduct of the event or activities associated therewith;

(7) Applicant has had a street closure permit revoked within the preceding 18 months or has failed to pay outstanding reimbursable costs to the city for prior event(s);

(8) Applicant is unable to obtain indemnification and insurance consistent with section 3.9.8.

3.9.10 Permit revocation.

(a) The city manager may revoke a permit if:

(1) The applicant fails to comply with the terms of any condition(s) imposed on the permit including any applicable no parking/barricade requirements, the street closure is in violation of any provision of the Dayton Municipal Code, creates a hazardous condition, or any other applicable law;

(2) The permit holder made a false statement of material fact on an application;

(3) An unforeseen circumstance occurs prior to or during the event that diminishes the safety and security of the proposed event. This could include, but is not limited to, inclement weather such as a snowstorm, flood, or windstorm, natural hazard, or a fire, public safety, public works or other event.

3.9.11 Appeal to city council. *Except as provided in the Code under section 3.8.5(a), a decision of the city manager made concerning the application, denial or revocation of a street closure permit may be appealed to the city council. An applicant may appeal by filing with the city recorder a written statement of appeal within five working days of the date of the decision or action being appealed. The city recorder shall schedule a hearing before the city council no later than the second regular session following the filing and shall notify the applicant of the date and time for the hearing. The council may take such action(s) as it deems appropriate concerning the appeal, consistent with the limitations imposed by this section 3.8 for issuance of street closure permits.*

3.10 SIDEWALK VENDORS AND CAFES

3.10.1 Definitions. *When not clearly otherwise indicated by the context, the following words and phrases used in this section have the following meanings:*

(1) "Permit Operating Area" is the area approved for conducting business under a sidewalk vendor permit.

(2) "Sidewalk Café" is a duly licensed restaurant or café under state and local law, which obtains a sidewalk vendor permit to conduct business on the sidewalk as an extension of the regular service area directly from the building to the adjacent sidewalk.

(3) "Mobile Device" is a food cart or other device from which food, drink or other goods are prepared and/or served, or transactions are carried out.

3.10.2 General Provisions.

(a) It is unlawful for a person to conduct business on a public sidewalk or street except as provided in this section 3.10.

(b) No person may conduct business on a public sidewalk or street without first obtaining a sidewalk vendor permit from the city.

3.10.3 Miscellaneous Appurtenances.

(a) The manager or city council may approve the installation of certain appurtenances on sidewalks such as planters, solid waste containers, benches, drinking fountains and bicycle racks within the permit operating area.

(b) No advertising is allowed on the appurtenances under this Section 3.10, except the acknowledgement of donors of same, which may be displayed on a plastic or metal plaque not to exceed 160 square inches in size.

(c) In the event an appurtenance under this Section 3.10 is deemed by the manager to be in violation of the Code:

(1) The appurtenance deemed to be a violation will be removed by the city 10 days after providing written notice to the owner or person in charge; or

(2) If the appurtenance is deemed by the manager to be an immediate danger to the life, health, property or safety of the public, the manager may remove the appurtenance immediately and bill the owner for the cost of removal and storage.

3.10.4 Sidewalk Cafes.

(a) A duly licensed restaurant or café under state and local law may obtain a sidewalk vendor permit to conduct business as a sidewalk café subject to the following conditions:

(1) The permit operating area must be placed directly in front of the associated establishment and may not extend beyond the building walls as to be in front of another establishment;

(2) The permit operating area may not be placed in front of an entrance and must leave unobstructed pedestrian travel space equal to the width of the doorway from the doorway to the curb line;

(3) Tables to be used by standing customers may be placed only in the 30-inch space most adjacent to the exterior wall of the building housing the primary restaurant or café;

(4) Only food and beverages prepared and offered for sale in the primary establishment may be served in the permit operating area and are under the same controls and conditions of service as in the primary establishment;

(5) No vending machines are allowed in a permit operating area;

(6) Table umbrellas are allowed with a minimum height of seven feet above sidewalk level in a permit operating area;

(7) Dirty dishes and all debris must be promptly removed from a permit operating area;

(8) Solid waste containers must be provided in the permit operating area for the placement of solid waste by customers; and

(9) Equipment in the permit operating area must be attended at all times.

3.10.5 Application for Permit.

(a) Application for a sidewalk vendor permit must be made on a form provided by the manager, with a separate application for business location and include, but not be limited to:

(1) The names and addresses of the owner and all operators;

(2) Copies of all necessary licenses and permits required by state or local authorities;

(3) Identification of the type of business conduct;

(4) The means to be used in conducting the business, including, but not limited to, a description of any mobile device to be used;

(5) The specific location proposed;

(6) A certificate of insurance that:

(i) Names the city, its officers and agents, as coinsured and co-indemnified for any damage to property or injury to persons which may result from the activity carried on under the sidewalk vendor permit;

(ii) Insures the permittee, property owners and the city from all claims which may arise from operation under the sidewalk vendor permit or in conjunction with it;

(iii) Provides coverage of not less than \$200,000 for bodily injury for each person, \$500,000 for each occurrence and not less than \$50,000 for property damage per occurrence or a combined single limit coverage of \$500,000; and

(iv) May not be terminated or canceled without 30 days written notice to the city and so specifies;

(7) If seeking the use of appurtenances under section 3.10.3, photographs or detailed scale drawings showing the design and precise location proposed for such appurtenances;

(8) If seeking to operate a sidewalk café under section 3.10.4:

(i) Photographs or detailed scaled drawings of the proposed permit operating area and the portion of the restaurant or café connecting to same, showing the intended placement of barriers, chairs, tables and other appurtenances; and

(ii) Written permission of both the owner or person in charge of the property and the owner or person in charge of the establishment in front of which the permit operating

area extends beyond that portion of the building operated as the primary restaurant or café, if any;

(9) A nonrefundable fee, as set by council resolution to cover the cost of investigation and processing, must accompany applications for initial and renewal of sidewalk vendor permits; and

(10) Obtain approval after inspection by the manager to determine if the mobile device is in conformance with the provisions of the fire code and county food handlers permit provisions.

3.10.6 Conditions of Operation.

(a) Only such business conduct as approved under the sidewalk vendor permit may occur.

(b) A sidewalk vendor may not lead to or cause congestion or blocking of pedestrian traffic contrary to the limitations established in this section 3.10.

(c) A sidewalk vendor may not cause or allow loud or undue noise by vocalizing or through sound amplification in a manner that violates section 2.8 of the Dayton Municipal Code regarding noise.

(d) A sidewalk vendor may not cause or allow an offensive odor as a result of the vendor's business conduct.

(e) If a sidewalk vendor is selling edible items they must be immediately consumable.

(f) If a sidewalk vendor is selling non-edible items, they must be easily carried by pedestrians and be pre-manufactured, prepackaged, or previously handmade.

(g) A sidewalk vendor must provide a solid waste container for use by customers.

(h) Temporary canopies, umbrellas and other transparent enclosures, if any, may not present an unsightly appearance or hazard to passing pedestrians or exceed eight feet above sidewalk level.

(i) Mobile devices may not conduct business outside of approved areas or in any manner that impedes disability access in the public right of way.

(j) The owner or operator of a mobile device is deemed an operator of a business under section 3.3 of the Code.

(k) The owner or operator of a mobile device may not:

(1) Refuse to obey a lawful order of a peace officer to remove a mobile device entirely or relocate it to a different location within the permit area to avoid congestion or obstruction of the sidewalk;

(2) Allow it to be left unattended on the sidewalk;

(3) Place any cord, pipe, or other such object on or above the sidewalk;

(4) Conduct business in such fashion or location as to hinder the use and access of curbside parking; or

(5) Operate except during regular business hours.

3.10.7 Allowed Areas.

(a) Mobile devices and sidewalk cafés are only allowed on sidewalks within the following areas of the central business overlay zone:

- 1. 4th Street between Ferry Street and Main Street, and only where fifteen (15) foot sidewalks have been developed.*
- 2. Ferry Street between 5th Street and 3^d Street, and only where fifteen (15) foot sidewalks have been developed.*

(b) The areas not considered sidewalks under this section 3.10 are:

- 1. Alley areas;*
- 2. Private parking lots open to the public; and*
- 3. Driveways, whether private or open to the public.*

3.10.8 Permit Issuance.

(a) Review and issuance. The manager will review an application for a sidewalk vendor permit and may issue a permit after all the conditions under section 3.10.5 are met and upon finding that use of the permit operating area is compatible with the public use of the sidewalk area and the proposed business conduct is deemed to be in the best interest of the public. In making this determination, the manager will consider any pertinent information, whether submitted by the applicant or obtained by the manager independently.

(b) Denial and appeal. If the application for sidewalk vendor permit is denied because the proposed location is determined by the manager to be unsuitable, the applicant may file a written appeal with the city within 15 days of notice of denial. The council will then set, notice, and conduct a hearing on the appeal of applicant.

3.10.9 Permits.

Sidewalk vendor permits:

(a) Will name the applicant and the conditions under which the sidewalk vendor permit is granted;

(b) Must be plainly displayed in a weatherproof container on the mobile device or at the sidewalk café;

(c) Expire one year from issuance;

(d) Are not transferable in any manner;

(e) Are valid only when used within the permit operating area designated on the sidewalk vendor permit and such permit operating area may not exceed 24 square feet of sidewalk including the area of the mobile device, the operator, the required solid waste container and any approved appurtenances;

(f) Are valid for one mobile device; and

(g) May be suspended for up to five days when the council authorizes a special event and provides a written notice to the permittee by either personal delivery or by mail via first class United States Postal Service at least five days prior.

3.10.10 Nonprofit Corporations.

(a) Local nonprofit corporations may, upon approval of the application made to the city on a form approved by the manager that includes written consent from the adjacent property and business owners or operators, conduct bake sales, rummage sales and other similar fundraising activities for a duration not to exceed three days, no more frequently than once per calendar quarter and only between 9 a.m. and 9 p.m.

(b) The application must be accompanied by a fee, as set by council resolution, and a certificate of insurance conforming to section 3.9.5(a)(6).

3.10.11 Violations.

(a) A violation of the provisions of this section 3.10 is a Class C violation according to the City's Fee Schedule, and will subject the sidewalk vendor permittee to removal of the mobile device or closure of the sidewalk café.

(b) The manager is authorized to cause the removed mobile device or sidewalk café contents to be stored until the owner pays the removal and storage charges.

(c) Failure of the owner to pay the removal and storage charges or file a written appeal within 30 days of the date of removal will constitute a waiver of rights to the property and it shall become the property of the city to be disposed of as the council deems proper.

(d) Appeals will be heard by the council.