

**RESOLUTION NO. 08/09-42
CITY OF DAYTON, OREGON**

Approval of a resolution directing the City Manager to implement an Application for Encroachment Permit and Encroachment License Agreement and associated fees

WHEREAS, the City of Dayton has statutory and constitutional authority to manage its Right-of-Way (ROW) under the authority of the City Charter and state law; and

WHEREAS, the City Manager has the administrative authority to negotiate and approve licenses or permits to use real property; and

WHEREAS, the City Council has the authority to adopt by resolution the fees for permits and licenses;

The City of Dayton resolves as follows:

- 1) THAT the City Manager is directed to implement the Application for Encroachment Permit and charge the fees associated with the permit as outlined in the attached Exhibit A;
- 2) THAT the City Manager is directed to implement and require a License Agreement and require special conditions for encroachments more permanent in nature as outlined in the attached Exhibit B which shall be recorded against the deed to the property at the expense of the applicant;
- 3) THAT this resolution shall become effective immediately upon adoption, as will the proposed changes.

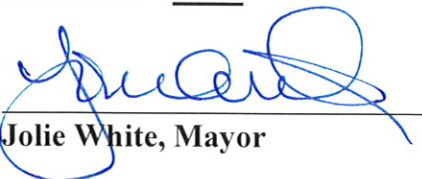
Adopted this 6th day of April, 2009

In Favor Blackburn, Dickson, Evers, Henry, Hensley, White, Wytoski

Opposed None

Absent None

Abstained None

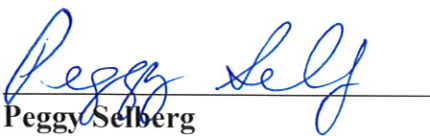


Jolie White, Mayor

4/30/09

Date of Signing

ATTESTED BY:



**Peggy Selberg
City Recorder**

4/6/09

Date of Enactment

Attachments - Exhibit A, Exhibit B



Application for Encroachment Permit

Site Address:		Date:	
Applicant:		State License #:	
Mailing Address:		Telephone #:	
		Fax #:	
Contractor:		State License #:	
Address:		Telephone #:	
		Cell Phone #:	
Starting Date:		Completion Date:	
Description of Encroachment: (See attached License Agreement if requesting a permanent structure, such as a fence or retaining wall)		Permit Fee Schedule:	
		Non-Construction items: \$25.00 (includes materials storage within right-of-way, debris box & temporary road or sidewalk closures)	
		Non-Public Improvement Construction Items: (i.e. Fence, retaining wall etc.)	
		\$0 to \$1,500 valuation \$200.00	
		\$1,501 to \$50,000 valuation \$200.00 + 3% value	
	over \$50,000 valuation \$1700.00 + 2% value		
Total Valuation: _____			
(Note: Valuation is based upon approved engineer's estimate)			
		Total Permit Fee:	

NOTES	
1. Inspections maybe requested by notifying the City of Dayton at (503) 864-2221. Twenty-four (24) hour notice is required. 2. Any person, firm, or corporation encroaching into the public right-of-way to do work, store materials, erect or place any structure is required to obtain an Encroachment Permit per Dayton Municipal Code.	

CERTIFICATE OF INSURANCE AND LICENSE COMPLIANCE	
Directions: Place an "X" next to the appropriate statement under both the Worker's Compensation section and the Contractor's Licensing section below. Fill in any blanks in the statement where your "X" is. Sign and date this form after you have read everything on it.	
Worker's Compensation (ORS 656)	
<input type="checkbox"/> 1. a. I have attached a certificate of insurance which shows that I carry Worker's Compensation Insurance for work to be done under this permit.	
<input type="checkbox"/> b. I have on file with the City of Dayton a certificate of insurance as described in (a) above.	
<input type="checkbox"/> 2. I have attached a certificate of consent to self-insure issued by the State of Oregon Worker's Compensation Division.	
<input type="checkbox"/> 3. I have certified that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the worker's compensation laws of Oregon.	
Comprehensive General and Auto Liability	
<input type="checkbox"/> 1. a. I have attached a certificate of insurance which shows that I carry General and Auto Liability (\$1,000,000 minimum each for person injury and Property Damage), for work to be done under this permit. The above named certificate of insurance shall name the City of Dayton as an additional insured.	
<input type="checkbox"/> b. I have on file with the City of Dayton a certificate of insurance as described in (a) above.	
<input type="checkbox"/> 2. As a public utility agency, we are exempt or self-insured.	
Contractor's Licensing (ORS 701)	
<input type="checkbox"/> 1. As the applicant, I am licensed under the provisions of the Contractor's License Law. My license # _____ in classification _____ is in full force and effect.	
<input type="checkbox"/> 2. I am exempt from the "License Required" provisions of the Contractor's License Law. Basis of Exemption: _____	
<i>I understand that this permit is revocable at any time when I am required to follow the conditions stated herein but do not. I agree to indemnify and hold harmless the City of Dayton against liabilities, judgements, costs, and expenses which may in any way accrue against said City in consequence of granting this permit.</i>	
Signature of Applicant/Contractor:	Date:

City of Dayton Use		
Date:	Approved By:	Permit Number:

After recording, return to:
City of Dayton
PO Box 339
Dayton, OR 97114-0339

EXHIBIT B

ENCROACHMENT LICENSE AGREEMENT

Between

City of Dayton and _____

WHEREAS, _____ is the owner (Property Owner) of certain property in Dayton, Oregon, located as follows:

Street Address:

Tax Lot:

Deed Reference: Instrument _____, Yamhill County Deed Records;

WHEREAS, _____ wishes to encroach on a portion of _____, a public right-of-way under the control of the City of Dayton (City) and within its boundaries, for the purpose of maintaining _____

WHEREAS, City is willing to allow such encroachment by Property Owner under the limited circumstances set forth below:

NOW THEREFORE, based on the foregoing, City and Property Owner, in consideration of \$_____ paid City by Property Owner and other valuable consideration (the receipt of which is hereby acknowledged) agree to issuance of a License, the terms of which are as follows:

1. By this License, City grants Property Owner the right (subject to the limitations below) to use the Encroachment Area for the following purposes and no other:
LIST CONDITIONS
2. The City reserves the right to revoke the License granted at any time for any purpose which City, in the exercise of its reasonable discretion, believes will benefit the public's health, safety and welfare.
3. In the event City elects to revoke the License, City shall give Property Owner, its successor or assigns not less than ninety (90) days' written notice of the revocation, except in an emergency when City may give such oral or written notice in advance as may be feasible. Once notice of revocation has been received, the Property Owner or its successor or assign shall take immediate steps to remove all or a portion of the encroachment as required by City in the notice. In the event Property Owner fails to take the above actions to the satisfaction of City, such that the Encroachment Area is fully available to City for its purposes, City or its designated contractors may take any steps necessary to make the Encroachment Area ready for City purposes. In the event that the City or its designated contractors must remove all or a portion of the encroachment in conjunction with emergency repairs to City utilities, Property Owner shall be responsible for all costs associated with repair or replacement of such encroachment improvements when such removal for emergency repairs does not result in permanent revocation of this agreement. The City or its designated contractors shall not be responsible for any damage to encroachment improvements during such removal by the City.
4. Property Owner assumes and accepts full responsibility for the care and maintenance of the encroachment on the Encroachment Area and all improvements thereon, accepts the cost of removal of any portion of the encroachment upon receiving notice to remove or notice of revocation, and agrees to defend, indemnify and hold City, its governing body, employees, agents and insurers harmless from and against any and all claims, suits, liabilities and expenses (including attorneys' fees, paralegal fees and related costs) that may be asserted against City arising out of Property Owner's use of the Encroachment Area, or arising out of the City's or its designated contractor's removal of any encroachment improvements or structures if required for emergency repair of City utilities.
5. Property Owner further agrees to cooperate with any franchise utility company in the event that such franchise utility company needs access to the encroachment area to service, maintain or repair franchise utilities, including removal of encroachment improvements if required to provide access for such service, maintenance or repair. Property Owner shall be responsible for all costs associated with repair or

replacement of such encroachment improvements when removal is required for franchise utility company access.

- 6. Upon revocation of this agreement by the City, the City will sign a certificate of revocation, which the Property Owner will be responsible for recording in the deed records of Yamhill County.
- 7. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

Legal Effect. This agreement is binding upon all heirs, successors and assigns of Property Owner and runs with the land.

Provision Applicable Law. This agreement shall be governed by, and construed in accordance with the laws of the State of Oregon.

Waiver. Failure of the City at any time to require performance of any provision of this agreement shall not limit the City's right to enforce the provision, nor shall any waiver of any provision of this agreement be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Severability. The determination that one or more provisions of this agreement is invalid, void or illegal or unenforceable shall not effect or invalidate the remainder of this easement.

Modification. No amendment or modification of this agreement shall be valid unless in writing and signed by the City, and re-recorded against the property. City may revoke this agreement as outlined above.

Executed this ___ day of _____, 2009 on behalf of the City of Dayton

Christy Ellis
City Manager (on behalf of the City of Dayton, Oregon)

State of Oregon)
)ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 2009 by Christy Ellis as City Manager of the City of Dayton.

Notary Public for Oregon
My Commission expires:

Executed this ___ day of _____, 2009 by Property Owner.

Printed Name of Owner(s)

Signature of Owner(s)

State of Oregon)
)ss.
County of Yamhill)

This instrument was acknowledged before me on _____, 200__ by _____.

Notary Public for Oregon
My Commission expires: