

Chapter 17 STREETS AND SIDEWALKS

ARTICLE I. IN GENERAL

Section 17-1. Names and destinations; erection of signposts.

- (a) The names and destinations of the streets, ways, squares and public places of the city shall remain as heretofore established, except that the city council may change and alter the same as provided in this section.
 - (1) Before making any alteration or change in the name and destination of any street, way, square or public place the city council shall hold a public hearing with relation thereto, first giving proper notice of the time and place of such hearing together with a statement of the proposed alteration or change.
 - (2) Such notice may be served by publication at least once in a newspaper published in the city and by delivering a copy of such notice to the abutting property owners on the street, etc., to be affected by the change in the name and destination.
- (b) The city council shall establish the names of all streets, highways and public places hereafter laid out and accepted by the city, or by any other authority within the city, and shall cause signposts to be erected designating such names, and the names of all streets or ways laid out and accepted. (Ord of 1-28-04)
- (c) No public way or part thereof, or square, shall be named or dedicated in the name of a person, unless such person's name has the approval of the Director of Veteran's Affairs. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 1; Ord. of 6-13-83(1), § 1A) (Ord of 01-28-2005)

Section 17-2. Minimum width.

No street or public way shall be constructed to a width of less than forty (40) feet; provided, however, to accept a street or way less than forty (40) feet in width, a plan and profile shall be approved by the planning board, approved by the city engineer, and adopted by a two-thirds vote of each branch of the city council. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 3)

Section 17-3. Construction--Laying out, Alterations, etc.

- (a) Every petition for the laying out, widening, altering, discontinuing or defining lines of streets or ways must have endorsed thereon the approval of the planning board, and shall be accompanied by a copy of an approved plan and profile, showing the present length, width, lines and grade of the street which it is proposed to have laid out, widened, altered, discontinued or defined; the abutting lands, with the fences and buildings thereon, and the length of frontage of each estate; the land to be taken and the names of the owners of such lands; also showing, in red ink, the proposed lines and grade of such street, and giving sufficient reference to stakes or other boundary marks on the premises, to enable the city engineer to locate such street with accuracy.
- (b) Such plan shall be accompanied by an agreement referring thereto, bearing the signatures of such owners, parties and other parties in interest as may be willing to

release all claims and demands against the city for property or other damage that may arise out of the proposed change in accordance with such plan, together with the amount of damage.

- (c) A list of the names of all owners, and other parties in interest who may decline to release or state their prospective damages shall be filed also. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 5)

Section 17-4. Same--Hearing; action.

- (a) The city council before passing any order for laying out, accepting, widening, altering, discontinuing or defining the lines of any street or way shall issue an order of notice as to the proposed action for a public hearing thereon before the city council.
- (b) Such notice shall be published for two (2) successive weeks in some newspaper published in the city, the last publication to be at least seven (7) days before such hearing, and such additional service thereof as may be prescribed by law.
- (c) Such notice shall state the time and place appointed for such hearing. Following, the board of alderman shall act first upon the proposed resolve or order for the laying out, accepting, widening, altering, discontinuing or defining the lines of such street or way, and upon all questions relating thereto, and such resolve or order shall then be sent then to the common council of the City Council for concurrent action.
(Rev. Ords. 1976, Pt. 2, Ch. 17, § 7)

Section 17-5. House numbering.

- (a) Every dwelling house and other structure shall have proper street numbers affixed thereto in the manner designated by the city engineer.
- (b) The owner of any building, or part of a building, who neglects or refuses to affix to the same the numbers designated by the city engineer or who shall affix or retain there, for more than three (3) days, any number contrary to such direction, shall be in violation of this section. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 8). Cross reference(s)--Buildings and building regulations, Ch. 4.State law reference(s)--Authority of cities to provide by ordinance for the numbering of buildings, M.G.L. c. 40, § 21(10).

Section 17-6. Obstruction in streets and gutters.

- (a) Except as provided in this chapter, no person shall place or deposit, or permit to be placed or deposited, in any public way, any impediment or obstruction of any kind, including snow or ice from private premises, without a permit from the Board of Public Works; nor occupy or obstruct any public way to interfere with the convenient use of the same for public travel.
- (b) The number of street corner boxes allowed, such as newspapers, real estate, employment, etc., at any public location, shall be limited to three. (Ord. 2-27-01)
- (c) Private property means and includes, but is not limited to, the following exterior locations owned by private individuals, firms, corporations, institutions or

organizations; yards, grounds, driveways, entranceways, passageways, parking areas, working areas, storage areas, vacant lots and recreational facilities.

- (d) Public property means and includes, but is not limited to, the following locations: streets, street medians, roads, road medians, catch basins, sidewalks, strips between streets and sidewalks, lanes, alleys, public rights-of-way, public parking lots, school grounds, municipal housing project grounds, municipal vacant lots, parks, beaches, playgrounds, other publicly-owned recreation facilities, and municipal waterways and bodies of water.
- (e) A police officer may arrest, without a warrant, any person who in his presence violates this section.
- (f) Whoever is in violation of this section shall be subject to a fine in accordance with Section 1-8 of these Revised Ordinances of the City of Everett. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 21; Ord. of 8-15-94; Ord. of 04-08-2004) Cross reference(s)--Solid waste management, Ch. 16.

Section 17-7. Fences or buildings on lines of public ways.

- (a) No person shall erect, or cause to be erected, any fence or building on the line of any public way without first ascertaining the bounds of the street from the city engineer.
 - (1) If any encroachment shall be made upon any street or way, and the party making it neglects or refuses to remove the same after notice so to do, the board of public works may remove the same at the expense of the owner and shall cause the persons so offending to be prosecuted for such offense.
- (b) No person shall erect any fence to a height of less than eight (8) feet above ground level on any side that has barbed wire or razor wire mounted on the top of such fence.
 - (1) Any fence erected with barbed or razor wire mounted on the top is prohibited on or adjacent to residential use property. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 23; Ord. of 11-27-95(3) Cross reference(s)--Buildings and building regulations, Ch. 4.

Section 17-8. Gasoline, etc., pumps in sidewalks.

No person shall be granted a permit or license to erect a gasoline pump or pump of similar nature in the sidewalk of any public street or way within the city. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 24)

Section 17-9. Encroachment by gates, doors.

No person shall allow any gate or door belonging to premises under his legal control, and adjoining any public way, to swing on, over or into a public way. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 26)

Section 17-10. Openings, etc., to cellars, basements, etc., in public way--Permit required.

No person shall erect or maintain a passageway or other opening to any cellar, basement or other structure in or upon any public way, without a license therefor from the board of

aldermen, and shall execute a bond to the city in such a sum as the Board of Aldermen may prescribe. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 27)

Section 17-11. Same--Guards and lighting.

- (a) No platform or grate covering the entrance or passageway to a cellar or basement, or any shaft or light shaft leading to a cellar or basement, in any public way, shall project above the even surface of such way.
- (b) Every such entrance, passageway or shaft shall be kept covered with a suitable platform or grate, or shall be guarded and protected by a sufficient railing on both sides thereof, and well lighted at night.
- (c) Whenever such platform, grate or railing shall be adjudged unsafe by the board of public works, the owner thereof shall be notified without delay and shall replace the same with a safe and proper platform, grate or railing forthwith. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 28)

Section 17-12. Selling articles or goods in public ways.

- (a) No person shall, without a permit from the Chief of Police, sell in a public way or from any building, any goods or articles to any person on such way.
- (b) No person shall place or permit to remain on a public way for more than ten (10) minutes any goods or articles of which he is the owner or in charge.
- (c) No person shall stand in a roadway for purpose of soliciting a ride, employment or business from the occupant of any vehicle.
- (d) No person shall stand in a roadway for purpose of soliciting contributions from the occupant of any vehicle without first obtaining a permit from the Chief of Police.
 - (1) Said permits shall be limited to:
 - a. A veterans' organization chartered by the Congress of the United States;
 - b. A church or religious organization;
 - c. A fraternal or fraternal benefit society;
 - d. An educational or charitable organization;
 - e. A civic or service club; or
 - f. Other clubs or organizations operated exclusively and for non-profit purpose.
 - (2) Said organizations shall have been organized and operating in Everett; and have evidence of their non-profit IRS status.
 - (3) Said organization shall provide the Chief of Police with the locations, dates and times of the solicitations; and in the case of Youth Organizations, a plan for adequate adult supervision.
- (e) No person shall stand directly in a lane of moving traffic on any street or roadway and stop or attempt to stop and engage any person in any vehicle for the purpose of soliciting contributions; or sell or attempt to sell anything to any person in any

vehicle; or hand or attempt to hand to any person in any vehicle any circular, advertisement, handbill or any political campaign literature, or any sample, souvenir or gift; or in any other manner, in an attempt to interfere with the normal flow of traffic for any other similar purpose. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 30; (A0398-06)(A0556-06) Cross reference(s)--Licenses and business regulations, Ch. 12.

Section 17-13. Raising or lowering merchandise over streets.

No person shall raise into, or lower from, the second or any higher story of a building, over any portion of a public way, any article of merchandise, except in accordance with a permit from the Board of Public Works, and such person shall execute a bond to the city in such a sum as the Board of public Works may prescribe. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 31)

Section 17-14. Washing vehicles in streets prohibited.

No person shall wash any vehicle in any public way in the city.
(Rev. Ords. 1976, Pt. 2, Ch. 17, § 36) Cross reference(s)--Traffic and motor vehicles, Ch. 18.

Section 17-15. Signs, awnings, canopies, etc.

- (a) No person shall place or maintain any sign, awning, canopy, that projects more than 12 inches over the public way without first obtaining a license from the Board of Aldermen.
 - (1) Such license may contain terms and conditions as the Board of Alderman may require.
 - (2) The person so placing or maintaining the same shall also conform to any directions given by the Board of Public Works and/or the Inspector of Buildings. The property owner where such sign, awning, or canopy is to be located shall execute a bond to the city in such a sum as the Board of Aldermen may prescribe. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 39)

Section 17-5.5. Protective barrier and grates.

- (a) No person shall place or maintain a protective barrier or grate on any window or entrance in a building without first obtaining a license from the board of aldermen.
- (b) Such license may contain terms and conditions as the board of aldermen may require.
- (c) No license shall be granted unless approval has been received from the fire chief or his designee.
- (d) The person or persons so placing and or maintaining the same shall also conform to any directions given by the board of public works and or the inspector of buildings.
- (e) The property owner where such barrier or grate is to be located shall execute a bond to the city in such a sum as the board of aldermen may prescribe.
(Ord. of 8-19-96(2))

Section 17-16. Moving buildings.

No person shall move a building in a public way without a license from the board of aldermen, to be granted upon such terms as in its opinion public safety may require, and such person shall execute a bond to the city in such a sum as the Board of Aldermen may prescribe. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 40) Cross reference(s)--Buildings and building regulations, Ch. 4; traffic and motor vehicles, Ch. 18. State law reference(s)--Permission to move buildings, M.G.L. c. 85, § 18; cutting of wires in order to move buildings, M.G.L. c. 166, § 39.

Section 17-17. Sidewalk construction--Supervision, materials, etc.

Every sidewalk ordered to be constructed or completed within the city shall be built or completed under the direction of the board of public works. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 44)

Section 17-18. Obstructing sidewalks and public ways.

No person shall stand on any sidewalk or public way in such a manner as to obstruct free passage for pedestrians or vehicles. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 49)

§ 17-19. STREETS, TEMPORARY BLOCKING OF

- (a) Purpose. The purpose of this section is to provide for the temporary blocking of city streets, highways and roads in a safe manner to allow neighborhoods to have neighborhood block parties, celebrations, graduation parties, or other like events.
- (b) Definitions. As used in this chapter, the following terms shall have the meanings indicated:
 - (1) PARTY—A neighborhood block party, celebration or event but shall not include a garage sale, yard sale, bazaar, rummage sale or other similar activity having the principal purpose as fundraising for an individual or organization, nor shall it include a political meeting or rally, carnival or theatrical or musical performances, such as rock concerts or similar events.
 - (2) STREET—A city street, highway or road.
- (c) Permit required; application.
 - (1) Any person, before blocking or barricading a road in the City of Everett for purposes of holding a block party, celebration, graduation party, or other like event, shall obtain a permit from the City Clerk or his designee.
 - (2) The City Clerk or his designee shall be authorized, with the further approval of the Chief of Police, the Fire Chief and the Director of City Service or their designees, to issue a permit for the temporary blocking of a street for the purpose of holding a party. Such permit shall allow the temporary blocking of a road on one (1) particular date only, and during a specified time period which shall be of a single duration. An application for such permit shall be filed with the City Clerk or his designee at least fourteen (14) days before the commencement of such party. Such application shall contain the following information:
 - a. The name and address of applicant.
 - b. Declaration of approval signed by at least seventy-five percent (75%) of the residents of the proposed block;

- c. The name of the street or streets and the description of the portions thereof to be blocked; major arteries and bus routes exempted.
 - d. A description of the specific party to be held.
 - e. The date and the hours thereof; holidays and weekends only.
 - (3) The specific nature of the form of the permit shall be determined by the City Clerk or his designee.
- (d) Determination of approval or disapproval of permit application.
- The permit shall be granted by the City Clerk or his designee upon determining that the permit bears the signature of the Chief of Police, the Fire Chief, and the Director of City Services or their designees and that the party is consistent with the provisions of this section and all applicable sections of the Revised Ordinances of the City of Everett. The permit shall be denied if it is not signed by the Chief of Police, the Fire Chief, and the Director of City Services or their designees or if either finds that blocking the street or portion thereof on the date requested in the application will unduly interfere with the flow of vehicular traffic or upon determining that the party is not consistent with the provisions of this section and all applicable sections of the Revised Ordinances of the City of Everett. The City Clerk shall advise the applicant, in writing, of the reason for denial of the application.
- (e) Duration of permit; time limitations.
- A permit issued pursuant to this chapter shall be valid only for the date and hours specified thereon, which shall not be before 8:00 a.m. or after 10:00 p.m.
- (f) Cleanup required.
- The applicant shall be responsible for the removal of litter, debris and other materials from the street or portion thereof used for the party that is attributable to or caused by the party.
- (g) Blocking of roads.
- (1) Prior to the commencement of the time for which the road is to be blocked, the Director of City Services or his designee shall cause the street or portion thereof to be blocked by devices of his choice to motor vehicles except authorized emergency or hazard vehicles, as the same are defined in this Chapter and by Massachusetts General Law, and to provide detour signs for vehicular traffic. No other person shall in any manner block or place barricades in the road.
 - (2) A street, or portion thereof, blocked off for a party shall not be obstructed by picnic tables and shall not be obstructed by other obstacles which cannot be readily moved to allow emergency or hazard vehicles to enter in response to an emergency.
 - (3) The City Clerk or his designee shall notify the Department of City Services, the Everett Police Department and Everett Fire Department of the date and time of the road blocking at the time the permit is issued by telephone call followed by written confirmation.
- (h) Limitation on number of permits issued.

No more than two (2) permits shall be granted by the City Clerk in any calendar year for the same neighborhood.

(i) Alcohol consumption prohibited

No alcoholic beverages shall be consumed on the public way, streets or sidewalks.

(j) Liaison Assigned, police detail

(1) The Chief of Police or his designee may assign an on-duty uniformed police officer as a liaison to said function. Assigned officer may monitor function via unannounced observations of function.

(2) The Chief of Police reserves the right to request that a paid detail be provided for functions involving over fifty (50) people.

(k) Liability.

The persons, organization or association to whom the permit is issued shall be liable for all losses, damages or injuries sustained by any person, whether a participant or spectator at the block party or recreational event, whether or not said losses, damages or injuries arise by reason of the negligence of the person, persons or organization to whom such permit shall have been issued. The Office of the City Solicitor shall require the applicant to enter into a hold-harmless agreement, which agreement shall provide that the applicant shall agree to save and hold the City harmless of and from any and all obligations and liabilities which may arise from the temporary street closing which represents the subject matter of the application. The applicant shall further agree as part of these provisions to hold harmless the City and to defend at his own cost and expense any claims or lawsuits instituted by third parties, which obligations or liabilities might otherwise exist or be asserted against the City. The Office of the City Solicitor shall further have the option to require that, prior to the issuance of a permit or commencement of the temporary street closing for commercial advertising purposes or profit, the applicant submit evidence of liability insurance covering damages to property and injuries to members of the general public arising out of the temporary street closing in such amounts as may be determined by the Office of the City Solicitor.

(l) Penalties for offenses.

Any person, firm or corporation who shall violate any provision of this chapter shall be subject to a penalty under section 1-8, in addition to any and all applicable state and local fines. Each day's continued violation shall constitute a separate offense.

Secs. 17-20--17-50. Reserved.

ARTICLE II. EXCAVATIONS

Section 17-51 Permits, applications, fees, fines and insurance.

(a) Permits.

- (1) No person shall break or dig up the ground or pavement in any street, sidewalk, or way without first obtaining a permit from the board of public

works, in writing, for such periods of time, and under such limitations and restrictions, issued by the board of public works. The permit shall state the times and dates on which work may be done.

- (2) Permits shall be issued only upon the following conditions:
 - a. Payment of a non-refundable application fee of fifty dollars (\$50.00).
 - b. Presentation of a performance or payment bond of five thousand dollars (\$5,000.00) for each street opening permit; or guarantee thereof.
 - c. Presentation of a certificate of insurance evidencing one million dollars (\$1,000,000.00) of general liability insurance naming the city on its face or evidence of self-insurance.
 - d. Any board of public works activities shall be exempt from the permit, fee, fine, bond and insurance requirements.
- (3) No permit shall be issued to break any pavement structure of a street, sidewalk or any way which is five (5) years or less in age; provided that the board of public works may issue a permit where, in the opinion of its director, the immediate health, safety, or convenience of the public requires that the street, sidewalk, or way, be opened. The age of any pavement structure shall be determined from the date of the final acceptance of its construction, reconstruction, or repair. The permittee shall be required to replace the pavement shall be required to replace the pavement structure to its original state.
- (4) Prior to the commencement of work, the permittee shall notify the board of public works who shall notify the board of public works who shall notify the police and fire department of the person in charge of such work who may be contacted after regular working hours.
- (5) Any permit may be revoked or cancelled by the board of public works at any time whenever the permittee fails to comply with any terms or conditions under which the permit was granted or when, in the opinion of the board, the public health, safety, welfare, or convenience requires such revocation.
- (6) Any person who opens an excavation without a permit shall be subject to cancellation of existing permits, refusal or future permits, license revocation and fined in accordance with chapter 1, section 8 of the revised ordinances of the city.
- (7) The permittee shall comply with the provisions of this section and all other city ordinances. Failure to comply shall result in the revocation of the permit.

(b) Notification.

- (1) Dig Safe and M.W.R.A. shall be properly informed by the permittee in advance of all intended excavations.

- (2) The board of public works shall be notified at least seventy-two (72) hours prior to the commencement of any work.

(c) Construction procedures.

- (1) All construction procedures shall meet or exceed current Massachusetts Highway Department Standard Specifications for Highways and Bridges.
- (2) The street or sidewalk shall only be disturbed within the area requiring excavation for repair, replacement, or new installation. When the opening occurs within two (2) feet of the curb and/or edge of the hardened surface, the paved area between the excavation and the curb or edge shall be removed prior to the temporary repair.
- (3) In the back fill process, the back fill shall be comprised of a suitable material and is subject to the approval of an authorized representative of the public works commission.
- (4) The area abutting the excavated area shall then be cut back in straight lines, with ninety (90) degree angles at the point of intersection, six (6) to twelve (12) inches to a depth exposing the undisturbed gravel base.

The vertical face of the pavement cuts shall be thoroughly cleaned, particularly at the corners.

Utility structures shall be leveled to the adjacent surfaces and shall be the responsibility of the appropriate utility.

The excavation site shall be maintained in a clean and safe condition at all times. Sidewalks and streets shall be cleaned at the end of each working day. Traffic shall be opened at the end of each working day unless the board of public works, or its director, determines that it is not in the interest of public convenience. Access to properties along the street is to be maintained at the end of each working day, and during the time that work is not being performed at each property.

- (5) All surplus or unacceptable excavated material shall be removed from the job site immediately. The removal and disposal of materials including pavement shall be the responsibility of the permittee. This shall be achieved in such a manner to minimize interferences with pedestrian and vehicular traffic.
- (6) The permittee shall be liable for the condition of the street and sidewalk openings and protection thereof.

Other than while work is actually being performed, all open ditches shall be protected by back filling or steel plating or as otherwise required by the board of public works director.

The excavation shall be properly secured to insure the safety to the traveling public and immediately reported to the board of public works. Temporary patching shall be done by the permittee or their contracted representative and shall be the financial responsibility of the permittee. The permittee's barricade or safety device shall be immediately removed from the vicinity of the patched area upon completion of the temporary bituminous patching application.

Permanent bituminous patching shall be completed no later than ninety (90) days from the date of temporary patching unless waived in writing by the director of public works.

- (7) The permittee shall be responsible for any settlement in or adjacent to the original excavated area.
- (8) In the event of an improperly prepared excavation including those left with unacceptable back fill material or insufficient pavement depth, the trench shall be re-excavated and prepared correctly by the permittee. Under the above conditions, the permittee may be subject to permit cancellation, inspection fees, fines in accordance with chapter 1-8 of the revised ordinances and loss of deposit.
- (9) All street and sidewalk excavations shall be made permanent by a method deemed appropriate by the board of public works and shall be the financial responsibility of the permittee.
- (10) The completion of a permanent restoration shall not alleviate the permittee from the responsibility for the condition of street and sidewalk openings for a period of one year from the date of the final accepted permanent repair. Permanent bituminous patching shall be completed no later than ninety (90) days from the date of temporary patching unless waived in writing by the director of public works.

(d) Emergency procedures.

- (1) For any public utility, the permit and notification provisions contained herein shall be waived for any excavation or groundbreaking undertaken in response to an emergency event or events. An emergency event is one, which, in the judgment of the utility, requires immediate action to restore service to customers or to protect the immediate health, safety, or convenience of the community. Such decisions shall be made consistent with and in accordance with generally accepted utility industry standards.
- (2) In the event of an emergency, the utility shall exercise best efforts to notify the police department and the board of public works as soon as practicable prior to or immediately after undertaking any work that would otherwise require a permit hereunder. After any emergency, the utility shall submit to the board of public works a report of actions taken and work performed during the emergency and such work shall comply with the construction provisions herein.

(Rev. Ords. 1976, Pt. 2, Ch. 17, § 9; Ord. of 12-5-94)

Section 17-52. Restoration of pavement, etc.

- (a) Any person who shall break or dig up the ground or pavement of any street or public way shall restore the same to proper condition to the satisfaction of the board of public works.
- (b) Any person who shall break or dig up the ground or pavement of any street or public way, other than municipal employees, in which requires overnight

protection of open or covered areas, must leave their name and telephone number on site and visible so they may be contacted in the event of an emergency. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 10; Ord. of 6-3-91(1))

Section 17-53 Temporary filling.

All excavations on sidewalks and streets shall be temporarily filled immediately upon completion of work and permanently filled and properly patched subject to the approval of the Board of public works. (Ord. of 11-23-87)

Section 17-54. Surety bond required.

Before granting any permit under the provisions of this article, the board of public works shall require that the applicant execute a bond to the city in such a sum as the Board of Public Works may prescribe, to save the city harmless from any damages that may arise from such digging up of the way, and to insure the carrying out of the provisions of this article. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 11)

Section 17-55. Protection of public.

Where the flow of pedestrian and/or vehicular traffic will be impeded or rerouted by any work coming under the provisions of this article, the holder of the permit shall procure at his expense sufficient police detail furnished by the police department as the regulations of the chief of police or his duly authorized agent may require. When a permit is issued by the Board of public works for a street opening the Board of public works and the petitioner shall notify the chief of police immediately. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 11)

Section 17-56. Emergency Phone Numbers.

Any utility company and/or contractors opening or doing work on streets in the City of Everett, requiring overnight protection of open or covered areas, must leave their name and telephone number on site and visible so that they may be contacted in the event of an emergency. (Ord. 6-3-91)

Section 17-57 Trench Cut Cost Recovery Fee.

(a) PURPOSE OF TRENCH CUT COST RECOVERY FEE.

Excavations in paved streets owned and maintained by the City degrade and shorten the life of the surface of the streets, and this degradation increases the frequency and cost to the public of necessary resurfacing, maintenance and repair. These excavations cause degradation of the streets even where the excavations are refilled and repaired in conformity with applicable standards and requirements. It is appropriate that entities responsible for excavating into the City's right of way bear the burden of the resulting cost of this degradation and shortened life of the surface rather than the taxpayers of the City. In addition, establishment of a trench cut cost recovery fee will create an incentive for utilities to coordinate excavations in the streets. This Ordinance shall not be construed to relieve those excavating into the City right of way of the obligation to fill, repair and properly maintain the location of the excavation.

(b) DEFINITIONS.

- (1) "Applicant" shall mean any owner or duly authorized agent of such owner, who has submitted an application for a permit to excavate.
- (2) "Board" shall mean the Board of Public Works for the City of Everett.
- (3) "City street" shall mean any Public right of way which has been accepted, or is hereafter accepted by the City of Everett.
- (4) "Department" shall mean the Department of City Services.
- (5) "Director" shall mean the Director of City Services or his/her designee.
- (6) "Excavation" shall mean any opening in the surface or subsurface of the public right of way.
- (7) "Facility" or "Facilities" shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by an owner or person, that are located or are proposed to be located in the public right of way.
- (8) "Owner" shall mean any person, including any agency, department, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right of way.
- (9) "Permit" or "permit to excavate" shall mean a permit to perform an excavation as it has been approved or may be amended or renewed by the Department.
- (10) "Person" shall mean any natural person, corporation, partnership, or any governmental agency, including any agency, Department, or subdivision of the County, the state of Massachusetts, or United States of America.
- (11) "Public right of way" shall mean the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, places, roads, sidewalks, streets, and ways within the City, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Department of City Services.
- (12) "Trench Cut Recovery Fee" is a fee, the amount of which shall be set at One Thousand dollars (\$1,000.00) per one hundred (100) square feet or any portion of one hundred square feet of surface area that is excavated.
- (13) "Trench Influence Area" shall mean an area three and one-half feet adjacent to the edge of trench where the excavation occurs.

(c) PAYMENT OF TRENCH CUT COST RECOVERY FEE.

No person shall excavate in a Public right of way without, in addition to all other requirements of this Ordinance, having first paid to the City a "Trench Cut Cost Recovery Fee." The amount of this Trench Cut Cost Recovery Fee may be modified from time to time by an Order passed by the Everett City Council with the approval of the Mayor. The "Trench Cut Cost Recovery Fee" is in addition to any other applicable fees or charges.

(d) VARIANCE FROM PAYMENT OF TRENCH CUT COST RECOVERY FEE.

Any person subject to the Trench Cut Cost Recovery Fee may request that the Director waive the requirement of payment of the Trench Cut Cost Recovery Fee due to individual circumstances that demonstrate, on a case-by-case basis, that the amount of the fee is not reasonably related to the projected impact of the proposed excavation.

(e) EXCEPTIONS.

- (1) Excavations in City streets scheduled for pavement structural improvements within two years of the date of excavation shall be exempt from the Trench Cut Cost Recovery Fee.
- (2) No Trench Cut Cost Recovery Fee shall be charged for underground utility district projects initiated by the City, or utility line relocations necessitated by City street work projects or by street discontinuances.
- (3) No Trench Cut Cost Recovery Fee shall be charged for excavations performed by or for the City of Everett Public Works Department.
- (4) No Trench Cut Cost Recovery Fee shall be charged with respect to excavation in a sidewalk or a concrete street.

(f) PAVEMENT LIFE PERFORMANCE WARRANTY

- (1) In lieu of paying a Trench Cut Cost Recovery Fee , a Person who is a public agency, who is a publicly regulated utility company, or who has a valid franchise agreement with the City or is statutorily exempt from franchise requirements shall provide a written pavement life performance warranty in a form acceptable to the City. The warranty shall provide that in the event that subsurface material or pavement over or within the Trench Influence Area becomes depressed, broken, or otherwise fails at any time after the excavation (or joint operation excavation) has been completed, that Person shall repair or restore such condition at the direction of the Director of City Services.
- (2) In the event that a Person who is a public agency, a publicly regulated utility company, or who has a valid franchise agreement with the City or who is statutorily exempt from franchise requirements fails or refuses to provide a written pavement life performance warranty, such Person shall pay the Trench Cut Cost Recovery Fee set forth in this Ordinance.
- (3) Should a Person who has entered a written pavement life performance warranty with the City fail to repair, replace or restore a Public right of way in accordance with the terms of the warranty, the City may cause the repair to be made and charge the amount of the repair costs to the Person. After three failures to make repair on any warranted trenches citywide within any twenty-four (24) month period, the Director may, at Director's discretion, terminate the Pavement Life Performance Warranty Agreement with the Person and thereafter require the Person to pay the Trench Cut Cost Recovery Fee.
- (4) Written notice of the decision of the Director to terminate a Pavement Life Performance Warranty Agreement shall be mailed to the Person who entered the Agreement, and the termination shall take effect upon mailing. The Person may, within sixty (60) days after mailing of the written notice of termination, request the Director to reconsider the decision to terminate the Agreement and to renew the Agreement by submitting a written statement, executed by the Person or by a duly authorized agent for the Person, stating the reasons that the Agreement should not be terminated, and reaffirming the Person's agreement to be bound by the terms of the Pavement Life Performance Warranty Agreement as amended if the Agreement is renewed. The Director shall consider the materials which are timely submitted by the Person, and such other information and material as the Director may in his discretion

permit, and shall respond in writing within thirty (30) calendar days after receipt of the timely request by:

- a. granting the request to renew the Agreement,
- b. denying the request to renew the Agreement, or
- c. requesting such additional information or documentation as the Director find relevant to evaluation of the request.

(5) Pavement life warranty agreements are not transferable or assignable.

(g) REPAIR OF SUNKEN PAVEMENT OVER EXCAVATION.

- (1) If the subsurface materials or pavement over or within the Trench Influence Area becomes depressed or broken at any time, the Person shall, within fourteen (14) days of mailing of written notice from the Director, immediately inspect the depressed or broken area to ascertain the cause of the failure. The Person shall make repairs to the installation or backfill and have the pavement restored in the manner and within the time period specified by the Director. A Trench Cut Cost Recovery Fee shall not be charged for work performed under this Section.
- (2) If the pavement is not restored as specified by the Director, unless delayed by conditions beyond the Person's control, the Director may cause the work to be done after giving the Person twenty-four hours final notice. The Person shall thereafter, upon written demand by Director, pay the City an amount calculated by multiplying the number of square feet of pavement restored by the Square Foot Trench Repair Reimbursement Fee. The Person shall remain responsible for any future repairs of that portion of pavement over the excavation that was repaired by the County.

(h) PROTEST OF TRENCH CUT COST RECOVERY FEE--CLAIMS FOR REFUND--APPEALS

- (1) Any person required to pay a Trench Cut Cost Recovery Fee pursuant to this Ordinance who desires to protest or otherwise challenge the imposition or amount of the fee shall tender to the City payment in full of the fee when due, accompanied by a written notice to the Director of City Services containing the following information:
 - a. A statement that the required payment is tendered under protest; and
 - b. A description of the factual and legal basis for the protest in writing.
- (2) Any person required to pay a Trench Cut Cost Recovery Fee pursuant to this Ordinance, and who has complied with the fee protest provisions of Subsection (a) of this Section, may submit a claim for refund of the fee in the manner set forth within thirty (30) days of payment of the Trench Cut Cost Recovery Fee. In evaluating the claim, the Director shall consider whether the claimant has established: (i) the claimant's excavation will not degrade and shorten the life of the surface of the street(s), (ii) that the degradation of the street(s) will not increase the frequency and cost to the public of necessary resurfacing, maintenance and repair of the street(s); (iii) that the imposition or amount of the Trench Cut Cost Recovery Fee required of the claimant is unlawful for another reason.
- (3) The validity or amount of a Trench Cut Cost Recovery Fee shall not be contested in any action or proceeding unless the action or proceeding is commenced within ninety (90) days after a claim is filed and denied.

- (4) The Director of City Services shall maintain a file for all refunds and the reason for the refund. A copy of the refund files shall be submitted to the City Auditor yearly or when requested by the City Auditor.

(i) UTILITY MASTER PLANS.

- (1) Any utility owning, operating or installing in a Public right of way facilities providing water, sewer, gas, electric, communication, video or other utility services, shall prepare and submit to the Director a utility master plan, in a format specified by the Director, that shows the location of the utility's existing facilities in Public rights of way, and shows all of the utility's planned major utility work in Public rights of way for the next year. Utilities shall submit an initial utility master plan no later than one hundred eighty (180) days after the effective date of this ordinance. Thereafter, each utility shall submit annually, on the first regular business day of August, a revised and updated utility master plan. A utility may extend its deadline to submit its utility master plan by a period not to exceed fifteen (15) days by submitting written notice to the Director of the delay and identifying the reasons for the delay. As used in this subsection, the term "planned major utility works" refers to any and all future excavations planned by the utility when the utility master plan or update is submitted that will affect any Public right of way for more than fifteen (15) days, provided that the utility shall not be required to show future excavations planned to occur more than a year after the date that the utility master plan or update is submitted.
- (2) The Director shall make all utility master plans submitted in accordance with subsection (a) of this section, available for public inspection.
- (3) Prior to applying for an excavation permit, any person planning to excavate in the Public rights of way shall review the utility master plans and the City's repaving plan on file with the Director and shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the use of Public rights of way.

(j) MORATORIUM

- (1) Excavation in newly renovated Public right of ways is prohibited for three (3) years after filing of a notice of completion or acceptance of a new street or structural overlay of an entire street except as follows:
 - a. Emergency which endangers life or property;
 - b. Repair or modification to prevent interruption of essential utility services;
 - c. Relocation work that is mandated by State or Federal legislation;
 - d. Service for buildings or parcels where no other reasonable means of providing service exists, as determined by the Director;
 - e. In a Public right of way that the City has scheduled for overlay or reconstruction within two years after the date of excavation due to failure of the original pavement;
 - f. Other situations deemed by the Director to be in the best interest of the general public.
- (2) Where a permit is issued to excavate during the three (3) year period after filing of a notice of completion or acceptance of a new street or structural overlay of an entire

street, payment of the Trench Cut Cost Recovery Fee will be required regardless of whether the Person has executed a pavement life performance warranty.

- (3) The Moratorium in subsection (a) shall not apply if the structural overlay was completed prior to the effective date of this Ordinance.

(k) COORDINATION WITH CITY

- (1) Prior to applying for an excavation permit in the Public rights of way, the City shall review on behalf of the Applicant the City's anticipated repaving plans and the utility master plans on file with the Director. The Applicant shall coordinate, to the extent practicable, with the utility and street work shown on such plans to minimize damage to, and avoid undue disruption and interference with the Public rights of way. Such coordination shall include:

- a. Whenever two or more persons have proposed a major excavation in the same general location, they shall meet and confer with the City regarding whether it is feasible to conduct a joint operation excavation. If the persons select a single contractor to do the joint work then the Director may direct that only a single Trench Cut Cost Recovery Fee shall be charged, except that no fee shall be charged if any of the Persons conducting a joint operation excavation possesses a valid performance warranty agreement with the City.

- (2) To avoid future excavations and to reduce the number of street excavations, telecommunication companies shall be requested, when practical, to install spare conduits.
- (3) In order to encourage coordination of excavation and pavement scheduling and planning between the City and excavators, the City shall update at least annually its anticipated repaving plans. The anticipated repaving plans shall also identify the Public rights of way which are then subject to the Moratorium provisions, and the Moratorium expiration date for each such right of way. A copy of the anticipated repaving plans shall be available for review at the Department of City Services by any interested Person.

(l) CREATION OF TRENCH CUT COST RECOVERY FEE FUND.

There is hereby created and established the "Trench Cut Cost Recovery Fee Fund." The Fund is a restricted fund, and all funds deposited into the Trench Cut Cost Recovery Fee Fund shall be used solely for the purpose of street surfacing, resurfacing, repair and reconstruction.

(m) DEPOSIT OF MONEYS.

All funds received pursuant to this Ordinance shall be placed in the Trench Cut Cost Recovery Fee Fund. All interest and other earnings from monies placed in the fund shall be credited to the fund and shall be used for the purposes stated above.

(n) EXPENDITURE OF FUNDS.

Funds maintained in the Trench Cut Cost Recovery Fee Fund shall only be appropriated by an Order of the Everett City Council, with the approval of the Mayor for the maintenance, rehabilitation, resurfacing administration and protection of the Public right of way that have been excavated after the effective date of this ordinance, and for refunds of fees approved by the Director of City Services. Monies not expended from the fund in

any fiscal year shall not revert to the General Fund, but shall remain in the Trench Cut Cost Recovery Fee Fund.

(o) SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City of Everett hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional. (A0065-06)

Secs. 17-58--17-80. Reserved.

ARTICLE III. USE OF PUBLIC WAYS DURING CONSTRUCTION, RECONSTRUCTION OF BUILDINGS*

Section 17-81 Permit required.

- (a) Every person intending to erect or repair any building upon land abutting on any public way in the city, and desiring to use any portion of the public way in connection therewith, shall make application to the board of public works for a permit so to do.
- (b) Any person excavating land or any person in charge of such excavation and any owner of land that has been excavated shall erect safety barriers around such excavation. After such person has been notified, in writing, by the inspector of buildings stating that in his opinion such excavation continues to constitute a hazard to public safety, such person shall immediately take whatever measures prescribed by the inspector of buildings. Penalty for violation for this provision shall be in accordance with section 1-8. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 12)

Section 17-82. Surety bond required.

Before granting a permit under the provisions of this article, the board of public works shall require that the applicant execute a bond to the city in such a sum as the Board of Public Works may prescribe, to save the city harmless from any damages that may arise from such use of the public way, and to insure the carrying out of the provisions of this article. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 13)

Section 17-83. Allotment of portions of public way.

The board of public works shall have full power and authority to allot for the use of the public way by persons erecting or repairing buildings, such portion of the public way adjoining the land as it shall deem necessary, and for such time and under such limitations and restrictions as it may deem proper for public convenience and as may be required by ordinance. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 14)

Section 17-84 Revocation of permit.

Any permit granted pursuant to this article may be revoked by the board of public works at any time when the holder thereof fails to comply with any rule or regulation under which it is granted or with the city ordinances, or when, in the opinion of such board, the public good requires such revocation. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 15)

Section 17-85 Use of unallotted portions of public way; removal of rubbish, etc.

(a) No part of a public way, other than that part so allotted shall be used for depositing materials for work to be done, or receiving rubbish arising from such work. Immediately after the expiration of the time fixed, and at such other times as the board of public works may direct, the person so building or repairing shall remove all rubbish or other substances resulting from such work.

(b) In case of neglect or refusal of such person to remove such rubbish the same shall be removed at their expense by the board of public works, and such person shall be liable to a fine in accordance with section 1-8. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 16)

Section 17-86 Repairs of vehicles.

(a) No part of a public way shall be used for the routine repair of motor vehicles.

(b) Any person found in violation of this section shall be fined in accordance with section 1-8. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 16A) Cross reference(s)--Traffic and motor vehicles, Ch. 18.

Section 17-87 Barrier required; lighting.

Whenever a permit is granted under the provisions of this article the portion of a public way thereby allotted shall be enclosed with a sufficient barrier, which shall be maintained during the whole time for which the occupation of such portion of the public way continues. Sufficient lights shall be fixed to some parts of such barrier, or in some other proper manner, and lights shall be kept lighted from the beginning of twilight through the whole of every night during such occupation. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 17)

Section 17-88. Passageway for pedestrians required.

Whoever is duly permitted to occupy a part of a public way while erecting or repairing a building, or making an excavation, or for any other purpose, shall provide a safe and convenient passage for pedestrians around or over the obstructions so caused which shall meet the approval of the board of public works. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 18)

Section 17-89 Exhibition of permit.

Every person granted a permit under the provisions of this chapter shall exhibit his permit for such occupation at all times when requested by the board of public works or any agent thereof, or by a police officer. (Rev. Ords. 1976, Pt. 2, Ch. 17, § 20)

Article IV

NEWSRACKS

Section 17-90 Definitions

When used in this ordinance, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) “Director” shall mean the Director of City Services Department of the City of Everett.
- (b) “Newsrack” shall mean any type of self-service device for the vending or free distribution of newspapers, periodicals, or printed material of whatever nature.
- (c) “Certificate of Compliance” shall mean the Certificate of Compliance issued by the Director in accordance with the provisions of this ordinance.
- (d) “Certificate Holder” shall mean the holder of a Certificate of Compliance issued by the Director in accordance with the provisions of this ordinance.
- (e) “Operator” shall mean any natural person or other legal entity including, but not limited to, corporations, partnerships, joint ventures and the like who either own, operate or otherwise are in control of the newsrack.
- (f) “Public Way” shall mean any public highway, private way laid out under authority of statute, way dedicated to public use, or way under control of a body having like power.

Section 17-91 Certificate of Compliance

(a) Requirement.

No person shall place, affix, erect, constitute or maintain a newsrack in or on any part of a public way without first obtaining a certificate of Compliance from the Director in accordance with the provisions of this ordinance.

- (1) The Certificate of Compliance must be renewed annually by application to the Director.

(b) Issuing Authority.

The Director shall be the issuing authority of the application process and administration of this ordinance.

(c) Approving Authority.

The approving authority shall be the Director. The Director or his/her designee shall review and approve for compliance with Section 17-91, entitled Certificate of Compliance, Section 17-93, entitled Standards for Placement, and Section 17-96, entitled Installation, Maintenance and Delivery Time.

(d) Application Process.

Applicants must complete a written application on a form provided by the Director.

(e) Application

The application shall describe in sufficient detail, the number, location and type of newsracks for which the Certificate of Compliance is sought and shall contain the following:

- (1) the name, address and telephone number of the applicant who is the owner/operator or other person who is the principal responsible person in charge of the newsrack(s); and
- (2) the name, address and telephone number of the natural person (if different from the applicant) whom the city may notify and/or contact at any time concerning the applicant's newsracks. This person would be responsible for receiving complaints and notices of violations when a Certificate of Compliance is issued and for providing information relating to the application during the application process; and
- (3) the number of newsracks and a written description specifying the proposed approximate location of each; and
- (4) a certificate of insurance naming the City of Everett as an additional insured in an amount sufficient to indemnify the city and hold it harmless from any and all claims or judgments for personal or bodily injury, including death, or property damage and from costs and expenses to which the city may be subjected or which it may suffer or incur by reason of design, placement, installation, operation or maintenance of any of the applicant's newsracks. Reasonable evidence of self-insurance may be substituted by the applicant for the certificate of insurance. Insurance under this section shall run continuously with the presence of the applicant's newsrack in the City of Everett public ways and any termination or lapse of such insurance shall be a violation of this ordinance, subject to appropriate remedy under Section 17-94 of this ordinance; and
- (5) a certification from the applicant stating that the proposed location for all of the newsracks listed in the application are in compliance with the provisions of this ordinance.

(f) Issuance of a Certificate of Compliance

- (1) Upon a finding by the Director that the applicant is in compliance with the provisions of this ordinance, the Director shall issue a partial Certificate of Compliance for installation by the applicant.
- (2) The Director shall issue a partial Certificate of Compliance upon a finding that of the proposed newsrack locations are in compliance with the provisions of this ordinance.
- (3) Issuance of a Certificate of Compliance or a partial certificate of compliance shall designate the applicant to be the certificate holder.
- (4) The Director shall issue a Certificate of Compliance within ten day of the Director's receipt of the completed application.
- (5) Proposed locations shall be approved by the Director on a first-come first-serve basis and no preference shall be given to applicants who might have had newsracks in a particular location prior to the effective date of this ordinance.

(g) Denial of Certificate of Compliance

If an application for a newsrack location is denied,

- (1) the Director shall notify the applicant within ten days of the Director's receipt of the completed application,
 - (2) the Director shall state the specific reason for denial'
 - (3) the applicant may reapply for a substitute alternative location without having to pay an additional application fee, and
 - (4) the applicant may appeal with thirty (30) days of such denial by requesting in writing to the Director an appearance before the Board of Aldermen to review such denial,
 - a. the appeal shall be heard within twenty (20) days of receipt of the appeal, and
 - b. the decision on the appeal shall be sent to the applicant with five (5) days after the hearing.
- (h) The Director reserves the right to order by written notice to the certificate holder that newsracks be removed from an approved location, either temporarily or permanently, in the interests of public safety.

Section 17-92 Fees

- (a) Certificate of Compliance.

There shall be a Certificate of Compliance fee in the amount of two hundred dollars (\$200.00) paid to the city. The fee shall be due upon initial application and upon each annual renewal.

- (b) Additional Certificate of Compliance.

If at any time after the Director has issued a Certificate of Compliance, a certificate holder proposes to install additional newsracks, then the provision of Section 17-91 are to be repeated. Additional Certificate of Compliance fees shall be in accordance with paragraph (a) of this section, except that the Certificate fee is waived if previously paid.

- (c) Annual Fee.

In addition to the Certificate of Compliance fee, an annual fee of twenty-five dollars (\$25.00) per newsrack authorized shall be paid to the city to offset the city's cost of monitoring compliance with this ordinance.

- (d) Where the Director has required newsracks to be set in corrals, or at hitching posts pursuant to Section 17-93, additional fees shall be imposed by the Director on certificate holders to offset the city's costs for each corral or hitching post used by such certificate holder.

Section 17-93 Standards for Placement of Newsracks

- (a) No person shall place, cause to be placed, or maintain a newsrack on any public way or sidewalk:

- (1) within five feet (5') of a handicapped access ramp;
- (2) within or overhanging the roadway;

- (3) within six inches (6") of a curb;
- (4) within five feet (5') of a curb return of any marked crosswalk;
- (5) within five feet (5') of any fire hydrant or hose connection;
- (6) within three feet (3') of any manhole, service gate, valve cover, sewer gate or other access panel or cover located in a public way or sidewalk;
- (7) within five feet (5') of a driveway;
- (8) immediately adjacent to a designated loading zone, a handicapped parking space, a zone reserved for emergency vehicles;
- (9) so as to reduce the width of a sidewalk to less than four feet (4') for the passage of travelers unless the width of the sidewalk is otherwise reduced to less than four feet (4'), as determined by the Director, in which case the newsrack may be installed as to avoid further reducing the width of the sidewalk;
- (10) so as to impede egress from legally parked motor cars;
- (11) so as to impede the operation of standard sidewalk snowplows in use by the City of Everett except where said sidewalk snowplows would be otherwise impeded, as determined by the Director;
- (12) within four feet (4') of the door of any building measured in a line perpendicular from the horizontal line made by the door when closed;
- (13) so as to create an imminent danger of harm to persons or property as demonstrated by specific facts;
- (14) directly abutting a public flowerbed, memorial or sculpture;
- (15) to a city city-owned tree, traffic control device, police or fire call box;
- (16) directly in front of and on the same side of the street as any parcel zoned solely for residential use as defined in the City of Everett Zoning Ordinances, except designated bus stops and MBTA railroad platforms, crossings and parking lots. This restriction shall not apply to parcels zoned for a mixed residential and business use;
- (17) in a manner that violates any provision of state or federal law.

(b) Newsracks may be secured to one another provided that they are no more than six inches apart and provided that the newsracks are aligned in a row that is parallel to the nearest curb line.

- (1) Individual newsracks shall be installed parallel to the nearest curb line.
- (2) Newsracks may be clustered back to back to form two rows provided that the rows are parallel to the nearest curb line and further provided that the newsracks otherwise comply with the provisions of the ordinance.

(c) Newsracks may only be attached or secured to city owned property with the express permission of the Director and then, only if the newsrack is otherwise in compliance with the provisions of this ordinance.

(d) Newsracks shall not exceed the following dimensional requirements:

- (1) Height: four and one-half feet (4'6") from the ground;
- (2) Width: two feet (2'); and

- (3) Length: two feet (2').
- (e) Newsracks shall be contracted and maintained so that they do not constitute a hazard or safety problem for travelers and others using the sidewalks and public ways. They shall be maintained in good repair and clean and safe condition and shall be removed if their use is discontinued.
- (f) No newsrack shall bear any advertising other than that directly relating to the printed matter dispensed by the newsrack.
 - (1) A newsrack may dispense more than one publication (printed matter) if it is published by the owner of the newsrack or an affiliate thereof, and
 - (2) the newsrack may bear advertising directly related to each publication dispensed by the news rack.

Section 17-94 Enforcement Procedures

- (a) Any newsrack which does not have a Certificate of Compliance issued or for which an Application is not pending review or whose placement is not in compliance with the standards set forth in Section 17-93, may be removed by the Director after ten (10) days written notice to the owner thereof unless same is brought into compliance before the expiration of the ten (10) day period.
- (b) Enforcement of the provisions of this ordinance shall be carried out by the Director. Upon a determination that a violation of any provision of this ordinance exists, the Director shall notify the certificate holder of the violation via first class mail. If the Director is without knowledge of the address of the owner of the newsrack, he shall be entitled to rely on whatever information is on the outside thereof, if any.
 - (1) The notice shall include:
 - a. the date and location of the incident or other cause giving rise to the incident;
 - b. a brief and concise statement of the facts causing the violation; and
 - c. notice to inform the certificate holder that at the expiration of ten (10) days from the receipt of the violation notice, the newsrack will be removed by the Director, unless the violation is corrected.
- (c) Upon removal of the newsrack, the Director shall send, by first class mail, written notice of such removal to the certificate holder.
- (d) Notwithstanding the provisions of the foregoing paragraphs, the Director may: order the immediate removal of any newsrack(s) that the Director determines presents an imminent threat or peril to public safety, provided the certificate holder shall be notified of such removal as soon as practicable thereafter, and further provided that any newsracks so removed shall be stored for a period of thirty (30) days in order to allow the certificate holder to retrieve the newsrack. If the Director removes a newsrack under this paragraph (d) that does not have a certificate of compliance, the Director may dispose of the newsrack at the end of the thirty (30) day period.

- (e) Except as provided in section 17-94 (e), part 3, the Director may remove and store at the owner's expense any newsrack(s) that remains in violation for more than thirty (30) days after the date for compliance specified in section 17-94 (b)(1)c. provided that the Director shall give written notice to the owner stating:
 - (1) the date the newsrack was removed;
 - (2) the reasons for removal;
 - (3) the storage location; and
 - (4) the procedure for claiming the machine.

- (f) The owner of a newsrack may avoid removal of the newsrack by:
 - (1) correcting the violation and so informing the Director; or
 - (2) making a written request for a hearing on the violation before the Director prior to the date set for compliance in which case the newsrack may remain in place pending the Director's decision on the matter. Said hearing shall be held no later than ten (10) days after receipt of a written request for a hearing and a decision shall be rendered with ten (10) days thereafter.

- (g) If maintenance, repair or construction of a public way, sidewalk or public or private property in or adjacent to the public way cannot be accomplished without the removal of a newsrack, the Director shall give written and/or telephone notice to the certificate holder ordering removal of the newsrack provided that said notice shall specify the reason for the removal and the date of notice.
 - (1) If the Director determines that delay would cause unreasonable risk of harm to persons or property or would cause a delay in the maintenance, repair or construction work, the Director may remove the newsrack.

Section 17-95 Fees for Removal and Storage

- (a) A newsrack removed pursuant to this ordinance may be retrieved by the certificate holder at any time with thirty (30) days of its removal upon payment of a removal fee of twenty-five dollars (\$25.00) plus a storage fee of five dollars (\$5.00) per day, to a maximum combined removal and storage fee of one hundred dollars (\$100.00).

- (b) After thirty (30) days, any newsracks removed by the Director pursuant to Section 17-94 of this ordinance shall be deemed "abandoned property and become the property of the City of Everett.

- (c) Failure of a certificate holder to retrieve a newsrack within the specified thirty (30) day period shall not operate to dismiss any fees owed to the city for removal and storage of such newsrack(s). Unpaid fees accrued pursuant to this section shall be considered a debt payable to the city.

Section 17-96 Advertising

It shall be unlawful for any operator to use a newsrack for advertising or publicity purposes than that dealing with the display, sale or purchase of the publications dispensed therein.

Section 17-97 *Installation and Maintenance*

Newsracks shall be of sturdy material and installed or otherwise placed and maintained by the certificate holder in accordance with the following provisions:

- (a) Each newsrack shall prominently display the name, address and phone number of a person or entity responsible for the newsrack.

- (b) Each newsrack shall be:
 - (1) installed or placed on pavement in an upright, sufficiently weighted and secure position;
 - (2) of a type that completely enclosed, with a self closing door that is either self-latching or otherwise requires manual or mechanical release at each use;
 - (3) maintained in a state of good repair and in neat and clean condition;
 - (4) maintained in a condition that is free of accumulations of outdated printed materials, trash, rubbish or debris; and
 - (5) handicapped accessible, as defined by the state Architectural Access Board at 521 CMR.

- (c) Each newsrack shall be regularly serviced so that:
 - (1) it is kept reasonably free of graffiti;
 - (2) it is kept reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;
 - (3) it is kept reasonably free of rust and corrosion in the visible unpainted metal areas thereof;
 - (4) the clear glass or plastic parts thereof, if any, through which the printed materials are being dispensed are not broken and are reasonably free of tears, peeling or fading; and
 - (5) the structural parts of the newsrack are not broken or unduly misshapen.

Section 17-98 *Severability*

The provisions of this ordinance shall be severable and if any section, part or position hereof shall be held invalid for any reason by any court, the decision of such court shall not affect or impair any remaining section, part or portion thereof. (Ord. of 01-31-2003)