SDOT	Director's Rule 07-2015

Applicant: **CITY OF SEATTLE** Seattle Department of Transportation (SDOT)	**Page** 1 of 12	**Supersedes:** SED Director's Rule 95-1
	Publication: 5/22/2015	**Effective:** 6/8/2015
Subject: Standards for Issuance or Denial of Street Use Permits for First Amendment Activities	**Code and Section Reference:** Seattle Municipal Code (SMC) Title 15, Street and Sidewalk Use Code	
	Type of Rule: Legislative	
	Ordinance Authority: SMC 3.12.010	
Index: Street and Sidewalk Use; Street Use Permits; First Amendment Activities	Approved	Date 6/7/15
	Scott Kubly, Director Seattle Department of Transportation	

TABLE OF CONTENTS

1.0	References	3
2.0	Purpose of Rule	3
3.0	Definitions	3
4.0	Policy; Scope	6
5.0	Applications for Permits	7
5.1	Forms	7
5.2	Fee Waivers	7
5.3	Insurance Waivers	7
6.0	Standards for Issuance or Denial of Street Use Permits	8
7.0	Identification of Reasonable Alternatives	9
8.0	Timing and Denial	10
9.0	Request for Review or Reconsideration	10
10.0	Suspension, Revocation, and Modification of Permits	11
11.0	General Provisions	11

1.0 References

1.1 Seattle Municipal Code (SMC) Title 15, (Street and Sidewalk Use Code, Ordinance 90047, as amended);

1.2 SMC 12A.12.015, Criminal Code;

1.3 First Amendment to the United States Constitution;

1.4 Article 1, Sections 3, 5 and 11 of the Washington Constitution; and

1.5 Revised Code of Washington (RCW) 74.09.035.

2.0 Purpose of Rule

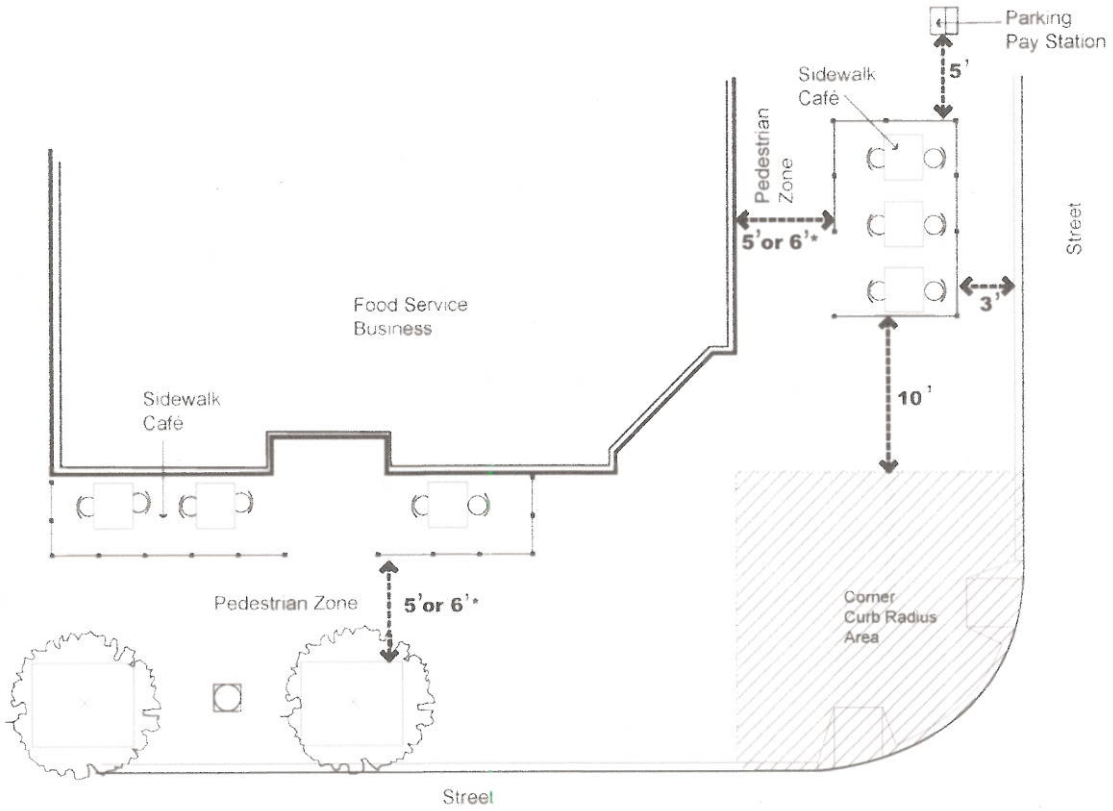
To establish procedures to be followed, factors to be considered, and standards to be applied when the Seattle Department of Transportation (SDOT) considers applications for Street Use permits for First Amendment expressive conduct.

3.0 Definitions

3.1 "Adjacent property" means and includes the property abutting the margin of and contiguous to the public places. (SMC 15.02.042)

3.2 "City" means The City of Seattle.

3.3 "Corner curb radius area" means the area that includes the intersection of two sidewalks bounded by the adjoining corner or curb bulb and curb ramps (see graphic below). If the start of the point of curvature for the curb bulb or curb radius occurs beyond the sidewalk intersections, the area shall be extended to the point of curvature for the curb bulb or curb radius.



3.4 "Curb or curbline" means the edge of a roadway whether marked by curbing construction or not. (SMC 11.14.145)

3.5 "Director" means the Director of the Seattle Department of Transportation or authorized representatives. (SMC 15.02.044)

3.6 "First Amendment expressive conduct" means conduct protected by the First Amendment that is primarily intended to convey a particularized message and is likely to be understood as such in the surrounding circumstances. The principal object of expressive conduct is the expression, dissemination or communication by verbal, visual, literary or auditory means of opinion, views or ideas.

3.7 "First Amendment" means the First Amendment to the United States Constitution and its counterpart in the Washington Constitution, Article I § 3, 5,. and 11.

3.8 "Indigent" means a natural person who, at the time of permit application, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp

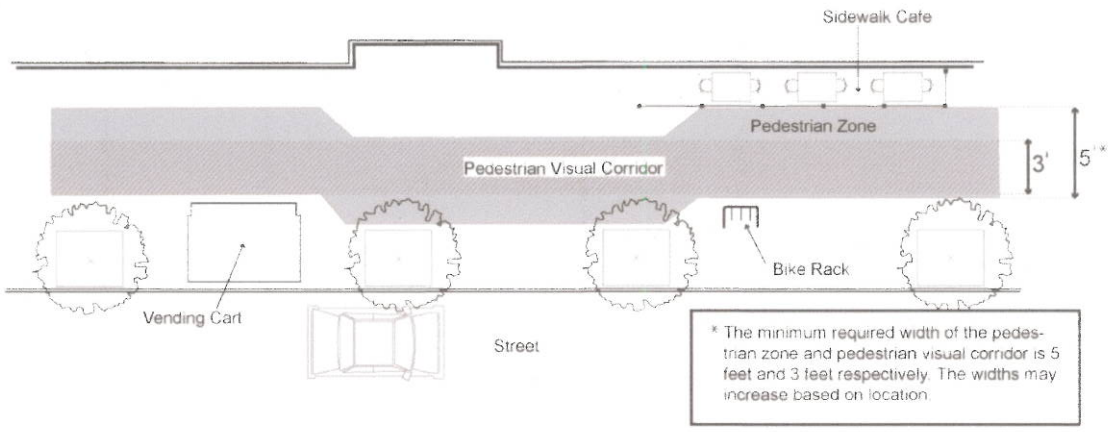
benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

3.9 "Pedestrian zone" means the area or space of the public place or roadway that is reserved for the exclusive use of pedestrians (Exhibit A for 15.02.046: Pedestrian Zone/Pedestrian Visual Corridor). (SMC 15.02.046)

3.10 "Pedestrian visual corridor" means a continuous and straight corridor within the designated pedestrian zone that provides pedestrians with a clear visual indication of the location of the path of travel along a block face (Exhibit A for 15.02.046: Pedestrian Zone/Pedestrian Visual Corridor). Street furniture, plantings, and other obstructions shall not protrude into this corridor. (SMC 15.02.046)

Exhibit A for 15.02.046
Pedestrian Zone / Pedestrian Visual Corridor



3.11 "Permit" and "Street Use permit" each mean a permit issued by SDOT pursuant to SMC Chapter 15.04.

3.12 "Public place" means public right-of-way and the space above or beneath its surface, whether or not opened or improved, including streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, planting strips, squares, triangles, and plazas that are not privately owned. (SMC 15.02.046)

3.13 "Sight triangle" means the area on both sides of a driveway that must be clear of any obstruction to permit optimal visibility from the driveway to the sidewalk and street. SMC 23.84A.036

3.14 "SMC" is an abbreviation for Seattle Municipal Code. (SMC 15.02.046)

3.15 "Use" means exercising dominion or control over, or occupying all or part of; a public place with or without the or the right to do so, and includes the entire definition set forth in SMC 15.02.048.

4.0 Policy; Scope

4.1 These regulations establish the procedures to be applied when SDOT considers applications for Street Use permits involving First Amendment expressive conduct.

4.2 When a Street Use permit is required. A Street Use permit is required prior to engaging in First Amendment expressive conduct that would constitute a "use" of the public place as that term is defined in SMC 15.02.048. Anyone wanting to engage in an activity that would constitute such a "use" of the public place (including "the exercise of dominion or control over or occupation of all or part of the public place") must first obtain a Street Use permit (SMC 15.04.010).

Examples of activities that would ordinarily fall within the definition of use, because they typically would appear to a reasonable person to constitute an exercise of dominion or control over a portion of the public place, include, but are not limited to: placing an object such as a table, sign, easel, stage, podium, display, or other structure on the public sidewalk.

4.3 When a Street Use permit is not required. The following activities would not ordinarily constitute a "use" because they would not typically appear to a reasonable person to constitute an exercise of dominion or control over a portion of the public place:

4.3.1 Handing out leaflets or handbills to passersby while standing or walking on a public sidewalk;

4.3.2. Carrying or holding a sign while standing or walking on a public sidewalk; or

4.3.3. Conducting a march or parade on a public sidewalk that is not of sufficient size or character to constitute an exercise of dominion or control over the public right of way.

4.4 These rules do not apply to permits for crowd control events, for example, marches, rallies, or parades that meet the definition of a crowd control event. Crowd control event permits are issued under SMC Chapter 15.52.

4.5 These regulations do not apply to First Amendment expressive conduct inextricably intertwined with commercial activity, referred to in this rule as First Amendment Vending. First Amendment Vending occurs when merchandise, goods or services are exchanged with a recipient obligated or expected to make

payment for the vended item. Permitting requirements for vending are regulated by SMC Chapters 15.04 and 15.17, and City of Seattle Regulations SED 94-2 – First Amendment Vending of Merchandise, or successor rule.

4.6 These regulations do not apply to placing newsstands governed by Chapter 15.14 SMC and SDOT Director's Rule 2-2014, or successor rule.

4.7 These rules are designed and intended to accommodate these compelling governmental interests:

4.7.1 Maintaining the use of public places under SDOT's jurisdiction, including sidewalks and City streets for: safe and reasonably unimpeded travel and transportation; utility rights of way and related purposes; incidental authorized uses; and other public purposes, including parades, street fairs, celebrations, demonstrations, and recreation;

4.7.2 Assisting cleaning and maintenance of the right-of-way;

4.7.3 Preserving the safety and appearance of "public places" as inviting areas for pedestrians; plazas as places for public gathering; street trees and greenery as amenities that contribute to the quality of the environment;

4.7.4 Respecting the interest of owners of adjacent property who may own the public place in fee, with the public enjoying an easement or other interest;

4.7.5 Respecting the interest of owners and occupants of adjacent properties in light, air, access, and view, and in conducting various activities under permit; and

4.7.6 Providing an opportunity for a diversity of activities, views, or opinions where two or more applicants request the use of the same public place.

5.0 Applications

5.1 Forms. Applications for Street Use permits must be completed in full on a form that SDOT shall provide (SMC 15.04.020).

5.2 Fee waivers. For an indigent natural person, SDOT shall waive the permit fee required for a Street Use permit involving First Amendment expressive activity upon a showing of inability to pay due to indigent status.

5.3 Insurance waivers. SDOT shall waive the standard insurance requirement contained in SMC Section 15.04.045 to accommodate First Amendment expressive activity, unless the particular activity involves components that could present a significant risk of injury or property damage.

6.0 Standards for Issuance or Denial of Applications for Street Use Permits

6.1 SDOT may deny an application for a permit on the following grounds:

6.1.1 Applicant has made material misrepresentations on previous applications or has violated the terms of previous permits;

6.1.2 The application is not complete and executed;

6.1.3 The applicant has not paid the required fee with the application or obtained a fee waiver;

6.1.4 The applicant has not provided proof of insurance as required under SMC Section 15.04.045 or obtained an insurance waiver;

6.1.5 The application contains material misrepresentations;

6.1.6 The applicant has damaged City property and has not paid for the damage or has other significant outstanding debts to the City;

6.1.7 An application for use has been received and a permit has been or will be issued that reasonably conflicts with applicant's proposed use;

6.1.8 A previously planned use by the City conflicts with applicant's proposed use;

6.1.9 The proposed use is prohibited by or would irreconcilably conflict with the factors set out in Section 6.2 and a reasonable alternative cannot be identified pursuant to Section 7.0;

6.1.10 The proposed use would present an unreasonable danger to the health or safety of the applicant, City employees, or the public;

6.1.11 The proposed use is prohibited by law or regulation.

6.2 In evaluating a request for a Street Use permit, SDOT shall evaluate the application in light of the following factors, where applicable:

6.2.1 The nature of the structure intended to be used to engage in or facilitate expressive conduct, including the structure's height and ability to remain in an upright position;

6.2.2 The volume of pedestrian and vehicular traffic in the vicinity of the proposed use;

6.2.3 The location of pedestrian zones and pedestrian visual corridors in the vicinity of the proposed use, and any interference with movement in those zones;

6.2.4 Compliance with Americans with Disabilities Act standards for the purpose of accommodating individuals with disabilities;

6.2.5 Effects on vehicular traffic and parking, including maintenance of a three foot setback between objects on the sidewalk and travel lanes in the roadway;

6.2.6 Visibility of pedestrians to drivers within 20 feet of a legal crosswalk or within sight triangles of alleys, driveways, and intersections;

6.2.7 Protection of clearance for corner curb radius areas;

6.2.8 Existing driveways or alleyways where vehicles may be entering or exiting;

6.2.9 Pedestrian entrances and exits of public and private buildings;

6.2.10 The location of public transit stations where transit riders may be waiting for transit or entering or exiting public transit vehicles;

6.2.11 Existing permitted sidewalks uses, including sidewalk cafes and construction activity; and

6.2.12 Needs of abutting property owners at the time of the application that, when combined with the placement of the proposed structure, create a significant risk of personal injury or property damage or interfere with the necessary operations of abutting property owners.

7.0 Identification of Reasonable Alternatives

If SDOT determines, that the proposed permit cannot be issued for the proposed location, time, duration, or manner of use because of a conflict with the factors listed in Section 6.2, SDOT shall attempt to identify reasonable alternatives. A reasonable alternative is an alternative location, time, duration, or manner of use (in consideration of the factors in 6.2) that would afford the applicant a reasonable opportunity to engage in the activity entitled to Constitutional protection.

If a reasonable alternative can be identified, SDOT shall, as an alternative to issuing the requested permit, issue an appropriate modified permit.

If a reasonable alternative cannot be identified, SDOT may deny the requested permit.

8.0 Timing and Denials

8.1 SDOT shall decide whether to grant or deny a permit within 48 hours of a complete application being submitted, excluding weekends and holidays, for use of a site, on an intermittent or continual basis, during a time period of up to thirty days.

8.2 SDOT shall decide whether to grant or deny a permit within 14 business days of a complete application being submitted, if the requested use of a site on an intermittent or continual basis is for a time period greater than thirty days.

8.3 Denials of permit applications shall be issued in writing. The denial shall set forth the reasons for denial.

9.0 Requests for Review or Reconsideration (SMC 15.04.112)

9.1 Any person aggrieved by an action of the SDOT Director with respect to a permit application decision may seek review of the action or request a review or reconsideration of a permit decision to the SDOT Director by filing a written request within 10-calendar days after the SDOT action or of the date of the SDOT decision. The request shall identify the action being appealed or decision for which review or reconsideration is requested, grounds for objecting to the action or decision based on City standards, and the specific remedy being proposed. Unless an emergency or an unsafe condition exists, a permitted use already in place shall remain in place during a review until the SDOT Director makes a final decision.

The Director shall designate a review officer who will make a recommendation to the Director. The Director may, at the Director's discretion, stay implementation of a decision pending review or reconsideration. On review, the Director may sustain, modify, prohibit, or reverse any permit decision. The Director's decision on a review or reconsideration is final and conclusive, subject to judicial review.

The request for review or reconsideration shall be submitted to:

Director of Transportation
Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle WA 98124-4996

With a copy to:

Division Director
Street Use Division
700 Fifth Avenue, Suite 2300
PO Box 34996
Seattle WA 98124-4996

9.2 The request for review or reconsideration of a permit request under these rules shall be heard and decided within two-business days.

9.3 Any Director's decision prepared in response to a request for review or reconsideration shall be provided to the applicant in writing.

10.0 Suspension, Revocation, and Modification of Permits

10.1 Street Use permits for a particular location may be temporarily suspended to accommodate construction activity, street maintenance, utility work, public emergencies, or during crowd control events authorized under Chapter 15.52 SMC.

10.2 When a temporary suspension of a street use permit is necessary, the permittee shall temporarily remove the permitted use and clear the public place for a period of time and in a manner that the SDOT Director deems appropriate to accommodate the conflicting use.

10.3 Street Use permits are temporary in nature, shall vest no permanent right, and may be revoked in case any use or occupation presents a threat to public safety; or any structure or obstruction permitted is insecure or unsafe; or is not constructed, maintained, or used in accordance with the provisions of Title 15 SMC or the conditions of the relevant Street Use permit.

10.4 A permit may be modified, including the permitted location, duration or type of structure, if conditions arise that cause a significant change in any of the factors listed in section 6.2 that could not have been anticipated at the time the permit was issued, and the modification of the permit is necessary in order to avoid an unreasonable risk of personal injury, property damage, or the unreasonable interference with pedestrian or vehicular traffic.

11.0 General Provisions

11.1 Compliance with laws. Whether or not a Street Use permit is required, all activities engaged in the public place must be conducted in compliance with all applicable ordinances and laws. For example, the placement of an object or structure must be done in such a way as to not interfere with pedestrians in a manner that violates SMC 12A.12.015 (Pedestrian Interference), and all sales of food and drink must comply with Title 15 SMC and all applicable ordinances including health and safety codes.

11.2 Severability. The provisions of this rule are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this rule, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this rule, or the validity of its application to other persons or circumstances.

11.3 Review. SDOT may review these rules from time to time and modify them as necessary.