

**SED**

**SED DIRECTOR'S RULE 95-1**

Subject:  <b>Standards for Issuance or Denial of Street Use Permits</b>	Cover Sheet and Six (6) Pages	Supersedes: None
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# STREET USE RULES

## 1.0 PURPOSE

To articulate procedures to be followed, factors to be considered, and standards to be applied when the Department considers applications for street use permits.

## 2.0 REFERENCES

- 2.1 Title 15, Seattle Municipal Code (Street Use Ordinance, Ordinance 90047, as amended).
- 2.2 SMC § 3.12.010 (rule making authority of Director of Engineering).
- 2.3 First Amendment to the United States Constitution.
- 2.4 Article I, Sections 3, 5 and 11 of the Washington Constitution.

## 3.0 DEFINITIONS

- 3.1 "Abutting property" means property abutting the margin of the particular public place that an applicant has applied to use under permit.
- 3.2 "City" and "Department" mean the Seattle Engineering Department, the Director of Engineering, or his or her designee.
- 3.3 "Director" means the Director of the Engineering Department.
- 3.4 "First Amendment" means the First Amendment to the United States Constitution and its counterpart in the Washington Constitution, Article I §§ 3, 5, and 11.
- 3.5 "Permit", "use permit", "use and occupation permit" and "street use permit" each mean a permit issued by the Department pursuant to SMC Chapter 15.04.
- 3.6 "Public place" means and includes streets, street ends, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting (parking) strips, squares, triangles, and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved (SMC 15.02.046).
- 3.7 "SMC" abbreviates Seattle Municipal Code.

3.8 "Use" means "the exercise of dominion or control over or occupation of all or part of a public place, 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 articulate the procedures to be applied when the Department considers applications for use permits.

4.2 When a use permit is required. A use permit is required prior to engaging in an activity 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 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 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:

1. placing an object such as a table or sign on the public sidewalk;
2. erecting scaffolding or a barricade on the public sidewalk, or storing dirt or construction materials on the sidewalk or in the street; and,
3. sitting or lying down upon a public sidewalk, or upon a chair or other object placed on the sidewalk;

4.3 When a 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:

1. temporarily utilizing a loading ramp, handtruck, or other similar device on the public sidewalk, while loading or unloading goods into an abutting property.
2. handing out leaflets or handbills to passersby while standing or walking on a public sidewalk;
3. carrying or holding a sign while standing or walking on a public sidewalk;

4. conducting a march or parade on a public sidewalk which is not of sufficient size or character to constitute an exercise of dominion or control over the public right of way. If the activity would constitute a crowd control event, a separate special events permit is required pursuant to SMC Chapter 15.52. (see 4.4).
- 4.4 These rules do not apply to permits for crowd control events (e.g. marches, rallies, or parades that meet the definition of a crowd control event). Crowd control event permits are issued pursuant to SMC Chapter 15.52.
- 4.5 These rules are designed and intended to accommodate these compelling governmental interests:
  1. maintaining the use of sidewalks, City streets, and boulevards for reasonably unimpeded travel and transportation, utility rights of way and related purposes, incidental authorized uses, and for other public purposes, such as parades, street fairs, celebrations, demonstrations, and recreation;
  2. assisting cleaning and maintenance of the right-of-way;
  3. preserving the safety and appearance of "public places" as inviting areas for pedestrians; boulevards as park-like drives; plazas as places for public gathering; street trees and greenery as amenities that contribute to the quality of the environment; and
  4. respecting the interest of owners of abutting property who own the public place in fee, with the public enjoying an easement or other interest;
  5. respecting the interest of owners and occupants of abutting properties in light, air, access, and view, and in conducting various activities under permit; and,
  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 Applications for use permits must be completed in full on a form (which the Department shall provide and which

shall be substantially similar to Attachment A) which the Department may modify from time to time (SMC 15.04.020).

6.0 STANDARDS FOR ISSUANCE OR DENIAL OF APPLICATIONS FOR USE PERMITS

6.1 Decisions to issue or deny applications for permits are generally legislative decisions within the discretion of the Department (SMC 15.04.030).

6.2 In exercising that discretion, the Department may evaluate the application in light of the governmental interests (4.5) and the following factors, where applicable:

1. Nature of the proposed use. What is the applicant proposing to do in the public place?
2. Location of the proposed use. What is the physical layout of the public place?
3. Public Use. How does the public presently use the area and for what purposes? What other potential public uses exist? How compatible/incompatible is the applicant's proposed use with the public's present or potential uses?
4. Duration and timing of the proposed use. Does the duration and/or timing of the proposed use pose any special issues/problems? Would alternative times or duration alleviate any such problems?
5. Effect on public access to public place. Would the proposed use enhance public access to the public space?
6. Is the proposed use consistent with City ordinances and policies which apply to that public place?
7. Abutting property owner(s)' position on the application. Abutting owners often own the public place in fee, with the public enjoying an easement or other limited interest (often for specified purposes) in the public place. When the applicant is not the abutting owner, the Department requires the applicant to inform the abutting property owner of the application and to provide the Department with information about the abutting

owner's position.<sup>1</sup> The position of abutting property owner(s) is not dispositive, but is one factor to be considered. (The Department may deny a permit supported by the abutting owner or may issue a permit over the objection of the abutting owner).

6.3 The Department shall exercise its legislative discretion to issue (or deny) a particular permit application based upon its determination that issuance (or denial) of the permit would serve the public interest.

1. The Department may, for example, issue a permit over the objection of the owner of abutting property, if the applicant shows that the proposed use is necessary at the proposed location in order to accomplish an important public purpose.
2. For example, if an applicant must, in order to safely replace the sidewalk in front of his or her property, place scaffolding or safety barriers on the public sidewalk abutting a neighboring property owner's property, the Department may issue a permit to do so over the objection of the neighboring property owner.

6.4 The Department's discretion in making such legislative decisions may be limited under certain circumstances.

1. The Department may, under certain circumstances, be prohibited from issuing a particular permit. For example, the Department may not issue a permit:
  - a. which would unreasonably interfere with the public's right to use the public place (SMC 15.04.030);
  - b. which would exceed the public's easement or other limited interest in an abutting owner's fee;

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<sup>1</sup> For purposes of this requirement, the applicant may ascertain the position of the owner of the abutting property (or of the tenant(s) with an interest in the abutting property). If the owner and tenant(s) disagree about the proposed application, the Department may ask the owner and tenant(s) for additional information before issuing a decision on the application.

- c. which would violate applicable law or City policy.
2. The Department may, under certain circumstances, be required to issue a permit (e.g. if the First Amendment requires issuance of a particular permit). If an applicant contends that the First Amendment requires issuance of the requested permit, the Department shall apply the following standards in determining whether issuance of a permit is constitutionally required.

The applicant bears the threshold burden of showing that the proposed use is entitled to constitutional protection, which may be met by showing that:

- a. The proposed "use" is itself a constitutionally protected activity;
  - b. The proposed use is inextricably intertwined with a constitutionally protected activity, such that the activity and the proposed use are inseparable and whatever constitutional protections which are afforded the activity must be extended to the use; or,
  - c. In order to engage in the constitutionally protected activity, it is reasonably necessary to engage in the proposed use (i.e. the applicant cannot engage in the constitutionally protected activity without also engaging in the proposed use of the public place).
3. If the applicant has made the above showing (6.4.2), but:
    - a. the Department determines, pursuant to 6.4.1, that the proposed permit cannot be issued for the proposed location, time, duration, or manner of use; or,
    - b. the abutting property owner owns the public place in fee and objects to the proposed permit,

the Department shall attempt to identify reasonable alternative(s).

A reasonable alternative is an alternative location, time, duration, or manner of use

(pursuant to the factors identified in 6.2) that would afford the applicant a reasonable opportunity to engage in the activity entitled to constitutional protection. If such a reasonable alternative can be identified, the Department may, as an alternative to issuing the requested permit, issue an appropriate alternative permit.

If the abutting owner objects and no reasonable alternative can be identified (e.g. the applicant has shown that the protected activity can only be reasonably effective if the proposed use is engaged in at the proposed location), the Department may issue a permit over the objection of the abutting owner.

**7.0 SUPERSEDING EVENTS, CROWD CONTROL EVENTS, AND EMERGENCIES:  
SUSPENSION, REVOCATION, AND MODIFICATION OF PERMITS**

7.1 Use permits for a particular location may be suspended during crowd control events authorized under SMC Chapter 15.52.

7.2 Use permits are temporary in nature, shall vest no permanent right, and may be revoked pursuant to 15.04.070 or other applicable law.

**8.0 GENERAL PROVISIONS**

8.1 Compliance with laws: Whether or not a use permit is required, all activities engaged in the public place must be conducted in compliance with all applicable ordinances and laws. For example, leafletting passersby must be done in such a way as to not interfere with pedestrians in violation of SMC 12A.12.015, and all sales of food and drink must be in compliance with all applicable ordinances such as health and safety codes.

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

8.3 Review: The Department shall review these rules from time to time and shall modify them as necessary.