

ORDINANCE NO. 1633

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING SECTION 12.28  
SIDEWALK OBSTRUCTIONS

WHEREAS, Section 12.28 of the Lynden Municipal Code regulates sidewalk obstructions and use of planting strips, including infractions for violations; and

WHEREAS, The City has determined that additional guidance is required to identify which obstructions are allowed without permits and which obstructions require permits; and

WHEREAS, The City of Lynden seeks to provide opportunity for outdoor dining areas to be placed on sidewalks adjacent to, and operated by the restaurants provided that safe pedestrian access can be maintained; and

WHEREAS, The City seeks to provide clarification on the permit application process required for sidewalk obstructions that require permits;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN,  
WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 12.28 of the Lynden Municipal Code is hereby repealed and replaced as follows:

Chapter 12.28 - SIDEWALK OBSTRUCTIONS

12.28.010 - Sidewalk obstructions prohibited—When.

Nothing shall be placed on any sidewalk in the city which either partially or totally obstructs or impedes the flow of pedestrian traffic except as specifically permitted in this chapter.

(Ord. 812 § A(part), 1989).

12.28.020 - Sidewalk Obstructions – Exceptions without permit.

The following obstructions shall be permitted on public sidewalks, provided that a minimum continuous unobstructed width of 5 feet is maintained for pedestrian use and the vision triangles at intersections are unaffected.

- A. Fire hydrants.
- B. Landscaping, traffic-control devices, streetlights, public art, and other objects and items placed permanently or temporarily by the city.
- C. Utility poles and boxes pursuant to franchise, permit, or contract granted by the

city.

- D. Flagpoles or standards therefor placed by community business groups recognized by the city.
- E. Refuse containers where the location of the container is on a sidewalk or planting strip as required by the city.
- F. Postal boxes, either individual or group, erected according to city and post office specifications.
- G. Public art placed by community business groups working with the city.
- H. New awnings or canopies that comply with the provisions of LMC 19.23.070.
- I. Hanging planters overhanging the sidewalk with a minimum clearance of seven feet above sidewalks.
- J. Merchandise being moved into or out of an adjacent business; provided, that such merchandise does not remain on the sidewalk or planting strip for more than 30 minutes.
- K. Merchandise located within thirty-two (32) inches of the building façade.
- L. Sandwich board signs ~~or similar less than thirty-six (36) inches tall placed by the owner or lessee of adjacent property that comply with the provisions of LMC 19.33~~ and with the written permission of the abutting property owner.

#### 12.28.020 – Sidewalk Obstructions and Encroachments – Permit required.

Obstructions of and encroachments onto public sidewalks not covered by section 12.28.010 may be placed by private parties only if a permit is obtained from the city public works department. Obstructions and encroachments may only occur on sidewalks with sufficient width to allow a continuous minimum of width of 5 feet to remain unobstructed for pedestrian travel. The following encroachments or obstructions may be permitted:

- A. Merchandise displays, limited to special sales events of no more than seven days continuously abutting the business offering such merchandise in such a way that an unobstructed pedestrian corridor is maintained at a minimum width of five feet;
- B. Façades for buildings built up to the right-of-way line of the public street; provided, that such addition shall not exceed six (6) inches in depth over the sidewalk as measured perpendicular to the existing façade.
- C. Temporary obstructions occurring as part of a city permitted special event. A description of the obstruction must be included with the special event permit

request and reviewed by the public works department.

- D. Outdoor dining areas, if all of the following conditions are met:
- a. The dining area must be adjacent to the permit applicant's property.
  - b. Business must utilize sturdy furniture and provide trash receptacles of good quality and attractive appearance consistent with the streetscape and adjacent architecture.
  - c. No elements including railings, tables, signs, or umbrellas may be permanently affixed to the sidewalk.
  - d. Patio-style umbrellas should be placed within an outdoor dining table and not protrude into the unobstructed sidewalk area outlined in this section.
  - e. Outdoor railings, partitions, or fences may not be taller than forty-two (42) inches in height.
  - f. If alcohol is to be served, the applicant must have a liquor license and comply with all provisions of WAC 314-02-125.
  - g. Written concurrence must be obtained from the immediately adjacent businesses.
  - h. Applications for outdoor dining shall include:
    - i. Proof of insurance and covenant. The business must continually maintain during the term of the permit, a certificate of insurance naming the City as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. The policy must contain the additional insured statement, coverage amounts of no less than \$1,000,000 and cancellation notification.
    - ii. A copy of City of Lynden business license.
    - iii. A copy of Whatcom County Health Department approval.
    - iv. If alcohol is to be served, a copy of approval by the Washington State Liquor and Cannabis Board per WAC 314-02-125.
    - v. The proposed site plan, that shows the location, number, and dimension of all seating, dining, signs, and barriers, such as railings or planters within the dining area and the dimension of clear zone(s) which are contiguous with the clear zones or the adjacent properties.
    - vi. Statement of concurrence from the immediately adjacent businesses.
  - i. The applicant shall sign a covenant to hold harmless and indemnify the City to be retained by the City for the duration of the business activity.
- E. Term. All permits approved under this chapter shall be temporary and shall vest no permanent right. The term of each permit shall be clearly stated on its face.
- F. Revocation

- a. All permits approved under this chapter may in any case be revoked at the sole discretion of the City upon 30 days' notice. Such permits may also be revoked without notice in the event any such use or occupation shall become dangerous; any structure or obstruction so permitted shall become insecure or unsafe; shall become a public nuisance; or shall not be constructed, maintained or used in accordance with the provisions of this chapter or the application materials submitted for review. The determination by the City Building Official that a structure is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter and applicable codes and standards shall be conclusive.
- b. Permits shall also be revoked if:
  - i. Following written notice of the lapse of an insurance policy required to be maintained by LMC 12.28.020, the permittee fails to supply a valid certificate of insurance; or
  - ii. Following written notice of the lapse of the annual renewal, or any associated renewal fee, or fees for the exclusive use of the right-of-way, the permittee fails to bring fees current.
- c. If any such obstructions, or use occupancy is not discontinued on notice to do so by the City and with the time period designated, the City may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

#### G. Denial

- a. The Public Works Director or their designee may reject or deny an Outdoor Dining Permit application when he/she determines, in his or her sole discretion, that any of the following apply:
  - i. Encroachment into the public right-of-way at the location proposed is prohibited by recorded documents associated with the property;
  - ii. The Lynden Municipal Code, the Lynden Development Standards and/or other adopted codes, regulations and standard prohibit encroachment of the type and/or quality proposed.
  - iii. Insufficient area exists to preserve a five-foot clear zone and automobile ingress/egress.
  - iv. The proposed obstruction would result in a threat to life or safety.
  - v. The proposed encroachment would result in an undue financial burden for the City, such as due to increased maintenance costs.
  - vi. The permit application includes information that is false, misleading, or is intentionally erroneous.
  - vii. The encroachment proposed is within a right-of-way not controlled

by the City at the time of application, either as the result of separate ownership or as part of an ongoing project in which state or federal control supersedes.

- viii. An alternative design or location is available to the applicant that would reduce or eliminate potential impacts to the City, and would not cause a hardship to the applicant.
- ix. The encroachment will be otherwise detrimental to the public interest.

- H. Appeal. Final decisions of the Public Work Director or their designee may be appealed to the hearing examiner pursuant to Chapter 17.11 LMC.
- I. Violation. Nothing in this chapter shall be construed as limiting or prohibiting the city from enjoining the obstruction of or encroachment upon any street or sidewalk or other public place in the city, or the right of the city to seek a writ for the removal of any such encroachment or obstruction which is now or may hereafter be authorized by the general laws of the state of Washington. Enforcement procedures and penalties resulting from violations of this chapter shall be administered pursuant to LMC 12.28.060.
- J. Fees. All application fees for sidewalk obstruction permits shall be established by the City Council and shall be paid prior to issuance of any permit

#### 12.28.040 - Use of planting strips.

Sandwich board signs, garbage cans, merchandise, flower containers, benches and/or newspaper stands may be placed on a planting strip between the street and sidewalk in CS, CSC, RS and I zones; provided, that they are at least twenty feet from any street intersection, are less than fifty inches high and do not constitute a safety hazard in the opinion of the Lynden police and public works departments. No fee shall be charged for the permit which is issued by public works. Use of the planting strip shall not interfere with city stormwater facilities or infiltration functions.

(Ord. 812 § A(part), 1989).

#### 12.28.050 Reserved

(Ord. 812 § A(part), 1989).

#### 12.28.060 - Penalty.

The penalty per violation of this chapter shall be at the rates set forth in the adopted annual budget:

(Ord. 812 § A(part), 1989).

Section 2 – Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_ IN FAVOR \_\_\_  
AGAINST AND SIGNED BY THE MAYOR THIS 20th DAY OF September, 2021.

MAYOR

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_

CITY ATTORNEY