

**City of Anacortes Staff  
Encroachment Review Summary**

**Name of Applicant:** Steven R & Janet L. Rutz      **Date:** 5/29/2012

**Location:** 1701 10<sup>th</sup> St.

**Brief description:** To encroach 11 feet by 38 feet of off their east property line into the city right of way along I Ave. to construct a decorative see through type fence to keep deer out of his garden. The fence will remain 14 feet of off I Ave.

**Reviewer's tentative recommendations:** To Approve. This recommendation is based on city staff's initial review of the application.

	Street Div.	Water Div.	Solid Waste Div.	Building Div.	Engineering Div.
To Approve					
Approve with Conditions					
Not Approved					
No Response					

**Distributed to Applicant and Abutting Property Owners      Date \_\_\_\_\_**  
**Notification of Proposed Encroachment and Tentative Decision Mailed**  
**10-day appeal period (To City Council)**

**End of Appeal Period      Date \_\_\_\_\_**  
**(10 days after Tentative Decision is mailed)**

**End of 15-day period before Decision Becomes Final      Date \_\_\_\_\_**  
**(15 days after Tentative Decision is mailed)**

**Anticipated Date of Final Decision \_\_\_\_\_**

***Appeals:***

**Appellant Name \_\_\_\_\_ Phone: \_\_\_\_\_**

**\$50.00 Appeal Fee Paid: Receipt No. \_\_\_\_\_ Date: \_\_\_\_\_**

**ORDINANCE NO. 2680**

**AN ORDINANCE ESTABLISHING PROCEDURES FOR THE  
ISSUANCE OF ENCROACHMENT PERMITS.**

**WHEREAS**, rights of ways and other public places in the City of Anacortes must be managed for the safety and convenience of the public, and

**WHEREAS**, adjacent property owners, both residential and commercial, have in the past and continue to desire to make limited appropriate use of the public rights-of-ways for landscaping and other attendant purposes, enhancing the visual character of the City as well as providing necessary maintenance to these areas, and

**WHEREAS**, the City Council deems it appropriate to continue to permit minor landscaping and other temporary encroachments into the public right of way subject to encroachment agreements and other protections, and

**NOW, THEREFORE**, be it ordained THAT SECTION 12.30 BE ADDED TO THE Anacortes Municipal Code to read as follows:

**Title 12**

**Anacortes Municipal Code 12.30**

**Chapter 12.30**

**ENCROACHMENT PERMITS**

Sections:

12.30.010 Policy

12.30.020 Permit required.

12.30.030 Applications.

12.30.040 Notifications.

12.30.050 Issuance of permit.

12.30.060 Term of permit.

12.30.070 Revocation.

12.30.080 Appeal.

12.30.090 Existing uses.

12.30.100 Penalty for violation.

**12.30.010 Policy.**

It is the policy of the city to retain adequate rights of way and easements for future expansion of streets, alleys, and utility systems, and to encourage the limited use of public right of ways and easements by the adjoining property owners.

**12.30.020 Permit required.**

Before any person, firm, or corporation shall commence or permit any other person, firm or corporation to place any barricade, material, earth, gravel, rock, debris or any other material or

thing over, under, or upon any public right of way or easement in the City of Anacortes, an encroachment permit shall be obtained. A separate permit shall be obtained for each separate project. In the case of work contracted for by the department of public works, the signing of the contract shall constitute an encroachment agreement.

#### **12.30.030 Applications.**

Application shall be made to the Director of Planning on a format as prescribed and provided by said director. The application shall contain such information, as the director deems necessary, including, but not limited to, evidence that the applicant is either the owner or entitled to possession of the property adjoining the public right-of-way or place sought to be used, and a full and complete description of the use to be made of the public right-of-way or place by the applicant and the duration of such proposed use. The decision to issue or not issue an encroachment permit, as authorized under this chapter, shall be at the sole discretion of the city. This chapter shall in no way be construed as granting or creating a right in any applicant to obtain an encroachment permit. An application fee shall be paid at the time of filing of the application with the city. The fee shall be in such amount as established from time to time by the city council, by ordinance, or by resolution.

#### **12.30.040. Notifications.**

In the case of a proposed encroachment into an opened or unopened alley, the application shall be accompanied by a list of all property owners, with their mailing addresses, who own land within the same alley and city block. All other applications shall be accompanied by a list of all property owners, with their mailing addresses, who own land immediately adjacent to the boundaries of the property proposing the encroachment.

The list of all such property owners shall be obtained from the latest available records of the Skagit County Assessor's office. The City shall send notice to all persons on the list informing them of the proposed encroachment and inviting comments to be made in writing within fifteen calendar days of the date that the notice is mailed.

The Director of Planning approval of this encroachment shall be tentative and shall not be final until fifteen days has elapsed since the date that approval or disapproval by the Director of Planning is mailed to the applicant, property owners, and those who submitted written comments.

#### **12.30.050. Issuance of permit.**

All permits shall be issued by the Director of Planning, or the director's designee. Requirements shall include, but are not limited, to the following:

A. The proposed use will not protrude into or over any portion of a public right-of-way or public place open to vehicle or pedestrian travel in such a manner as to create a likelihood of endangering the use of such public place by vehicle or pedestrian traffic.

B. The proposed use will not protrude into or over any public utility lines including water, sewer, storm drainage, cable, gas, power, or will not block access to the utility lines.

C. The requested use must meet all other applicable requirements of this code, including, but not limited to, the underlying zoning regulations applicable to the adjacent property upon which the use will be conducted, constructed or maintained.

D. The applicant shall be required to indemnify and hold the city harmless from any and all claims for bodily injury or property damage that may arise out of or in connection with the applicant's permitted use.

E. If deemed necessary by the Director of Planning, the applicant shall maintain public liability and property damage insurance acceptable to the city and/or other insurance necessary to protect the public and the city on premises to be used. The limits of said insurance shall be established by the Director of Planning. A certificate evidencing the existence of said insurance or, upon written request of the Director of Planning, a duplicate copy of the policy shall be provided to the city as evidence of the existence of the insurance protection. Said insurance shall not be cancelable or reduced without prior written notice to the city, not less than 30 days in advance of the cancellation or alteration. Said insurance shall name the city as a named or additional insured and shall be primary as to any other insurance available to the city.

F. Such other conditions as may be imposed by the Director of Planning to reasonably assure that the requested use does not in any way create a likelihood of endangering those who are lawfully using the public right-of-way or public place.

G. All conditions shall be subscribed on or attached to the permit.

H. Applicant shall consent that in the event the city is required to take enforcement actions to enforce the terms and conditions of the permit, that the city shall be entitled to recover its costs, disbursements, and expenses including its attorneys' fees, which sums may be filed as a lien against applicant's premises and enforceable in the manner provided for the enforcement of mortgages on real property.

#### **12.30.060 Term of permit.**

Notwithstanding the provisions of AMC 12.32.060, Revocation, encroachment permits shall be issued for varying terms, at the discretion of the Director of Planning and as generally set forth below:

A. Residential and Commercial encroachment permits are valid indefinitely unless revoked under AMC 12.30.060.

B. A temporary encroachment permit issued to property owners for uses of the right-of-way of a temporary nature and which involves the obstruction of a portion of a public sidewalk or other walkway, are valid for a period not to exceed 1 year. Property owners may make application to renew the encroachment permit upon expiration.

#### **12.30.070 Revocation.**

A. All permits issued pursuant to this chapter shall be temporary, shall vest no permanent right in the applicant, and may be revoked by the Director of Planning as follows:

1. Immediate revocation in the event of a violation of any of the terms and conditions of the permit;

2. Immediate revocation, in the event such use, structure or obstruction becomes, for any reason, dangerous, insecure or unsafe;

3. Upon 30 days' notice if the permit is revoked for any reason that is not covered by the preceding subsections, including, but not limited to, the city's desire to make public use of the road, street, public right-of-way or other public place subject to an existing permit.

B. If any use or occupancy for which the permit has been revoked is not immediately discontinued, the Director of Planning may remove any such structure or obstruction or cause to be made to such repairs upon the structure or obstruction as may be necessary to render the same

secure and safe, the cost and expense of which shall be assessed against the permittee, including all fees, costs, and expenses incurred, including attorneys' fees associated with the enforcement of or collection of the same. The city may enforce this chapter in any manner provided by law, including the abatement of public nuisances.

**12.30.080 Appeal.**

Any decision of the Director of Planning or the director's designee, with respect to the issuance, refusal to issue, or revocation or refusal to revoke a permit may be appealed to the City Council by filing a notice of intent to appeal such decision with the City Clerk within 10 days of the date of issuance of the decision being appealed. If an appeal from any such decision is taken, the appellant shall be required to pay a nonrefundable appeal fee in an amount of not less than \$50.00. The appeal shall include a complete statement of the reason or reasons that form the basis of the appeal. The decision of the city council shall be final, binding and conclusive, the decision being solely within the discretion of the legislative body.

**12.30.090 Existing uses.**

An encroachment permit will be required for any existing use of any public right-of-way, street, sidewalk, or other public place. Owners seeking a temporary use of city right-of-way must obtain a permit before the use begins.

**12.30.100 Penalty for violation.**

Any person violating any of the provisions of this chapter shall, upon conviction, be subject to a penalty of \$1000.00 as provided in AMC 17.66 and for any costs incurred by the city relative to any violation.

**EFFECTIVE DATE.** This ordinance shall take effect from and after five (5) days after its passage and publication as required by law.

**PASSED and APPROVED** this 15<sup>th</sup> day of November, 2004.

**CITY OF ANACORTES**

By \_\_\_\_\_  
H. Dean Maxwell, Mayor

**ATTEST:**

\_\_\_\_\_  
Wanda Johnson, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ian S. Munce, City Attorney

## City of Anacortes Encroachment Review Summary

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**Location:** 1701 10<sup>th</sup> St.

**Brief description:** To encroach 11 feet by 38 feet of off their east property line into the city right of way along I Ave. to construct a decorative see through type fence to keep deer out of his garden. The fence will remain 14 feet of off I Ave.

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To Approve					
Approve with Conditions					
Not Approved					
No Response					

	Verizon	Cascade Natural Gas	Comcast Cable	Puget Sound Energy
Approved				
Conditional approval				
Not Approved				
No Response				

Approved  Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Marc Krueger, Public Services Manager

Comments: \_\_\_\_\_

Approved  Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Sandi Andersen, Operations Manager

Comments: \_\_\_\_\_

Approved  Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Fred Buckenmeyer, Director of Public Works

Comments: \_\_\_\_\_

Approved  Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Ryan Larsen, Planning Department

Comments: \_\_\_\_\_

Conditions are as stated in the recorded encroachment agreement