

ORDINANCE NO. 4957

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, RELATING TO REGULATION OF BANNERS, SIDEWALK FLAGS AND DECORATIONS IN THE CITY'S RIGHTS-OF-WAY, AND ADDING A NEW CHAPTER ENTITLED "3.44 BANNERS, SIDEWALK FLAGS AND DECORATIONS IN CITY RIGHTS-OF-WAY" TO TITLE 3 OF THE ELLENSBURG CITY CODE.

WHEREAS, the City Council finds and determines that a new chapter should be adopted at Chapter 3.44 of the Ellensburg City Code to provide for new regulations and procedures regarding street banners, vertical banners, sidewalk flags and decorations in the City's right-of-way; and

WHEREAS, the City Council desires to establish clear regulations regarding the display of all banners, sidewalk flags and decorations in the City's right-of-way; and

WHEREAS, the City Council declares and affirms that flagpoles on City of Ellensburg property are not intended to serve as a forum for free expression by the public, but rather as a non-public forum for the display of flags as required by law, for the expression of the City's official government speech, or both; and

WHEREAS, the local Boy Scout troop has a history of working with Ellensburg businesses to install infrastructure for sidewalk flags, allowing them to seasonally place the flag of the United States in front the businesses on recognized federal holidays; and

WHEREAS, the City Council has previously been presented with information on the regulation of flags, banners and decorations at its study sessions on January 3 and October 2, 2023, and June 3, 2024; and

WHEREAS, City staff met on multiple occasions with stakeholder groups to review draft regulations for flags, banners and decorations in the City right-of-way and the proposed ordinance reflects input from City Council following study sessions, City staff and other stakeholders;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

Section 1. The recitals set forth above are hereby adopted as the findings of the City Council and are by this reference incorporated herein as if set forth in their entirety.

Section 2. A new chapter entitled "3.44 BANNERS, SIDEWALK FLAGS AND DECORATIONS IN CITY RIGHTS-OF-WAY" is hereby added to Title 3 of the Ellensburg City Code to read as follows:

3.44

Banners, Sidewalk Flags and Decorations in City Rights-Of-Way

Sections:

- 3.44.010 Purpose.**
- 3.44.020 Compliance with chapter.**
- 3.44.030 Definitions.**
- 3.44.040 Locations for banners, sidewalk flags and decorations.**
- 3.44.050 Permit.**
- 3.44.060 Application for permit; time for submission, criteria, and fee.**
- 3.44.070 Community events; sponsorship.**
- 3.44.080 Permit conditions.**
- 3.44.090 Licensed installer—proof of insurance—hold harmless.**
- 3.44.100 Official flags at city hall and other city buildings.**
- 3.44.110 Violation and penalties.**

3.44.010 Purpose.

A. The purpose of this chapter is to ensure the aesthetic character of the city and to promote the public health, safety and general welfare of its residents, by regulating the limited display of banners, sidewalk flags, and decorations over or on specific streets, streetlights or other poles, and sidewalk locations in the city's public right-of-way.

B. This chapter is also intended to avoid visual clutter that may adversely impact traffic and pedestrian safety or be adverse to business opportunities and the city's appearance, to prevent and abate public nuisances, and promote community-wide opportunities and activities within the city.

C. Except as otherwise provided in this chapter, the purpose of authorizing official flags, street banners, vertical banners, sidewalk flags, and decorations in the city right-of-way is to allow for the display of public service messages and announcements promoting community events taking place within the city of Ellensburg and sponsored by government, nonprofit or other charitable organizations. Display of banners, sidewalk flags and decorations in the city right-of-way as provided in this chapter is for the use and benefit of the city of Ellensburg in its exercise of government speech. None of the city's locations for street banners, vertical banners, sidewalk flags or decorations shall constitute or be used as a public forum or in any manner as an open place of public expression.

D. The requirements of this chapter do not apply to banners, sidewalk flags or decorations used as signs and regulated under the city sign code, chapter 3.12 of the Ellensburg City Code.

3.44.020 Compliance with chapter.

A. It is unlawful for any person, firm or corporation to erect, construct, place, attach to, or in any way suspend from any building, light pole standard, support wires, telecommunication or telephone wires in a city right-of-way any street banners, vertical banners, sidewalk flags, decorations, or other decorative material, without first receiving a valid permit issued by the city of Ellensburg, and other than in a city-approved location.

B. This chapter shall not apply to banners, sidewalk flags, or decorations of any type owned and installed by the city or on behalf of the city by contract.

3.44.030 Definitions.

“Banner” means a display that is representative of an entity, organization or event authorized under this chapter other than a governmental jurisdiction, and includes both street banners and vertical banners, but do not include any banner regulated as a sign under Chapter 3.12 ECC.

“City-sponsored event” means an event for which the applicant:

1. is the city of Ellensburg, or one of its departments, divisions, committees, boards or commissions;
2. has an intergovernmental relationship with the city of Ellensburg or an organization for which the city is a member; or
3. is funded in whole or part by the city of Ellensburg.

“Community event” means a recreational, entertainment, educational, charitable or similar event intended and held for the benefit of the entire community, and which is open to attendance by the entire community.

“Decoration” means pennants, balloons, decorative flags and other such temporary displays which are displayed on the exterior surface of a building or lot of record. Decorations as defined herein shall be distinguished from other types of banners, flags and posters by their wide variety of shapes and forms and their lack of letters or figures that display a message which is intended to be read by those who view the decoration.

“Decorative material” means any material that is ornamental and not required for the functionality of the item upon which the material is placed. Decorative material includes, but is not limited to, lights, fabric, streamers, vines, branches or other greenery used for a decorative purpose, streamers, or material used to embellish a sign that does not lie flush with the sign itself or exceeds the sign’s dimensions.

“Decorative purposes” means for the purpose of decoration, rather than advertising or promoting an activity, organization, event or a public service message. Examples of decorative purposes are lights and decorations for various holidays, or the installation of vines, plants or other items to commemorate the changing of the seasons.

“Director” means the public works director, or their designee, of the city of Ellensburg.

“Installer” means a person or entity who physically hangs the vertical banner or decorations over the public right-of-way and who has the required skill and equipment to properly and safely hang the street banner, and who is licensed to perform such installation pursuant to Chapter 3.12 ECC.

“Official flag” means the U.S. flag, the Washington State flag, the POW/MIA flag, and the official flag of other governmental jurisdictions such as city, state or national flags being flown at city buildings and facilities, but does not include the U.S. Flag when being flown on poles in the right-of-way installed by a local community service organization(s).

“Right-of-way” means land dedicated to, or owned by, the city and held open for public travel and includes, but is not limited to, city roads, streets, sidewalks and alleys.

“Sidewalk flag” means the United States flag which is placed in existing flag post holes in the sidewalk installed in the city right-of-way by a local troop of the Boy Scouts of America.

“Street banner” means a non-illuminated sign consisting of fabric and containing a public service message or community event announcement which is hung across a public right-of-way at an approved location.

“Vertical banner” means a banner similar in shape and size of a flag, consisting of fabric and containing a public service message, a community event announcement or approved decorative images, which is hung in a generally vertical manner in public right-of-way, typically from a flagpole or other attachments to a streetlight or other pole.

3.44.040 Locations for banners, sidewalk flags and decorations.

A. Street banners. The following locations have approved poles and supporting wires for street banners, and are the only locations within the city authorized for display of street banners:

1. West 4th Avenue between Main Street and Pearl Street; and
2. East University Way between North Wildcat Way and North Chestnut Street.

B. Locations for Streetlight Poles used for Vertical Banners and Decorations; Sidewalk Flags Locations.

1. Streetlight poles with existing individual brackets for vertical banners or decorations are located within the areas zoned Central Commercial (CC), Central Commercial II (CC II), Commercial Highway (CH) and Public Reserve (PR).
2. Sidewalk Flag Locations in Sidewalk Right-of-Way. Sidewalk flags may be posted where flag post holes have been installed in sidewalks in the city right-of-way.
3. Maps of streetlight poles and flag post holes appropriate for use as permitted in this chapter shall be made available by the public works department.

3.44.050 Permit.

Permits for the installation of street banners, vertical banners or decorations shall be issued only when permission has been granted as set forth in this chapter.

3.44.060 Application for permit; sidewalk flag approval; time for submission, criteria, and fee.

A. Application to Be Submitted by Qualified Applicants. Applications to hang a street banner, vertical banner, or decoration shall be accepted only from qualified nonprofit organizations meeting all the following criteria:

1. An organization that maintains an office or other presence in the city of Ellensburg; and
2. The organization has obtained IRS certification as tax-exempt; and
3. The organization is the primary organizer of a community event or city-sponsored event.

B. Sidewalk Flags. The local troop of the Boys Scouts of America that seeks to install new sidewalk holes is exempt from the application requirements in this section as well as the requirements of ECC 3.44.080 (Permit conditions) and 3.44.090 (Licensed installer—proof of insurance—hold harmless); however, they must submit information to the director including, but not limited to, the location of the installation(s) and proof of permission from the adjacent property owner. New sidewalk holes may only be installed upon written approval of the director. There are no fees associated with installation of sidewalk flag holes.

C. Time for Submission of Application. Permit applications, along with applicable fees, shall be submitted not more than twelve months nor less than thirty days prior to the proposed installation

of the street banner, vertical banner, or decoration. Notwithstanding the foregoing, the Ellensburg Rodeo Association shall have the exclusive right to apply for use of the vertical banners regulated by this chapter for the period of three weeks prior to the start, and one week after completion, of the Ellensburg Rodeo.

D. Contents of Application. The permit application shall be in writing and shall contain the following information:

1. Date(s) of event;
2. Name and purpose of event;
3. Date of installation of street banner, vertical banner, or decoration, and date of removal;
4. Proposed location for street banner, vertical banner, or decoration;
5. Inclusion of draft artwork and/or photographs, sample specifications and message to be printed on the street banner, vertical banner, or decoration, together with any acknowledgement of sponsors and/or sponsors' logos;
6. Documentation of IRS tax-exempt certificate, if applicable;
7. Contact person, name, email address and phone number;
8. Any other information deemed necessary and appropriate by the director; and
9. Name, address and contact information of licensed installer, if any.

E. Application Review.

1. Application for Vertical Banners or Decorations.

- a. Upon the receipt of said application for vertical banners or decorations, the director shall review the application for compliance with the provisions of this chapter, and whether the installation of the vertical banner, or decoration will be likely to constitute a hazard to the safety of the residents of the city of Ellensburg.
- b. The director may order the issuance of a permit if, in the exercise of their judgment and discretion, the director determines, in consultation with appropriate city staff, that the proposed vertical banner, or decoration is compliant with the provisions of this chapter and that installation thereof, as proposed, could be made and thereafter maintained with reasonable safety.
- c. The director may approve, deny or require modification of the proposed vertical banner(s) or decoration(s) to meet the requirements of this chapter. Notwithstanding the foregoing, the director may refer any application under this section to the city council at the next scheduled council meeting for consideration of whether it should be approved.

2. Application for Street Banner.

- a. An application for the use of street banner shall be filed with:
 - 1) Central Washington University Scheduling Services for the University Way location; and
 - 2) the director for the W. 4th Avenue and N. Pearl Street location.

b. An application for a street banner requires review and recommendation for approval or denial by the director to the city manager, who may approve, deny or require modification of the proposed street banner to meet the requirements of this chapter.

c. Street banners affiliated with Central Washington University shall have scheduling priority for the University Way street banner location.

G. Fees. The application and permit fee, if any, shall be included in the fee schedule adopted in the Public Works Department Development Standards and approved by city council. Fees for the University Way street banner location shall be established by Central Washington University.

3.44.070 Community events; sponsorship.

A. Except as otherwise set forth below, street banners, vertical banners, and decorations shall be used only to promote community or city-sponsored events within the city of Ellensburg, and not solely for the promotion of the organization or its products or services. No requests shall be approved for banners of any type, or decorations, promoting the following types of events:

1. Commercial product sales, services or events;
2. Advocating for or against a particular political party, candidate for office or ballot proposition; or
3. Religious events or services that promote or promulgate any particular religious belief, creed, tenet or denomination. Banners or decorations for non-denominational or fundraising events sponsored by religious and other nonprofit organizations may be permitted so long as they are for the promotion of community events and not advertising of the organization or its products.

B. Commercial Sponsorship. A banner may include a portion acknowledging a commercial sponsor of the banner or the community or city-sponsored event. Such acknowledgement may contain a representation of the sponsor's logo, but such acknowledgement or logo shall not comprise the primary message of the banner. The city reserves the right to approve, modify or reject the content of each banner, including but not limited to placement and size of sponsorship acknowledgements and logos.

3.44.080 Permit conditions.

A. Street Banners.

1. Street banners shall conform to the size, material and hardware requirements published by Central Washington University (for the University Way location) or the city's public works department (for the W. 4th Avenue and N. Pearl Street location).
2. Installation and Removal. Street banners may only be installed and removed by authorized city staff for the W. 4th Avenue and N. Pearl Street location and by authorized Central Washington University staff for the East University Way location.

B. Permit Duration. Permits shall be valid for a maximum period of two weeks with the exception that vertical and/or street banners associated with the Ellensburg Rodeo shall be valid for four weeks, and holiday decorations for a reasonable period of time determined in the sole discretion of the city. Requests for permit extensions will be considered by the director based on other permit applications that are pending or approved.

C. Removal. Vertical banners, sidewalk flags or decorations must be removed no later than three days after the permit expiration date or event. If such items are not removed, they will be removed by the city and any costs associated therewith shall be paid by the permit holder.

3.44.090 Licensed installer—proof of insurance—hold harmless.

A. Before any permit shall be issued to a licensed sign installer for the installation of banners or decorations, the licensed sign installer shall provide the city with proof of licensing under ECC 3.12.140(A) and a certificate of insurance as proof of commercial general liability insurance as required by 3.12.140(B). The public works department may also require, if applicable:

1. That the installer provides a traffic control plan that meets the requirements of the Manual of Uniform Traffic Control (MUTCD) and is subject to approval by the city; and
2. The installer or traffic control company provide proof of insurance as required in Section 9 of the city's Public Works Development Standards.

B. Installation of any vertical banner or decorations shall be in conformance with hardware and other installation requirements promulgated by the public works department.

C. No permit shall be issued pursuant to this chapter until the applicant has executed an agreement whereby the applicant agrees to defend, indemnify and hold harmless the city and any of its officers, agents and employees from any and all liability resulting from the granting of said permit. The form of agreement shall be provided by the city.

D. This section shall not apply to sidewalk flags; however, installation of new holes in the right-of-way shall require prior notice to the public works department.

3.44.100 Official flags at city hall and other city buildings.

A. It is the policy of the city of Ellensburg to correctly honor the flags of the United States, the state of Washington, the POW/MIA recognition, and flags of other governmental entities (as approved by city council), and to ensure a standard for flag display on city property.

B. The city of Ellensburg shall comply with national and state protocols for flag display and etiquette, as specified in 4 U.S.C. Ch. 1, Sections 6 through 8, as they presently read or as they may be amended.

C. The city of Ellensburg shall follow the provisions governing the display of flags as required by state law.

D. Only official flags will be flown on flag poles located at the Ellensburg City Hall or at other city facilities.

3.44.110 Violations and penalties.

A. It is unlawful for any person, firm or corporation to erect, install, hang, construct, or enlarge any banner or decoration in the city of Ellensburg contrary to or in violation of any provision of this chapter. Any person, firm or corporation violating any of the provisions of this chapter shall be required to remove such banner or decoration to conform to the provisions of this chapter.

B. Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a penalty of a fine of not more than \$1,000.00 or by imprisonment of not more than 90 days, or both such fine and imprisonment. Each day shall be a separate offense.

Section 3. Section 3.12.340 of the Ellensburg City Code, as last amended by Section 1 of Ordinance 4907, is hereby amended to read as follows:

3.12.340 - Temporary and special signs.

Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a limited period of time. The category includes any banner, pennant, flag or display constructed of canvas, fabric, wood, plastic, metal or other material. All such temporary or special signs are allowed provided they meet the following respective requirements:

A. Signs displayed prior to, during, and after elections shall not exceed a maximum sign area of ten square feet in the R-S, R-L, R-M, R-O, and MHP zones. In all other zones, said signs shall conform to the sign area requirements applicable to the type of sign used. Such signs shall be

displayed only on private property of consenting property owners. Such signs shall be removed within seven days after the election, except that a candidate who wins a primary election and advances to a general election may continue to display such signs until seven days after the general election. It will be the responsibility of the appropriate campaign manager or candidate for office to remove their signs within the above time.

B. Signs for properties with active construction of a building must obtain a sign permit and specify the amount of time the sign is to be displayed, which in no event shall extend beyond the time a valid building permit for such activity is in effect. Only one such sign is allowed per site not to exceed 48 square feet in size in the R-S, R-L, R-M, and R-O zones. In all other zones, said signs shall conform to the sign area requirements applicable to the type of sign used.

C. Temporary banners and posters as defined in this chapter shall be allowed for use in any commercial or industrial zone, subject to the following limitations. Each business address shall be limited to the display of no more than seven banners or posters at any one time. The aggregate area of all banners or posters displayed at any one time shall not exceed 250 square feet. For the purposes of this chapter, a business address shall be considered a single building or complex or related buildings housing a single business or multiple businesses. Multiple businesses in one building or a related complex of buildings shall be treated as a single business address. The display of such banners and posters shall take place entirely on private property, shall not cause any sight distance or other public safety problems for motorists, pedestrians, or bicyclists, and shall conform to the height requirements for the zone in which located.

D. Temporary decorations as defined in this chapter shall be allowed for use in any business or industrial zone, subject to the following limitations. Each business address shall be limited to the display of temporary decorations which total surface area of all such temporary decorations shall not exceed a total of 250 square feet at any one time. For the purposes of this chapter, a business address shall be considered a single building or complex of related buildings housing a single business or multiple businesses. Multiple businesses in one building or a related complex of buildings shall be treated as a single business address. The display of such temporary decorations shall take place entirely on private property, shall not cause any sight distance or other public safety problems for motorists, pedestrians, or bicyclists and shall conform to the height requirements for the zone in which located.

E. Signs for property for sale or rent for any lot or property in the city shall be located on said property for the time such sale or lease is offered. In the R-S, R-L, R-M, R-O, MHP, and C-N zones, such signs shall not exceed eight square feet in total sign area. If said signs overhang public rights-of-way, they shall be subject to the provisions of ECC 3.12.220(B). In the C-C, C-C II, C-H, I-L, and I-H zones, such signs shall not exceed 48 square feet in total sign area.

~~F. Banners for community events which advertise civic activities such as the Ellensburg Rodeo and Kittitas County Fair and other activities that may from time to time be approved by the city~~

~~council may be supported on those steel strain poles in two locations in the public right-of-way which were constructed for that specific purpose. "Community events" are nonprofit, governmental or charitable festivals, contests, programs, fairs, carnivals, or recreational contests conducted within the city. One set of strain poles is authorized on University Way between N. Walnut Street and N. Anderson Street and one set is authorized on 4th Avenue between Main Street and Pearl Street.~~

GF. A-frame signs as defined in this chapter shall be allowed for use in any commercial or industrial zone, subject to the following limitations. For the C-H, C-N, I-L, and I-H zones, each business address shall be allowed for the use of a maximum of one A-frame sign at any one time. For the purposes of this chapter, a business address shall be considered a single building or complex of related buildings housing a single business or multiple businesses. Multiple businesses in one building or complex of related buildings shall be treated as a single business address. Each A-frame sign displayed in the C-H, C-N, I-L and I-H zones shall not exceed a total sign area of 32 square feet on one side and 64 square feet total sign area on all faces and shall be placed a minimum of two feet behind the inside edge of an existing curb if no sidewalk is present. If no sidewalk or curb is present, the A-frame sign shall be placed a minimum of eight feet behind the edge or road pavement. Further, such A-frame sign shall not cause any sight distance or other public safety problems for motorists, pedestrians, or bicyclists.

For the C-C and C-C II zones, each business shall be allowed the use of a maximum of one sidewalk sign at any one time. For the purposes of this chapter, in the C-C and C-C II zones each business which has been issued a separate city business license shall be entitled to the use of one sidewalk sign at any one time. Each sidewalk sign displayed in the C-C or C-C II zones shall not exceed a height of three feet and a width/length of two feet and shall be adequately anchored against movement or overturning due to wind. Such signs shall not cause a hazard or impediment to pedestrians, vehicles, or bicyclists.

HG. All signs placed on vehicles, trailers, or portable supports which are parked or located for the primary purpose of displaying said signs are prohibited. This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business.

~~I. Community Welcome banners, pennants, signs, windsocks, flower baskets, or other displays connoting a welcome from the city of Ellensburg to visitors of the city may, upon prior approval of the council of the city of Ellensburg, be displayed over or on publicly owned land or rights-of-way at a minimum clearance of at least 20 feet for a renewable period of one year, said right to display being subject to the annual review and approval of the council.~~

(Ord. 4907 § 1, 2023; Ord. 4890 § 6, 2022; Ord. 4395, 2004; Ord. 3582 § 1, 1987; Ord. 3402 § 1, 1983)

Section 4. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

Section 5. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 17th day of March, 2025.

ATTEST:


MAYOR


CITY CLERK

Approved as to form:


CITY ATTORNEY

Publish:

3-20-25

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4957 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4957 was published as required by law.


BETH LEADER