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ORDINANCE NO. 339

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING REGULATION OF PRIVATE USE OF CITY RIGHT-OF-WAY; AND AMENDING TITLES 12 AND 20 OF THE SHORELINE MUNICIPAL CODE RELATING TO RIGHT-OF-WAY PERMITS AND STREET VACATION PROCEDURES.

Section 1. New chapter. A new chapter 12.15 *Use of right-of-way* is a adopted as set forth in Exhibit A, attached hereto and incorporated by reference.

Section 2. Amendment. SMC 20. 30.040 is amended as follows:

Table 20.30.040 – Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority

Action Type	Target Time Limits for Decision	Section
Type A:		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	~~20.70.240 – 20.70.330~~ 12.15.010-12.15.180
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	30 days	20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370

An administrative appeal authority is not provided for Type A actions, except that any Type A action which is not categorically exempt from environmental review under Chapter 43.21 RCW or for which environmental review has not been completed in connection with other project permits shall be appealable. Appeal of these actions together with any appeal of the SEPA threshold determination is set forth in Table 20.30.050(4).

Section 3. Repeal . Shoreline Municipal Code sections 20.70.240-.430 are hereby repealed.

Section 4. New Chapter, repeal. A new chapter 12.17 *Street Vacation* is added to the Shoreline Municipal Code as set forth in Exhibit B attached hereto and incorporated by reference. SMC 20.40.530 *Street vacation* is hereby repealed.

Section 5. Amendment. SMC 20.30.070, Table 20.30.070 is amended to read as follows:

Table 20.30.070 – Summary of Legislative Decisions

Decision	Review Authority, Open Record Public Hearing	Decision Making Authority (in accordance with State law)	Section
1. Amendments and Review of the Comprehensive Plan	PC(1)	City Council	20.30.340
2. Amendments to the Development Code	PC(1)	City Council	20.30.350
3. Street Vacation	PC(1)	City Council	~~20.40.530~~ 12.17

(1) PC = Planning Commission
Legislative decisions usually include a hearing and recommendation by the Planning Commission and the action by the City Council.

The City Council shall take legislative action on the proposal in accordance with State law.

There is no administrative appeal of legislative ~~The legislative~~ actions of the City Council but they may be appealed together with any SEPA threshold determination according to state law.~~to the Superior Court.~~

Section 6. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and the ordinance shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON NOVEMBER 10, 2003.

Mayor Scott Jepsen

ATTEST:

Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

Ian Sievers
City Attorney

Date of Publication: November 13, 2003
Effective Date: November 18, 2003

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Exhibit A

12.15 Use of Right-of-Way

~~20.70.240~~ .010 Purpose.

A. ~~The purpose of t~~This ~~sub~~chapter ~~is to~~ manages the ~~usage~~ use and construction within the public right-of-way in a manner with the least impact to the general public.~~.~~ ~~(Ord. 238 Ch. VII § 5(A), 2000).~~

B. It is expressly the purpose of this chapter and any procedures adopted hereunder to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter or any procedures adopted hereunder.

C. It is the specific intent of this chapter and any procedures adopted hereunder to place the obligation of complying with the requirements of this chapter upon the permittee, and no provision is intended to impose any duty upon the City of Shoreline, or any of its officers, employees or agents. Nothing contained in this chapter or any procedures adopted hereunder is intended to be or shall be construed to create or form the basis for liability on the part of the City of Shoreline, or its officers, employees or agents, for any injury or damage resulting from the failure of the permittee to comply with the provisions hereof, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or any procedures adopted hereunder by the City of Shoreline, its officers, employees or agents

.020 Definitions

A. "Department" means the Public Works and Utilities Department or other Department designated by the Mayor.

B. "Director" means the Director of Public Works and Utilities or his/her designated representative.

C. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, but not limited to, damage to persons or property from natural or manmade consequences, such as storms, earthquakes, riots or wars.

D. "Franchised utilities" means utilities that have City approval to use City rights-of-way for the purpose of providing their services within the City, by written franchise granted by the City.

E. "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

F. "Private use" means use of the public right-of-way for the benefit of a person, partnership, group, organization, company, or corporation, other than as a thoroughfare for any type of vehicles, pedestrians or equestrians.

G. "Policy" means a policy adopted by the Director to implement this chapter, or to carry out other responsibilities as may be required by this chapter or by other codes, ordinances, or resolutions of the City or other agencies.

H. "Revocation" means the cancellation of a permit.

I. "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for street purposes and utilities, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways,

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and parking whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.

J. "Underground location service" means the underground utilities location center that will locate all underground utilities prior to an excavation.

~~20.70.250~~ .030 Right-of-way permit issuance.

A. Applicability. A right-of-way permit shall be required for all construction and usage activities within the public right-of-way as described in this ~~sub~~chapter. Additional requirements for the construction and usage of the right-of-way by utility providers are located in SMC 12.25 Right of Way Franchises and SMC 12.30 Electrical and Communication Facilities. ~~Subchapter 6 of this chapter, Utility Standards~~.

B. ~~Financial Guarantee. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary.~~Nonexclusive Right. City right-of-way shall not be privately improved or used for access or other purposes unless a permit has been issued for such use. Permits issued pursuant to this section shall not be construed to convey any vested right or ownership interest in any City right-of-way. Every right-of-way permit shall state on its face that any City right-of-way subject to the permit shall be open to use by the general public except in those cases where specific conditions require the closure of the right-of-way to the public for safety reasons.

C. Right-of-way site permit. Right- of-way site permits is a specific class of right-of-way permit that may be available for utilities or other parties who do not hold a valid City franchise in accordance with Chapter 12.25 SMC for activities of extended duration which will not further physically disturb the existing or planned public use of the right-of-way once in place. This may include structures, facilities, and uses that involve capital expenditures.

1. Right-of-way site permits, if allowed in the nearest classified land use zone, may be issued for:

a. Accessory uses permitted to the adjacent property such as parking, displays, and signage, provided the proposed use is not required to meet city development standards for any private property development;

b. Air rights;

c. Bus shelters/stops;

d. Construction site/haul roads;

e. Fences, retaining walls, terracing, and similar structures;

f. Litter and recycle receptacles placed by private parties;

g. Special and unique structures such as benches, fountains, clocks, flagpoles, kiosks, banners, street furniture, decorations, bicycle racks, , private planters, or any other obstruction to be placed in the right-of-way by an entity other than the City;

h. Sales structures, including sidewalk cafes, telephone booths or the usage of the right-of-way for the sale of flowers, food or beverages, newspapers, or other items;

i. Underground rights;

j. Utility facilities;

k. Planting, pruning or removing street trees.

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2. Utility facilities placed in the right-of-way under the authority of a franchised utility as defined in this chapter are exempt from the requirement to obtain a site permit.
3. Site permits may be granted up to five years; provided, however, uses of the right-of-way that are expressly permitted by the zoning district of the adjacent property may be approved for an indefinite duration and are exempt from compensation.
4. In addition to the right-of-way site permit application fee established in the City's fee schedule, the uses listed under subsection 1(a), (b), (h), (i) or fences and vegetative screens which exclude the public shall pay a periodic use fee for the right—of–way equivalent to the rental value of the right-of-way used.
5. Upon termination of a site permit, for which the permittee does not obtain a new permit, any improvements constructed in the right-of-way must be improved by the permittee and the area restored to its original condition or better.

D. ——Right-of-way use permits. The purpose of use permits is to allow short term activities and temporary alteration of the right-of-way so as not to unreasonably obstruct, hinder, jeopardize, injure, or delay the use of the right-of-way for its primary functions: vehicular and pedestrian travel. All use of the right-of-way shall be for a lawful purpose and shall not breach the peace or adversely interfere with public use of the right-of-way. The location, time, and date of the use must be in accordance with City requirements. All signs for directional control and event advertising must be approved, properly erected, and removed within 24 hours of the termination of the use. The permittee shall be liable for any expense, damages, or cost required to return the right-of-way to its condition prior to use by the permittee or to an improved condition if specifically required by the conditions of the permit. The permittee may be required to advise property owners who may be inconvenienced during the right-of-way usage. Police escorts, control, and inspections may be required. All floats, stands, and use-related structures shall be subject to Fire and Building Code requirements. Other conditions may be imposed at the discretion of the Director.

1. Right-of-way use permits may be issued for the following activities:
    a. Temporary street and sidewalk closures.
    b. Temporary blockage or streets and sidewalk, for uses such as dumpsters and scaffolding.
    c. Boring, jacking or pushing;
    d. Construction adjacent to the right-of-way that may physically impact the right-of-way;
    e. Construction related to the installation of culverts, curb cuts, handicap ramps, sidewalks and driveway approaches;
    f. Drainage facilities;
    g. Installation of landscaping;
    h. Painting;
    i. Paving;
    j. Street trenching;
    k. Utility installation;
    l. Temporary construction devices, such as scaffolding, barricades, walls, elevators, cranes, pedestrian walkways, etc.;

m. "Haul roads", or the usage of public roads to move materials that can cause debris, spills, noise, road damage, and/or unusual traffic congestion;
n. House moves, special usage of the street and/or public right-of-way to move houses or other oversize and overweight materials and structures at specific times and locations;
o. Street runs, or races held on public streets and sidewalks on specific routes, parades and processions;
p. Assemblies, fairs, carnivals, shows, exhibitions, or large gatherings of people that may use or obstruct the right-of-way with people, vehicles, and signs and may produce noise;
q. Commercial filming or videotaping, except that associated with news reporting. ~~producing motion pictures except;~~
r. Parking spaces temporarily dedicated for private use.

2. Utility facilities placed in the right-of-way under the authority of a franchised utility in good standing as defined in this chapter may be exempt from the requirement to obtain a use permit if the activity is a minor or blanket activity specified in section .170.
3. Right-of-way use permits may extend up to 120 days. Permits extending longer than 120 days shall be processed as a right-of-way site permit.

~~B. Nonexclusive Right. City right-of-way shall not be privately improved or used for access or other purposes unless a permit has been issued for such use. Permits issued pursuant to this section shall not be construed to convey any vested right or ownership interest in any City right-of-way. Every right-of-way permit shall state on its face that any City right-of-way subject to the permit shall be open to use by the general public except in those cases where specific conditions require the closure of the right-of-way to the public for safety reasons.~~

~~C. Right-of-Way Site Permit Conditions. A right-of-way site permit shall include at a minimum the following terms and conditions:~~
~~1. Scope, nature, and process for permitting future maintenance activities associate with the facilities installed pursuant to this type of permit;~~
~~2. Insurance, indemnification, relocation, and removal and restoration upon termination or abandonment;~~
~~3. Compensation for use of the right-of-way consistent with SMC 12.25.090, and for personal wireless facilities, such additional compensation allowed by state law;~~
~~4. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary; and~~
~~5. Duration of the permit grant to occupy the right-of-way and removal and restoration conditions upon the end of that duration, and/or a renewal process. (Ord. 244 § 6, 2000; Ord. 238 Ch. VII § 5(B),~~

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.040 Applications and Processing of Permits.

A. To obtain a right-of-way use permit the applicant shall file an application with the Department.

B. Every application shall include the following information appropriate to the proposed use:

1. A scale drawing showing the location of the proposed right-of-way use, the location of the existing and proposed improvements, surface features such as curbs and gutters, underground features such as the location of utilities, and the limits of the work area;
2. A description of the use;
3. The planned duration of the use;
4. Applicant contact information;
5. All other information which may be required as specified in policies adopted hereunder; and
6. An estimate of construction costs.

C. The Director shall examine each application submitted for review and approval to determine if adequate information is provided and if it complies with the applicable provisions of this chapter and procedures adopted hereunder. Other departments that have authority over the proposed use activity will review and recommend approval or disapproval of the application. The permit may be approved if the Director finds that the application conforms to the requirements of this chapter, and may impose such conditions as are reasonably necessary to protect the public health, welfare and safety, to mitigate any impacts resulting from the use and to coordinate activities or address potential conflicts with future improvements in the area.

D. A right-of-way permit shall include at a minimum the following terms and conditions:

1. Scope, nature, and process for permitting future maintenance activities associate with the facilities installed pursuant to this type of permit;
2. Insurance, indemnification, relocation, and removal and restoration upon termination or abandonment;
3. A financial guarantee for all construction and activities within the right-of-way shall be required, unless the director determines such a guarantee to be unnecessary; and
4. Duration of the permit grant to occupy the right-of-way and removal and restoration conditions upon the end of that duration or renewal.

E. All applications for permits must be submitted 10 working days or more prior to the start of work or as required to obtain other City permits.

F. Upon submittal of a completed application the applicant shall provide the application fee according to the fee schedule adopted by the City.

.050 Renewal of Permits.

Each permit shall be of the duration specified on the permit and may be renewed without payment of an additional fee for up to the length of the original permit, at the discretion of the Director. If continued use of the right-of-way is desired by the permittee after expiration of a renewed permit, he/she must apply for a new permit.

.060 Permit Exception.

A. A right-of-way use permit shall not be required of franchised utilities for activities exempted under section .170 or when responding to emergencies that require disturbance of the right-of-way, provided that the Department shall be notified by the responding utility or contractor verbally or in writing, as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or contractor from the requirement to apply for a right-of-way use permit as provided in this chapter within 48 hours after beginning emergency work in the right-of-way.

B. Permits are not required for City Public Works.

C. Permits are not required of utilities in the right-of-way under the authority of a franchise agreement or site permit for relocation or conversion of facilities because of City initiated construction projects. This provision only applies to work that would not otherwise have been done by the utility.

D. Permits are not required for the ordinary maintenance of landscaping in the right-of-way. Blockage of the right-of-way associated with ordinary maintenance of landscaping requires a use permit.

~~20.70.260~~ .070 Construction within the right-of-way – Purpose.

The purpose of SMC ~~20.70.260~~12.15.070 ~~—~~through ~~20.70.310~~12.15.130~~—~~ is to permit orderly construction in the right-of-way with the minimum amount of disruption to the right-of-way and/or traffic patterns of the City.

~~20.70.270~~ .080 Construction within the right-of-way – Coordination requirements.

A. At the time of application for a right-of-way permit, the applicant shall notify all other public and private utility entities known to be using or proposing to use the same right-of-way of the proposed timing of such construction. Within seven days of receiving this notification, any such entity notified may request a delay of the proposed construction to coordinate other right-of-way construction with the applicant. The Director may approve a delay of up to 90 days, except in case of emergencies, if the Director determines that such delay will reduce the inconvenience to City street users from construction activities and that the delay will not create undue economic hardship on the applicant. The Director shall also coordinate the approval with City street improvements and maintenance and may also delay the construction under the same circumstances.

B. All permittees shall, before commencing any construction in City right-of-way, comply with all requirements of Chapter 19.122 RCW, the one number locater service.

~~20.70.280~~ .090 Construction within the right-of-way – Equipment and materials within the right-of-way.

During nonworking hours the project site is to be left in a manner that is safe and protected from the public using the right-of-way. Equipment and materials are not allowed in the right-of-way unless they are placed in a safe location or protected by permanent guardrails, lighted barricades, or temporary concrete barriers. The use of temporary concrete barriers in the right-of-way is permitted only if the Director approves the installation and location. During work hours, only materials or equipment necessary for construction are allowed in the roadway

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~~20.70.290~~ .100 Construction within the right-of-way – Traffic and pedestrian control.

A. A traffic control plan meeting the approval of the Director, based on engineering principles, shall be prepared for any activities within the right-of-way that disrupt traffic patterns in accordance with the currently applicable Manual on Uniform Traffic Control Devices (MUTCD). This plan must be developed and submitted with the permit application.

1. Temporary traffic control to ensure traffic safety during construction activities must be provided. A City-approved plan is required prior to starting construction activities.

2. The developer is responsible for the cost of supplying and installing all necessary permanent traffic control devices such as street name signs, stop signs, speed limit signs, and channelization. The City is responsible for conducting the installation of such devices.

3. Neighborhood traffic control devices such as speed humps, traffic circles, curb extensions, etc., are demonstration devices used to control vehicle speeds and cut-through traffic. Installation of these devices will be permitted only when the installation has met criteria established by the Engineering Development Guide and has been approved by the Director.

4. The Traffic and Pedestrian Control Plan shall minimize disruption to pedestrians. In the event of pedestrian disruption, the plan shall contain adequate pedestrian connections and clear signage

~~20.70.300~~ .110 Construction within the right-of-way – Pavement cutting and restoration.

A. All pavement types should not be cut for a period of five years after the pavement has been constructed or resurfaced. Trenchless construction techniques such as pushing, jacking, or boring shall be explored on all new or existing pavement road crossings. Pavement cuts parallel to street alignment shall be restored and overlaid for the full width in accordance with City specifications.

B. Unsatisfactory restoration work shall be redone promptly by the permittee. This includes immediately replacing any failed patches. If necessary, unsatisfactory work may be redone by the City and billed to the utility.

C. Cleanup of excavation and debris material shall be accomplished concurrently with the burying operation. At no time shall debris and excavation extend along a line for more than 300 feet.

D. Any temporary restorations shall be made permanent within 30 calendar days from the date of the temporary restoration.

E. All final restoration work shall be guaranteed by the permittee.

F. All abandoned aboveground facilities shall be removed from the right-of-way within 30 days of abandonment by the owner of the facilities. After 30 days, the City may remove any abandoned facilities and recover all costs of ~~the cost for~~ removal from the facility owner.

~~20.70.310~~ .120 Construction within the right-of-way – Survey requirements.

In cases where the Director determines it necessary, the applicant may be required to provide a survey prepared by a licensed land surveyor to adequately define the limits of the right-of-way.

~~20.70.320 Usage of right-of-way.~~

~~The purpose of SMC 20.70.320 and 20.70.330 is to ensure that structure or activities do not unreasonably obstruct, hinder, jeopardize, injure, or delay the use of the right-of-way for its primary functions: vehicular and pedestrian travel.~~

~~A. All usage of the right-of-way shall be for a lawful purpose and shall not breach the peace or adversely interfere with public use of the right-of-way. The location, time, and date of the use must be in accordance with City requirements. All signs for directional control and event advertising must be approved, properly erected, and removed within 24 hours of the termination of the use. The permittee shall be liable for any expense, damages, or cost required to return right-of-way to its condition prior to use by the permittee or to an improved condition if specifically required by the conditions of the permit. The permittee may be required to advise property owners who may be inconvenienced during the right-of-way usage. Police escorts, control, and inspections may be required. All materials used in floats, stands, and use-related structures shall be of fire-retardant materials and subject to Fire Department requirements. Other conditions may be imposed at the discretion of the Director.~~

~~B. Specific activities requiring right-of-way permits include, but are not limited to, the following:~~

~~1. Items placed in the right-of-way, such as benches, litter and recycling receptacles placed by private parties, bicycle racks placed by private parties, telephone booths, private planters, or any other obstruction to be placed in the right-of-way by an entity other than the City;~~

~~2. Special and unique structures, such as fountains, clocks, flag poles, wireless telecommunication facilities, awnings, marquees, street furniture, kiosks, signs, banners, mailboxes, and decorations;~~

~~3. Sales structures, including sidewalk cafes or the usage of the right-of-way for the sale of flowers, food or beverages, newspapers, or other items;~~

~~4. Fences, retaining walls, terracing, and other similar structures;~~

~~5. Temporary construction devices, such as scaffolding, barricades, walls, elevators, cranes, pedestrian walkways, etc.;~~

~~6. "Haul roads", or the usage of public roads to move materials that can cause debris, spills, noise, road damage, and/or unusual traffic congestion;~~

~~7. House moves, special usage of the street and/or public right-of-way to move houses or other oversize and overweight materials and structures at specific times and locations;~~

~~8. The private use of the air spaces over and the ground under the public right-of-way for long term commitments;~~

~~9. Loading zones, bus stops/shelters, parking spaces dedicated for private use on a permanent or temporary basis;~~

~~10. Street runs, or races held on public streets and sidewalks on specific routes;~~

~~11. Parades and processions;~~

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~~12. Assemblies, fairs, carnivals, shows, exhibitions, or large gatherings of people that may use or obstruct the right-of-way with people, vehicles, and signs and may produce noise;~~
~~13. Filming, video taping, or otherwise producing motion pictures for television or public exhibition. The following activities are exceptions; provided, that they do not disrupt the right-of-way or traffic patterns:~~
~~a. Filming or video taping for private use;~~
~~b. Filming or video taping for use in a criminal investigation;~~
~~c. Filming or video taping for news purposes;~~
~~d. Filming or video taping for charitable purposes; and~~
~~e. Filming or video taping under direction of the City relating to traffic study activities.~~
~~(Ord. 244 § 7, 2000~~

~~20.70.330~~ .130 Temporary street closures.

The convenience of an open roadway is consistent with the idea of good customer service. The City will discourage street closures and strongly discourage arterial street closures. In the event of street closure, the following standards apply:
A. Signs shall be posted in a conspicuous place at each end of the roadway to be closed and at all intersections associated and/or adjacent to the closed segment of the street.
B. The signs shall be posted no later than three calendar days prior to the proposed closure.
C. Any residential street closures greater than 12 hours will require a detour route plan, signage, and a public notice published in the newspaper of record three days prior to closure.
D. For all nonemergency arterial street closures, the publication of the closure is required in addition to posting signs a minimum of three days in advance, regardless of the length of the closure.
E. For all street closures described above, the permittee is required to notify in writing the following agencies a minimum of three calendar days prior to the closure:
1. The Shoreline Police Department;
2. The Shoreline Fire District;
3. The Shoreline School District; and
4. King County Transportation Division.
F. These standards shall be considered a minimum; other notifications may be required as appropriate.

~~20.70.340~~ .140 Purpose.

The purpose of this ~~subchapter~~ 12.15.140 through 12.15.180 is to provide the requirements and conditions regarding the accommodation of utilities in the City right-of-way. The accommodation of utilities in City right-of-way shall place primary emphasis on the following:

A. Transportation operation and safety;
B. Maintaining the structural integrity of the transportation facility;
C. Preserving the aesthetic value of the facility elements;
D. Protecting the public's investment in the roadway and associated facilities; ~~and~~

E F. Accommodating development or improvements of the City right-of-way.;
F G. Minimizing the need for later adjustment to accommodate future roadway improvements; and
G H. Permitting service access to utility installations with minimum interference to traffic

~~**20.70. 350 General utility requirements.**~~

~~C. Utility installations shall be located to minimize the need for later adjustment to accommodate future roadway improvements and to permit access to servicing such installations with minimum interference to roadway traffic. Utilities shall attend City preconstruction conferences when notified by the Director, that their facilities may be affected. They shall coordinate the relocation of their facilities with the Director. (Ord. 238 Ch. VII § 6(B), 2000).~~

~~20.70.360~~ .150 Utilities in good standing.

The purpose of designating Utilities in Good Standing (UGS) is to provide a streamlined permitting process by issuing UGS certification. for franchised utilities. This certification will allow a UGS Utility to work in the right-of-way without a permit for blanket activity work. The UGS Utility may inspect its own blanket activity work and certify that the work has occurred in accordance with the provisions of this subchapter. Each utility may apply for UGS certification in writing on the standard City form.

A. Approval Standards. All franchise holders are eligible to apply for UGS certification. To qualify for UGS certification, the following factors shall be considered:

1. A utility must have no more than three written notifications of noncompliance during the preceding 12 months;
2. The utility's past documented performance in complying with City policy and requirements;
3. Terms of the utility's franchise agreement.

Records of the actions by the utilities providing timely relocation and extension, and work that conforms to the standards of this subchapter will be kept by the Department and will be used as a basis for establishing or continuing UGS standing.

B. Revocation of UGS Standing. Utility in Good Standing certification shall remain in effect for the term of the franchise agreement, or until the UGS certification is revoked. Revocation may occur for the following reasons:

1. A UGS utility may have its UGS certification immediately revoked upon written notice by the Director for gross noncompliance with City requirements creating health, safety, or roadway stability hazards.
2. A UGS certification may be automatically revoked after three written notifications of noncompliance within a 12-month period. Reasons for notifications of noncompliance may include, but not be limited to, the following list. Failure to:

a. Comply with the provisions of the franchise agreement;
b. Comply with the Shoreline Development Code and Engineering Development Guide;
c. Comply with the latest edition of the MUTCD;
d. Comply with Washington State Labor and Industry rules;
e. Comply with the provisions and conditions on an approved permit;
f. Actively coordinate with City street construction projects, including attending any required design and preconstruction meetings;

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g. Actively coordinate with other utilities on utility-initiated projects;
h. Respond to requests for relocation information when requested by the City;
i. Relocate utility franchises in a timely manner that is consistent with approved construction schedules;
j. Notify the City as soon as it is known that compliance with City standards for a construction project cannot be achieved (an engineering standards variance may be required);
k. Obtain a permit, when required, to work in the right-of-way;
l. Notify the City 24 to 72 hours prior to beginning work in the right-of-way;
m. Notify the appropriate agencies prior to a road closure;
n. Notify the City of canceled or completed work in a timely manner;
o. Complete all work within 12 months of permit issuance;
p. Permanently repair a pavement patch within 30 calendar days from the date of temporary restoration;
q. Restore the roadway and pavement in accordance with approved provisions and conditions;
r. Leave the project site in a manner that is safe and protected;
s. Minimize the need for cutting of pavement less than 60 months old ~~less than 36 months old;~~
t. Maintain temporary pavement restorations;
u. Remove abandoned aboveground facilities in the required timeframes; and
v. Payment of permit fees in a timely manner.
C. The Director shall consider the following before issuing a written letter of noncompliance:
1. The utility's tenure;
2. Prior performance levels;
3. Volume of work conducted;
4. Severity of the noncompliance; and
5. The existence of extreme circumstances beyond the utility's control

~~**20.70.370 Relocation of utility installations.**~~

~~Utility companies with facilities in City right-of-way shall relocate their service facilities at their own expense when the relocation is necessary to accommodate public right-of-way improvements. In the event such utility company is subject to a franchise agreement or right-of-way use agreement with the City, such agreement shall control any relocation requirement, if inconsistent with this section. (Ord. 238 Ch. VII § 6(B-2), 2000).~~

~~20.70.380~~ .160 Design of utility installations.

The utility is responsible for the design of the utility facility being proposed. This design, in addition to the integrity of the proposed utility facility, shall include provisions for public safety during the course of construction as well as full consideration of traffic safety and traffic accident potential for the life of the installation. The design shall also minimize disturbance to the roadway both during and after construction. In the case of proposed attachment to existing bridges and structures, the utility is responsible for submitting engineering information, including all engineering calculations, to the Director concerning the structural ability of the bridge to carry the additional load. The

Director will make a final determination regarding the request and establish design and construction parameters for this type of work.

~~20.70.390~~ .170 Utility installation.

The Department shall determine whether proposed utility construction is consistent with the applicant's right-of-way franchise or permit from the City. Applications shall be evaluated in respect to the hazard and risk of the proposed construction, location of the proposed construction in relation to other utilities in the right-of-way and the adequacy of the engineering and design of proposed construction.

~~20.70.400~~ .180 Types of utility activities.

Depending on the type of work and the standing of the utility, a permit may be required for a utility to work in the right-of-way. ~~Utility work is divided into three classifications.~~ In the event of conflict between the listed standards ~~below~~ and a utility's franchise agreement or right-of-way use agreement, the provisions of the agreement shall apply. ~~(Ord. 238 Ch. VII § 6(C), 2000).~~ Utility work is divided into the following three classifications:

~~**20.70.410 Minor activities.**~~

A. Minor activity

1. Minor activity work does not disrupt right-of-way or traffic patterns. ~~This type of activity includes work as minimal as trenching the right-of-way outside of the paved area.~~ Some examples of minor activity work include:

~~1.~~ a. Street lamp replacement;

~~2.~~ b. Accessing existing manholes~~,~~ ~~handholes,~~ and vaults;

~~3.~~ c. Raising valves;

~~4.~~ d. Providing cathodic protection; and

~~5.~~ e. Replacing existing aboveground meters, transformers, closures, and pedestals.

~~B.~~ 2. No breaking of any asphalt, curb, gutter, or sidewalk is allowed. No permit or notification is required for this type of work; however, proper traffic control devices must be used and any disturbance to the right-of-way must be repaired in accordance with standards.

~~**20.70.420 Blanket activities.**~~

B~~A~~. Blanket activity

1. Blanket activity work has a moderate effect on nonarterial right-of-way or traffic patterns. Some examples of blanket activity work include:

~~1.~~ a. Installing utility services while disturbing no more pavement than the specified maximum amount in each utility blanket agreement;

~~2.~~ b. Installing short side services and hydrants;

~~3.~~ c. Pushing under a street; and

~~4.~~ d. Constructing splice pits.

~~B.~~ 2. Utilities in good standing are not required to obtain a permit for these types of activities, however fax notification must be provided to the City 24 to 72 hours before

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starting any blanket activity work. Utilities not in good standing must obtain a permit prior to starting any blanket activity work.

~~**20.70.430 Major activities.**~~

C. Major activity

1. Major activity~~ies~~ work has~~ve~~ a major impact on the right-of-way or traffic patterns. ~~Major activities include cutting asphalt greater than the square footage allowed as specified in a blanket activity permit.~~ Some ~~E~~examples of major activity work ~~may~~ include:
   a. Cutting asphalt greater than the square footage allowed as specified in a blanket activity permit
   b. ~~e~~Constructing a main line or an open cut road crossing.
2. All utilities are required to obtain a permit for this type of work.

.190 Revocation of Permits.

A. The Director may revoke any permit issued under this chapter whenever in the Director's sole determination:

1. The work or activity does not proceed in accordance with the plans as approved, or conditions of approval, or is not in compliance with the requirements of this chapter or procedures, or other City ordinances, state law or federal law;
2. The City has been denied access to investigate and perform inspection;
3. The permittee has made a misrepresentation of a material fact in applying for a permit;
4. The progress or condition of the approved work or activity indicates that it is or will be inadequate to protect the public and adjoining property, the street or utilities in the street, or any excavation or fill endangers or will endanger the public, the adjoining property, street or utilities in the street.

B. Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized or directed by the Director.

.200 Nuisance in the right-of-way.

A. Any activity, object or thing which occupies any right-of-way without the legal authorization required by this chapter is declared a public nuisance and shall be subject to enforcement procedures, including penalties, as provided in SMC 20.30.

.210 Adoption of administrative procedures.

The Director may prepare and adopt policies and procedures necessary to implement this chapter. Such policies do not require approval by the City Council.

A. The amount of compensation shall be the full-appraised value of the area to be vacated if the vacated property has been part of the dedicated public right of way for twenty-five years or more, or if the property was acquired at public expense. Compensation shall be one-half of the appraised fair market value if dedicated less than twenty-five years.
B. The vacation ordinance shall appropriate the compensation received from the vacation, provided one-half of the proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city.

.040 Resolution method – Procedure

A. The City Council may propose a vacation by resolution of intent to vacate in lieu of a petition from abutting property owners. The resolution shall set a hearing before the Planning Commission within the timeframes of section .020(B) of this chapter.
B. A Notice of hearing shall be posted and mailed as required by section .020(C), except the notice shall state the vacation was initiated by the City Council and further state that if fifty percent of the abutting property owners file written objection to the proposed vacation with the city clerk prior to the Planning Commission Hearing, the vacation proceeding will terminate.
C. If sufficient objections to the vacation are not filed, the Planning Commission shall hold an open record hearing, and make a recommendation to the Council based on the vacation criteria of this chapter and recommendations of planning and engineering staff.
D. The City Council shall hold a closed record hearing to consider the hearing record and recommendation of the Planning Commission.

.050 Hearing Criteria

The Planning Commission and City Council shall find each of the following criteria are satisfied in making their recommendation and decision.

A. The vacation will benefit the public interest;
B. The proposed vacation will not be detrimental to traffic circulation, access, emergency services, utility facilities, or other similar right-of-way purposes;
C. The street or alley is not a necessary part of a long range circulation plan or pedestrian/bicycle plan; and
D. The subject vacation is consistent with the adopted Comprehensive Plan and adopted street standards.

.060 Limitations on vacations abutting bodies of water

Vacations of a street or alley abutting a body of fresh or salt water must comply with all the procedures and criteria of RCW 35.79.035, in addition to this chapter.

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Exhibit B

12. 17 STREET VACATION

.010 Purpose

This chapter establishes procedures and criteria for the vacation of city right-of-way or easements. The provisions of this chapter supplement chapter 35.79 RCW.

.020 Petition method – Procedure

A. The owners of two-thirds interest in any real estate abutting any city right-of-way, or any part thereof, may file a petition with the city clerk giving a description of the property to be vacated, together with a nonrefundable street vacation fee established by the Council. Petitions shall comply with petition requirements of RCW 35A. 01.040.

B. After verification of the petition by city staff, the City Council by resolution shall fix a time when the petition will be heard by the Planning Commission not more than sixty (60) days nor less than twenty (20) days after the date of the passage of such resolution.

C. The city shall post a public notice at least twenty (20) calendar days before the hearing in three conspicuous public places and in a conspicuous place on the street or alley sought to be vacated. Copies of the notice shall be mailed to each owner of property within 500 feet of the proposed vacation area at least fifteen (15) days before the hearing. The notice shall include:
    1. A statement that a petition has been filed to vacate the street or alley;
    2. The description of street or alley to be vacated; and
    3. The time and place of the hearing of the petition

D. The Planning Commission shall conduct an open record hearing to determine whether the Commission will recommend approval of the petition to the City Council based on criteria of this chapter and planning and engineering staff recommendations.

E. After the Planning Commission has issued their recommendation the petitioner shall pay the actual cost for preparation of the appraisal report to determine the fair market value of the subject property together with a deposit to cover anticipated closing costs required by the vacation as recommended by the Planning Commission.

F. If the petition is approved by the City Council following a closed record hearing and a vacation ordinance is adopted, the effective date and recording of a certified copy of the ordinance with the King County Records Division shall be conditioned on the payment of compensation and expenses under this chapter and recording of utility or other public easements necessary to satisfy vacation criteria.

.030 Petition method – Compensation

A. The amount of compensation shall be the full-appraised value of the area to be vacated if the vacated property has been part of the dedicated public right of way for twenty-five years or more, or if the property was acquired at public expense. Compensation shall be one-half of the appraised fair market value if dedicated less than twenty-five years.
B. The vacation ordinance shall appropriate the compensation received from the vacation, provided one-half of the proceeds shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city.

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A. The City Council may propose a vacation by resolution of intent to vacate in lieu of a petition from abutting property owners. The resolution shall set a hearing before the Planning Commission within the timeframes of section .020(B) of this chapter.
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D. The City Council shall hold a closed record hearing to consider the hearing record and recommendation of the Planning Commission.

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The Planning Commission and City Council shall find each of the following criteria are satisfied in making their recommendation and decision.

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B. The proposed vacation will not be detrimental to traffic circulation, access, emergency services, utility facilities, or other similar right-of-way purposes;
C. The street or alley is not a necessary part of a long range circulation plan or pedestrian/bicycle plan; and
D. The subject vacation is consistent with the adopted Comprehensive Plan and adopted street standards.

.060 Limitations on vacations abutting bodies of water

Vacations of a street or alley abutting a body of fresh or salt water must comply with all the procedures and criteria of RCW 35.79.035, in addition to this chapter.