

ORIGINAL

ORDINANCE NO. 633

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AMENDING TO RIGHT-OF-WAY PERMIT REGULATIONS BY RESTATING OR REORGANIZING FOR CLARITY; REMOVING HAUL ROADS AND MAILBOXES AS SUBJECT TO PERMIT, ADDING UTILITY FACILITIES SUBJECT TO PERIODIC USE FEE, CODIFYING THE ADMINISTRATIVE RULE REQUIRING RELOCATION OF IMPROVEMENTS WHICH CONFLICT WITH CITY ROJECTS, EXTENDING TERM OF RIGHT-OF-WAY USE PERMITS TO 180 DAYS, REPEALING SECTIONS WHICH HAVE BEEN ADOPTED IN REVISION TO ENGINEERING DEVELOPMENT MANUAL; AND AMENDING CHAPTER 12.15 OF THE SHORELINE MUNICIPAL CODE**

WHEREAS, City staff has recently completed a revision of the Engineering Development Manual (formerly Guide) following notice and public comment, which incorporates as Administrative Rules much of the detail regarding construction in the right-of-way now contained in Chapter 12.15 of the municipal code, including less restrictive requirements for pavement cutting and restoration; and

WHEREAS, restatements and reorganization of certain provisions provide clarity; and

WHEREAS, right-of-way use permits, often used for temporary construction of frontage improvements associated with development, should be extended to 180 days to coincide with the term of building permits; and

WHEREAS, Chapter 12.15 includes a right-of-way site permit for extended activities in the right of way and utilities without an approved franchise, and utility surface facilities should be subject to the periodic use fee in addition to aerial and underground facilities; and

WHEREAS, regulations of franchises in SMC 12.25 allowing a credit for utility taxes paid by the franchisee to offset the 6% franchise fee required by that chapter should be extended to right-of-way site permits required where no franchise has been authorized, and utility tax payments should satisfy the periodic use payment of the permit; now therefore

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Amendment.** Shoreline Municipal Code section 12.15.030 *Right of way permit issuance* is amended as follows:

- 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 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.

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. Right-of-way site permits ~~is~~ are 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. If the use is allowed in the nearest adjacent classified land use zoning designation, a right of way site permit 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;~~
  - ed. Fences, retaining walls, terracing, and similar structures;
  - fe. Litter and recycle receptacles placed by private parties;
  - gf. 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;
  - hg. 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;
  - ih. Underground rights;
  - ~~ji. Utility facilities;~~
2. Utility facilities placed in the right-of-way under the authority of a franchised utility as defined in this chapter, and mail boxes are exempt from the requirement to obtain a right-of-way site permit.
3. Site permits may be granted up to five years; ~~provided, however, uses of~~ if use of the right-of-way that are expressly permitted by the zoning district designation of the adjacent property for particular structures such as commercial awnings, the structure may be approved for an indefinite duration and are ~~is~~ exempt from paying compensation a periodic use fee. Each permit shall be of the duration specified on the permit and may be renewed for up to the length of the original permit, at the discretion of the director.
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), (g), (h), (i), (j) 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. Utilities which pay a utility tax pursuant to SMC 3.32.030 are exempt from paying compensation a periodic use fee under this section.

5. To accommodate the completion or as the result of a public project, upon reasonable notice, improvements or facilities authorized by a right-of-way site permit shall be removed or relocated at applicant's expense

65. 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 reimproved 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 complete or partial closures of traffic lanes or street and sidewalks. ~~closures.~~
  - b. ~~Temporary blockage of streets and sidewalk, for uses such as dumpsters and scaffolding.~~
  - e.b. Boring, jacking or pushing;
  - ~~d.c.~~ Construction or painting adjacent to the right-of-way that may physically impact the right-of-way;
  - e.d. Construction related to the installation of culverts, curb cuts, handicap ramps, sidewalks and driveway approaches;
  - f.e. Drainage facilities;
  - g.f. Installation of landscaping;
  - h. ~~Painting;~~
  - i.g. Paving;
  - j.h. Street trenching;
  - k.i. Utility installation;
  - l.j. Temporary construction devices, such as scaffolding, barricades, walls, elevators, cranes, pedestrian walkways, etc.;

- m.k. ~~“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.l. 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.m. Street runs, or races held on public streets and sidewalks on specific routes, parades and processions;
- p.n. 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.o. Commercial filming or videotaping, except that associated with news reporting. producing motion pictures except;
- r.p. 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 120-180 days, provided permits issued for frontage improvements required for a development permit shall continue for the term of the development permit . Renewals may be approved for good cause and payment of a renewal fee.

**Section 2. Amendment.** Shoreline Municipal Code section 12.15.040 *Applications and Processing of Permit* is amended as follows:

.040

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. A traffic control and pedestrian control plan where vehicular or pedestrian circulation is disrupted.

[C-E unchanged]

**Section 3. Repeal.** SMC 12.15.050 *Renewal of Permits* is repealed in its entirety.

**Section 4. Amendment.** SMC .060 *Permit Exception* is amended to read as follows:

.060

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.

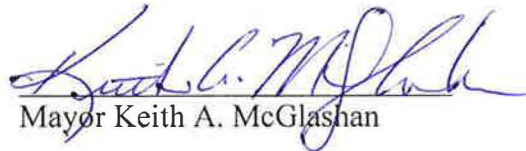
~~C. Permits are not required of utilities in the right-of-way under the authority of a franchise agreement or site permit for relocation or conversion of facilities because of City initiated construction projects. This provision only applies to work that would not otherwise have been done by the utility.~~

D.C. Permits are not required for the ordinary maintenance of landscaping in the right-of-way including pruning of trees which is consistent with SMC 20.50.350(E). Blockage of the right-of-way associated with ordinary maintenance of landscaping requires a use permit.

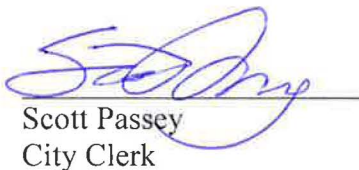
**Section 5. Repeal.** Sections 12.15.070-.120 are repealed in their entirety.

**Section 6. Publication and Effective Date.** This ordinance shall take effect five days after publication of the title of this ordinance as an approved summary of the ordinance in the official newspaper of the City.

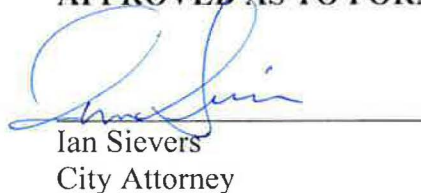
**PASSED BY THE CITY COUNCIL ON MAY 14, 2012.**

  
Mayor Keith A. McGlashan

**ATTEST:**

  
Scott Passey  
City Clerk

**APPROVED AS TO FORM:**

  
Ian Sievers  
City Attorney

Date of publication: May 17, 2012

Effective date: May 22, 2012