

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Ordinance No. 633 Amending Regulation of Right-of-Way Permits Established in Chapter 12.15 of the Shoreline Municipal Code
DEPARTMENT:	Public Works
PRESENTED BY:	Mark Relph, Public Works Director Tricia Juhnke, Engineering Supervisor
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

Staff is recommending revisions to Shoreline Municipal Code Chapter 12.15 *Use of Right of Way* to provide consistency with the recently adopted Engineering Development Manual. As part of the review of Chapter 12.15, inconsistent or ambiguous provisions have been restated or reorganized. Finally, under the rulemaking authority of SMC 12.15.210, several sections can now be removed from the Shoreline Municipal Code that are included in greater detail in the updated Engineering Development Manual.

The proposed amendments were reviewed by the City Council on April 23, 2012.

RESOURCE/FINANCIAL IMPACT:

No financial impacts are anticipated. Potential staff times, and increased permit fees, are avoided by using the utility tax paid (SMC 12.15.030(C)(4)) as a substitute for the periodic use fee charged under the right-of-way site permit, although this effort has only been required infrequently in the past for utilities without a franchise and isolated facilities. Since the permit serves as an alternative to a franchise, this credit follows the same tax offset approach to franchise fees.

Extending the term of right-of-way use permits from 120 to 180 days will reduce staff and developer resources in unnecessary renewal. This permit is often required for construction of frontage improvements associated with a development permit and should be coordinated with the term of the development permit.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 633 amending regulations of right-of-way permits under chapter 12.15 of the municipal code

Approved By: City Manager **JU** City Attorney **JU**

INTRODUCTION

City staff has recently completed a revision of the Engineering Development Manual (formerly Guide) which incorporates as administrative rules much of the detail regarding construction in the right-of-way now contained in Chapter 12.15 of the Shoreline Municipal Code (SMC). The Engineering Development Manual addresses engineering requirements for site and right-of-way work related to development within the City of Shoreline. While this manual is geared toward the developer and the design/development engineer, it is intended to provide information to a wide group of users.

The manual sets forth minimum engineering criteria and specifications, and supplements the Shoreline Municipal Code. It does not replace the code. These standards do not substitute for engineering design, nor are these standards intended to limit innovative design where equal performance in value, safety, and maintenance can be demonstrated. The 2012 Engineering Development Manual (EDM) can be found at the following link: <http://cityofshoreline.com/index.aspx?page=251>

Staff recently completed a review and revision of SMC Chapter 12.15 for consistency with the revised EDM that was administratively adopted on March 29, 2012. Several of the sections of SMC Chapter 12.15 have either been replaced with rules in the EDM or the EDM rules adopt approaches to use of the right-of-way which conflict with existing sections of Chapter 12.15 and should be reconciled or withdrawn. Adoption of Ordinance No. 633 (Attachment A) will make the proposed modifications to SMC Chapter 12.15. Council reviewed the proposed Ordinance No. 633 on April 23, 2012.

BACKGROUND

The last major revision to SMC Chapter 12.15 was in 2003, when the Council adopted Ordinance No. 339 in response to new requirements for franchises and "master permits" required for telecommunication utilities in ESSB 6676. That state law struck a compromise between cities and telecommunication utilities for use of right-of-way and provided the authorization for a new "right-of-way site permit" to be available for utilities that do not have a valid City franchise agreement, but have extensive occupation in the right-of-way. Ordinance No. 339 provided an exemption to the requirement to obtain a right-of-way site permit for those utilities with a valid franchise agreement. For a utility with extensive occupation in the right-of-way, the new 2003 site permit included ongoing commitments similar to those provided by franchised utilities. The right-of-way site permit is a specific class of right-of-way permit obtained for activities of extended duration and is codified in SMC 12.15.030(C).

Ordinance No. 339 also provided clarification on "right-of-way use" permits. These permits are issued to allow for short-term activities and temporary alteration of the right-of-way. The right-of-way use permit is codified in SMC 12.15.030(D).

DISCUSSION

SMC Chapter 12.15 includes a high level of detail for right-of-way construction that was not included in previous versions of the Engineering Development Guide (now called Engineering Development Manual). The 2012 Engineering Development Manual (EDM)

and application forms include the detail for right-of-way construction and therefore, much of the detail can be removed from SMC Chapter 12.15. Staff also recommends changes to resolve operational issues in working with the two right-of-way permits as detailed in the section summary of the ordinance that follows.

Proposed Changes to SMC Chapter 12.15.

12.15.030- The following amendments are made to the subsection regulating the right-of-way site and right-of-way use permits.

- *Section 12.15.030(C)(1-d) and 12.15.030(D)(1-m):* Haul roads are removed both from the site permit and the use permit. Unlike house moving, use of the road is not outside the legal limits for vehicle use, so these permits are inappropriate and add unnecessary process. Concerns for proper truck routes or hauling conditions will be disclosed and conditioned in processing the permit for the development that generates the truck trips.
- *Section 12.15.030(C)(2):* Mail boxes have been determined to be an appropriate right-of-way use and are proposed to be exempt from the site permit.
- *Section 12.15.030(C)(3):* Uses allowed to be sited in the right-of-way by the zoning code land use designation of the adjacent property were exempt from the five year duration and periodic use fee. For example the North City Business District allows commercial awnings of sufficient height to be located in the right-of-way. This language has been clarified.
- *Section 12.15.030(C)(4):* Uses that are required to pay the periodic use fee equivalent to rental value are expanded to include utility facilities. Although most utilities use air rights or underground rights in the right-of-way, which are already subject to the use fee, this addition corrects an oversight. Utilities subject to the Shoreline utility tax are exempt from this use fee, limiting the application of the periodic use fee to non-utility users and those utilities which do not have retail customers served in Shoreline. Since the site permit is in lieu of a franchise, this compensation approach is consistent with SMC Chapter 12.25.090 which also allows a credit against the franchise fee for utility tax.
- *Section 12.15.030(C)(5):* It has long been an established site permit condition that any improvements installed must be removed or relocated if necessary for a City road project. Although discussed in the context of a permit exemption for relocation caused by city projects in section SMC 12.15.060, this condition is codified here for clarification.
- *Section 12.15.030(D)(3):* Right-of-way use permits for temporary activity has been extended from 120 days to 180 days, the term of building permits. These permits are often required for frontage improvements and must be obtained with the building permit. Developers often prefer to complete the work at the end of the project. This change will lessen the need for a use permit renewal.

Section 12.15.040 - This section establishes submittals for a right-of-way application.

Although details of traffic and pedestrian control are appropriately removed to

the EDM, the requirement for submitting a plan with the right-of-way permit application in SMC Chapter 12.15.100 is moved to this section.

Section 12.15.050 - This section on renewal has been incorporated into Chapter 12.15.030(D)(3) which also dealt with permit duration. This section is repealed as unneeded.

Section 12.15.060 - The exemption from permits for franchised utilities included in this section is already stated, twice, in section 12.15.030. If operating under a site permit, that permit will require the relocation or removal for city projects with conditions as clarified in language added to 12.15.030 discussed above. Subsection .060.C is therefore unneeded.

Section 12.15.070-.120 - These detailed sections on construction in the right-of-way are more appropriate to the EDM and are included in the 2012 update. Therefore these sections are repealed as redundant of the Administrative Rules. A material change, however, from the approach to pavement cutting and restoration in Section 12.15.110 has been proposed in the EDM. The five year pavement moratorium currently contained in 12.15.110 is intended to encourage utilities to perform upgrades in advance of capital improvement projects so as to not have pavement cuts in a newly surfaced roadway. While well intended, it is not entirely practical or feasible and in some instances it discourages development and/or significantly increases costs for making service connections. There are also emergency breaks and/or repairs that need to be made by utilities. In these cases the costs associated with full street overlays are passed on either to rate payers through utility bills or applicants for re-development. The 2012 EDM has defined, in more detail, requirements for pavement restoration that can more easily be managed and provide more consistency and predictability to utility owners and applicants. Trenching takes many forms with varied impacts to the roadways; the new approach in the EDM allows pavement restoration necessary to mitigate for varied impacts, rather than setting one repaving standard that is often excessive.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 633 amending regulations of right-of-way permits under chapter 12.15 of the municipal code.

ATTACHMENTS

Attachment A- Ordinance No. 633

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

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- ~~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.

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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.

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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:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of publication: , 2012
Effective date: , 2012