

ORDINANCE NO. 244

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ESTABLISHING NEW REGULATIONS FOR SITING TELECOMMUNICATION UTILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY; AND AMENDING SHORELINE MUNICIPAL CODE CHAPTER 12.25 AND ORDINANCE 238, EXHIBIT "A" CHAPTER II AND SECTIONS III 3, IV 3 B (W) 5, 6 AND VII 5 B, D

WHEREAS, ESSB 6676 passed by the State Legislature in the 2000 Regular Session places new restrictions on municipal authority to grant access to the City's right-of-way for telecommunication and cable utilities; and

WHEREAS, ESSB 6676 requires the City to allow wireless telecommunication facilities into the City's right-of-way in accordance with City zoning regulations, and

WHEREAS, the City Council passed a moratorium on the acceptance and processing of new franchise applications for telecommunications service providers on May 8, 2000 to allow review of right-of way franchise and permit procedures in light of ESSB 6676 requirements; and

WHEREAS, the procedures of this ordinance are consistent with the requirements of ESSB 6676 and the federal Telecommunications Act of 1996;

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

Section 1. Amendment. Shoreline Municipal Code Chapter 12.25 is amended as set as set forth in Exhibit A attached hereto and incorporated herein.

Section 2. Amendment. Ordinance 238, Exhibit "A" Chapter II is amended as follows:

...

<u>Right of Way Use Agreement</u>	A contractual agreement between a utility and the City setting forth the terms and conditions under which the City grants the utility authority to install and maintain facilities in the public right-
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<u>Right of Way Permit</u>	<u>A class of permit issued by the City prior to any construction, use, or activity performed at a specific location in the City's public right-of-way. Permits may include long term installation of a facility or improvement in the absence of a franchise (Right of Way Site Permit) or standard maintenance operations by a franchise holder (Right of Way Blanket Permit).</u>
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Section 3. Amendment. Ordinance 238, Exhibit "A" Section III 3 (a) is amended to read as follows:

Table 1
Summary of Type A Actions and Target Time Limits for Decision

Action Type	Target Time Limits for Decision	Code-Pg. # (after codified-Section #) (listed # refers to the Draft Dev. Code issued Jan. 2000)
Type A:		
1. Accessory Dwelling Unit	30 days	pp. 100, 103 & 104
2. Lot Line Adjustment including Lot Merger	30 days	pp. 65 & 66
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	p. 69
5. Home Occupation, Bed & Breakfast, Boarding House	120 days	pp. 100, 107, 108, 111 & 112
6. Interpretation of Development Code	15 days	pp. 2, 3, & 43
7. Right-of-Way Use Permit	30 days	pp. 256-260
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	pp. 219-224
10. Site Development Permit	30 days	p. 68
11. Variances from Engineering Standards	30 days	pp. 58 & 59
12. Temporary Use Permit	15 days	p. 116

Section 4. Amendment. Ordinance 238, Exhibit "A" Section IV 3 B (W) 5 is amended by adding a new subsection 5 b to read as follows:

5. GROUND-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

a. [unchanged]

b. No new ground-mounted wireless telecommunication facilities are allowed within the City rights-of-way.

c.b [unchanged]

Section 5. Amendment. Ordinance 238, Exhibit "A" Section IV 3 B (W) 6 is amend to read as follows:

6. STRUCTURE-MOUNTED WIRELESS TELECOMMUNICATION FACILITIES STANDARDS.

a. Wireless telecommunication facilities located on structures other than buildings, such as light poles, flag poles, transformers, existing monopoles, towers and/or tanks shall be designed to blend with these structures and be mounted on them in an inconspicuous manner. (Figures 9 and 10.)

b. The maximum height of structure-mounted facilities shall not exceed the base height limits specified for each zoning designation in this title regardless of exceptions for the particular mounting structure; provided the facility may extend up to 15 feet above the top of the structure on which the facility is installed, including those built at or above the maximum height allowed in a specific zone, so long as the diameter of any portion of a facility in excess of the allowed zoning height does not exceed the shortest diameter of the structure at the point of attachment. The height and diameter of the existing structure

prior to replacement or enhancement for the purposes of supporting wireless facilities shall be utilized to determine compliance with this paragraph.

c. Wireless telecommunication facilities located on structures other than buildings shall be painted with nonreflective colors in a color scheme that blends with the background against which the facility will be viewed.

d. Wireless telecommunication facilities located on structures within the City of Shoreline rights-of-way shall ~~comply with right-of-way use permit requirements (Chapter 12.25 SMC)~~ satisfy the following requirements and procedures:

- (1) Only wireless telecommunication providers holding a valid franchise in accordance with Chapter 12.25.030 shall be eligible to apply for a Right-of-Way Permit, which shall be required prior to installation in addition to other permits specified in this chapter. Obtaining a Right-of-Way Site Permit in accordance with Title 20 may be an alternative to obtaining both a franchise and a Right-of-Way Permit for a single facility at a specific location.
- (2) All supporting ground equipment locating within a public right-of-way shall be placed underground, or if located on private property shall comply with all development standards of the applicable zone.
- (3) Right-of-Way Permit applications are subject to public notice by mailing to property owners and occupants within 500 feet of the proposed facility, posting the site and publication of a notice of application, except permits for those facilities that operate at 1 watt or less and are less than 1.5 cubic feet in size proposed by a holder of a franchise that includes the installation of such wireless facilities as part of providing the services authorized thereby.
- (4) To determine allowed height under subsection 6(b) above, the zoning height of the zone adjacent to the right-of-way shall extend to the centerline except where the right-of-way is classified by the zoning map. An applicant shall have no right to appeal an administrative decision denying a variance from height limitations for wireless facilities to be located within the right-of-way.
- (5) A Notice of Decision issued for a Right-of-Way Permit shall be distributed using procedures for an application. Parties of record may appeal the approval to the Hearing Examiner but not the denial of a permit.

Section 6. Amendment. Ordinance 238, Section VII 5 B *Regulated Activities* is amended to read as follows:

B. ~~Regulated Activities~~ Right-of-Way Permit Issuance

B-1 Applicability. A Right-of-Way right-of-way Permit shall be required for all construction and usage activities within the public right-of-way as described in this section. Additional requirements for the construction and usage of the right-of-way by utility providers are located in Section 6 *Utility Standards* ~~the utilities standards in the Engineering Section.~~ 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.

a. A Right-of-Way Site Permit 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 SMC 12.25 and are not exempted from that requirement by City regulations. The applicability of a Right-of-Way Site Permit to a particular activity proposed for the City's right-of-way or to a particular applicant shall be an ministerial decision without appeal right based upon the following criteria:

- (1) The scope of the activities included in the requested permit;
 - i. Will the use exceed 1 year;
 - ii. Is the facility or use at a single specific location or for a limited installation path;
 - iii. Will there be little or no need for ongoing entry right to maintain installed facilities;
 - iv. Is the need for the applicant to obtain future permits to enter the right-of-way limited, or does the applicant not desire to obtain a City franchise;
- (2) The impact of these activities on the right-of-way;
- (3) The ease of resolving issues related to proposed activities in the conditions of the requested permit; and
- (4) State and federal law.

B-2 Nonexclusive Right. City right-of-way shall not be privately improved or used for access or other purposes ~~and no development approval shall be issued that requires use of privately maintained city right-of-way 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 opened pursuant to this section 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.

B-3 Right-of-Way Site Permit Conditions. A Right-of-Way Site Permit shall include at a minimum the following terms and conditions:

- a. Scope, nature, and process for permitting future maintenance activities associate with the facilities installed pursuant to this type of permit;
- b. Insurance, indemnification, relocation, and removal and restoration upon termination or abandonment;
- c. 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;
- d. 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

- e. 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.

Section 7. Amendment. Ordinance 238, Section VII 5 D is amended as follows:

D. Usage of Right-of-Way

The purpose of this section 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.

D-1.1 [No Change]

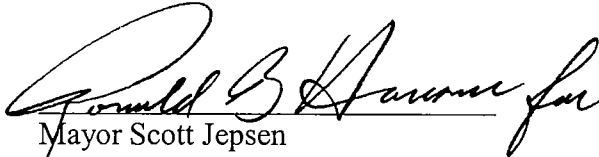
D-1.2 Specific activities requiring Right of Way Ppermits include, but are not limited to, the following:

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

Section 8. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

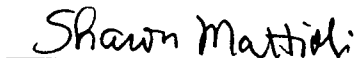
Section 9. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JULY 24, 2000.



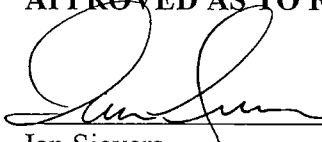
Mayor Scott Jepsen

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Ian Sievers
City Attorney

Date of Publication: July 27, 2000
Effective Date: August 1, 2000