

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 14-15

AN ORDINANCE OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, AMENDING CHAPTER 13.35 OF THE BUCKLEY MUNICIPAL CODE ENTITLED RIGHT OF WAY USE REGULATIONS.

WHEREAS, the City Council of the City of Buckley has the responsibility under the Constitution of the State of Washington for the improvement, maintenance, and protection of public ways within the corporate limits of the City pursuant to RCW 35A.11.020 and Chapter 35A.47 RCW; and

WHEREAS, in order to protect and preserve the public health, safety, and welfare through adoption of Ordinance No. 13-13 the City Council established policies and regulations to provide for the issuance of right-of-way use permits in order to regulate activities within rights-of-way in the City and to provide for the fees, charges, security devices, and procedures required to administer the permit process;

WHEREAS, since implementation of these new policies and regulations City staff have identified several areas within the code provision that need clarification, enhancement and corrections; and

WHEREAS, the City's Transportation and Utilities Subcommittee have reviewed these changes and concurred with staffs recommended changes and are recommending that the City Council approve such changes; and

WHEREAS, the City Council concurs with the Transportation and Utilities Subcommittee's recommendation and desires to amend BMC 13.35 to incorporate the recommended changes;

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

Section 1. Chapter 13.35 of the Buckley Municipal Code entitled "Right-of-Way Use" is hereby amended to read as follows:

13.35.010 PURPOSE.

It is the purpose of this chapter to provide for the issuance of right-of-way use permits in order to regulate activities within the rights-of-way in the City of Buckley in the interest of public health, safety and welfare; and to provide for the fees, charges, performance and warranty deposits, warranties, and procedures required to administer the permit process.

13.35.020 APPLICABILITY.

This chapter and the procedures adopted in this chapter shall be in effect throughout the City of Buckley.

13.35.025 ACTIVITIES REGULATED.

This chapter shall regulate the following activities:

- A. Street Disturbance. Any activity which digs up, breaks, excavates, tunnels, undermines or in any manner disturbs any street or makes or causes to be made any excavation in or under the surface of any street for any purpose. This includes the placement of earth or other excavated material obstructing or tending to interfere with the free use of the street;
- B. Sidewalk, Curb and Gutter Disturbance. Activities which disturb curbs, gutters and sidewalks where such curbs, gutters and sidewalks are located within city rights-of-way. Other Chapters of BMC Title 13 contain additional provisions concerning sidewalk regulations;
- C. Side Sewers and Water Connections. Activities involving the installation or repair of side sewers and water services not installed by the city, whether or not city rights-of-way are disturbed. BMC Title 14 outlines specific requirements for filing applications for water and sewer service and shall be read as supplemented by this chapter;
- D. Miscellaneous Activities. Activities which may involve disturbance to the rights-of-way, but more generally involve a long-term permanent installation of above-ground feature in the rights-of-way such as street trees or vegetation, bus shelters, fountains, clocks, flag poles, awnings, marquees, benches, permanent sales structures, permanent signs, fixed street furniture or similar fixtures.

13.35.030 CONSTRUCTION - INTENT.

- A. The purpose of this chapter is to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these three purposes.
- B. It is also the purpose of this chapter and any procedures adopted in this chapter 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 and/or any procedures adopted in this chapter.

- C. It is the 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 Buckley, 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 Buckley, 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 Buckley, its officers, employees or agents.

13.35.040 DEFINITIONS.

The following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

- A. "City administrator" means the individual or his/her designated representative appointed by the mayor to oversee day-to-day operations of the city.
- B. City Engineer" means the engineer appointed as such by the City or his/her designated representative.
- C. "City inspector" means the employee or agent designated by the city to inspect permitted work.
- D. "Civil violation" or "violation" means an act or omission contrary to a regulation as defined in Chapter 1.12 BMC. A violation continues to exist until abated and each day, or a portion thereof, that a violation exists constitutes a separate and distinct offense.
- E. "Complaint" means a written document initiating a procedure pursuant to Chapter 1.12 BMC.
- F. "Cost of construction" means the cost incurred for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), in accordance with all applicable laws, ordinances and standards, including the City's public works standards. The cost of construction shall be documented in writing on final invoices or other documents showing the amounts paid by the applicant. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City and the applicant concerning the cost of the improvements and/or infrastructure, the City engineer's determination shall be final.

- G. "Department" means the Public Works and Utilities Department or other Department designated by the Mayor.
- H. "Director" means the Director of Public Works or his/her designated representative as appointed by the Mayor.
- I. "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, property, or environment from natural or manmade consequences, such as storms, earthquakes, riots or wars.
- J. "Enforcement Officer" means the city's code enforcement officer(s) or any other person or persons assigned or directed by the city administrator, or his or her designee, to enforce the regulations subject to the provisions of this chapter.
- K. "Franchised utilities" means utilities that have City approval to use City rights-of-way for the purpose of providing their services within or beyond the City, whether by written franchise granted by the City, State tariff or other similar City authorization.
- L. "Investigative" means the gathering of information about the proposed location of utilities, right-of-way, subsoil or subgrade conditions, etc., to assist in identifying ascertaining surface and subsurface conditions within a project area.
- M. "Minor repair or construction" means any activity which, in the discretion of the city engineer, includes a short-term temporary use of the right-of-way and where pavement or sidewalk is not to be disturbed or broken. Examples of such activities include, but are not limited to, the sweeping and/or cleaning of debris from the right-of-way and trimming, cutting and pruning vegetation within the right-of-way, placement or replacement of gravel on parking shoulders that were previously used for on street parking.
- N. "Notice of violation" means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.
- O. "Oral directive" means a directive given orally by City personnel designated by the Director to correct or discontinue a specific condition.
- P. "Permit" means a document issued by the City granting permission to engage in an activity not allowed without a permit.
- Q. "Permit Center" means the City Building & Planning office.
- R. "Permittee" means the person, partnership, group, organization, company, or corporation so designated on the permit application, or designee.

- S. "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.
- T. "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.
- U. "Revocation" means the cancellation of a permit.
- V. "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, trails, sidewalks, bikeways, parking, and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.
- W. "Stop work order" means an oral directive or a written notice posted at the site of activity that requires all work to be stopped until the City approves continuation of work.
- X. "Suspension" means the temporary stay of a permit.
- Y. "Temporary" as used in this ordinance shall mean of a limited duration generally considered not to exceed three days after an event or a total duration of 14 days unless otherwise stated in this chapter or extended by exception.
- Z. "Underground location service" means the underground utilities location center that will locate all underground utilities prior to an excavation.
- AA. "Unsafe condition" means any condition which the Director determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto.

13.35.050 POWERS OF THE DIRECTOR.

The Director shall have the power to:

- A. Administer the provisions of this chapter including but not limited to interpreting the chapter and issuing rules and procedures necessary for its administration.
- B. Administer and coordinate the enforcement of this chapter and all policies adopted hereunder relating to the use of rights-of-way.
- C. Adjust the amount of fees required by this chapter to be proportional to any increased scope of work for which the permit is required.

- D. Advise the City Council, Mayor and other City Departments on matters relating to use of the rights-of-way.
- E. Assign the responsibility for interpretation, application and enforcement of specified procedures to Department staff.
- F. Carry out such other responsibilities as required by this chapter or other codes, ordinances, policies or procedures of the City.
- G. Issue permits relating to use of the rights-of-way in accordance with this chapter.
- H. Request the assistance of other City Departments to administer and enforce this chapter.

13.35.060 PERMIT REQUIRED.

- A. No person, firm or corporation shall trench, dig, excavate or penetrate any city right-of-way roadway, street, alleyway, sidewalk, curb or gutter by creating a ditch, excavation or other subgrade penetration for water, sewer, storm sewer, natural gas, telephone, cable TV, electrical power or other utility, or for any other purpose, without first obtaining an right-of-way use permit issued by the City.
- B. It is unlawful for anyone to make private use of any public right-of-way without first having obtained a right-of-way use permit issued by the City.
- C. It is unlawful for anyone to use any right-of-way without complying with all the provisions of such right-of-way use permit issued by the City.
- D. The City does not waive its right to use the right-of-way by issuance of any permit.

13.35.070 ADDITIONAL PERMITS.

Additional permits for any use of the right-of-way may be required by other City codes.

13.35.080 RIGHT-OF-WAY USE PERMITS.

The following types of right-of-way use permits are established and shall be processed as Type A-1 permits as listed in BMC 20.01:

- A. Type A - Short-Term Use.
 - 1. Type A Permits may be issued for use of a right-of-way up to 72 continuous hours, and which do not involve any physical disturbance of the right-of-way.

2. This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance.
3. Type A Permits include but are not limited to the following:
 - a. Assemblies;
 - b. Bike races;
 - c. Block parties;
 - d. Fairs;
 - e. House or large structure moves;
 - f. Nonmotorized vehicle races;
 - g. Parades;
 - h. Processions;
 - i. Street dances;
 - j. Street runs;
 - k. Temporary sale of goods; and
 - l. Temporary street closures.

B. Type B - Disturbance of the Right-of-Way.

1. Type B Permits may be issued for activities that alter the appearance or disturb the surface, or disturb the subsurface of the right-of-way on a temporary or permanent basis. Type B Permits are also required for the initial construction of improvements within rights-of-way and private streets required to conform to City standards. Type B Permits may be issued for up to one hundred eighty (180) days.
2. Type B Permits include, but are not limited to, construction activities associated with:
 - a. Boring;
 - b. Curb cuts/driveways;
 - c. Drainage facilities;
 - d. Landscaping;
 - e. Paving;
 - f. Sidewalks;
 - g. Street trenching;
 - h. Temporary use of right-of-way for private construction related activities on adjoining properties; and
 - i. Utility installation, repair, replacement.

C. Type C - Long-Term Use.

1. Type C Permits may be issued for right-of-way use for activities for extended periods of time which will not further physically disturb the right-of-way once in place. This may include structures, facilities, and uses that involve capital

expenditures and long-term commitment of use. The Type C Permit shall be a revocable permit. Type C Permits may be issued for a term of up to five (5) years except as provided for in subsection (c)(7) of this section.

2. A Type B Permit may be required for construction activities in conjunction with a Type C use.
3. Type C Permits include but are not limited to:
 - a. Accessory business activity such as: parking, displays and signage;
 - b. Air rights;
 - c. Bus shelters/stops;
 - d. Construction site/haul roads;
 - e. Fences;
 - f. Recycle receptacles, dumpsters, and facilities;
 - g. Special and unique structures such as: fountains, clocks, flagpoles, benches, kiosks, banners, street furniture, decorations, etc.;
 - h. Underground rights;
 - i. Utility facilities;
 - j. Waste facilities.
4. 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 Type C Permit.
5. Type A uses that exceed four (4) weeks duration will be treated as Type C uses.
6. Upon termination of a Type C Permit, for which the permittee does not obtain a new permit, any improvements constructed in the right-of-way must be removed by the permittee and the area restored to its original condition or better.
7. Type C Permits may be issued for right-of-way use for an extended term not to exceed ten (10) years for activities which will not further physically disturb the right-of-way once in place such as the installation and maintenance of structures, facilities, and uses that involve capital expenditures and long-term commitment of use. Type C Permits may be issued for an extended term under the following conditions:
 - a. At the end of the permit period, the permit may be renewed upon request by the permittee and acceptance by the City for additional terms not to exceed ten (10) years. If the use of the right-of-way under the jurisdiction of a Type C Permit is changed so as to affect the installation permitted, the Director of Public Works and Utilities shall require the permittee to remove the installation or modify the installation to accommodate the new use of the right-of-way. The Director of Public Works and Utilities shall set the time for removal or modification. The time for removal or modification shall be at least ninety (90) days after the date the request for removal or modification is

submitted, unless the Director finds that a lesser amount of time is in the best interest of the public. All expenses for removal and/or modification of the permitted installation shall be borne by the permittee.

- b. A Type C Permit will not be issued for the extended term unless the City determines that there is no reasonable likelihood that the City will need to utilize the area for which the permit is granted within the permit term, and that the proposed use is consistent with the City's Comprehensive Plan, and that the use is not detrimental to the public health, safety or welfare, and that the proposed use is not aesthetically incompatible with the City's streetscape standards.
- c. In the case of a proposed use that is necessary to protect a governmental installation from possible terrorist attack, the City may waive any of the requirements of this section.
- d. The City shall impose such fees as are appropriate to cover the City's cost associated with processing the application and that takes into account the value of the land used, the length of use, and lost revenue to the City, if applicable.

D. Type D - Franchised Utility Routine Maintenance Permit.

1. Type D Permits may be issued for franchised utilities as defined in this chapter to perform routine maintenance on existing overhead lines and for entry into existing underground facilities. The permit will be valid for this work within the City boundaries. Type D Permits may be issued for up to one (1) year.
2. Type D Permits will not involve physical disturbance of the right-of-way.
3. Type D Permits may be revoked if the permittee does not adequately and consistently comply with the permit conditions or requirements of this chapter. In the event that the Type D Permit is revoked, the permittee must obtain a Type A Permit for each work site.

E. Assignment of Permit. Permits cannot be assigned or transferred, subleased or used for any purpose not specified in the permit without prior written permission of the City. Any attempt to assign or transfer an interest in a permit without such prior written permission shall be cause for immediate termination.

13.35.090 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 following:
 - a. The location of the proposed right-of-way use,
 - b. The location of existing and proposed improvements,
 - c. The location of surface features such as curbs and gutters,
 - d. The location of underground features such as the location of utilities,
 - e. The location of the limits of the work area and method of restoration;
 2. The name, address, email, telephone and facsimile number of the applicant.
 - a. If the applicant is not the owner of the facility to be installed, maintained or repaired in the public right-of-way, the application shall also include the name, address, email, telephone and facsimile number of the owner;
 3. The proposed start date of the use or excavation;
 4. The proposed duration of the use or excavation, which shall include the duration of the restoration of the public right-of-way physically disturbed by the excavation;
 - a. The number of cubic yards to be excavated or filled.
 - b. Amount of impervious surface being added as defined by BMC 14.30.
 5. A copy or other documentation of the franchise, easement, encroachment permit, license or other legal instrument that authorizes the applicant or owner to use or occupy the public right-of-way for the purpose described in the application.
 - a. If the applicant is not the owner of the facility or facilities to be installed, maintained or repaired, the applicant must demonstrate – in a form and manner specified by the director – his authorization to act on behalf of the owner;
 6. Traffic control plan as may be required by the director in conformance with this code and the latest edition of the Manual of Uniform Traffic Control Devices, showing the proposed detour routing and location and type of warning lights, safety devices, signs and barricades intended to protect vehicular or pedestrian traffic at the site for which the right-of-way use permit is requested. If a traffic plan is required, no right-of-way use permit will be issued until the traffic plan is approved;
 7. An estimate of construction costs;
 - a. A draft bond form to be reviewed by the city (see section 220)

8. An environmental checklist if required by the SEPA official.
 9. Any other information that may be reasonably required by the director based on the particular application at issue; and
 10. An application fee as required by BMC 13.35.120.
- 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.
1. Other departments and/or agencies that have authority over the proposed use activity shall review and recommend approval or disapproval of the application.
 2. If the Director finds that the application conforms to the requirements of this chapter, he may approve the permit, and shall impose such conditions thereon as are reasonably necessary.
 - a. To protect the public health, welfare and safety,
 - b. To meet code requirements,
 - c. To mitigate any impacts resulting from the use and
 - d. To coordinate activities or address potential conflicts with future improvements in the area.
- D. All applications for permits must be submitted ten (10) working days or more before the start of work or as required to obtain other City permits. If SEPA is required, the application should be submitted at least 90 days prior to the planned construction.
- E. Upon submittal of a completed application the applicant shall provide the application fee per the fee schedule adopted by the City. Permittees who have an approved monthly billing status shall be billed accordingly.

13.35.100 RENEWAL OF PERMITS.

Each Type A and Type B 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. Type C and D Permits cannot be renewed and the permittee must apply for and receive a new permit prior to expiration or remove the permitted improvements.

13.35.110 PERMIT EXCEPTION.

- A. A right-of-way use permit is not required for franchised utilities when responding to emergencies that require disturbance of the right-of-way typical of a Type B Permit; 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 forty-eight (48) hours after beginning emergency work in the right-of-way.
- B. Permits shall not be required for routine maintenance and construction work performed by the City.
- C. Permits shall not be required for a public utility, under franchise agreement with the city, performs normal maintenance as defined in the franchise agreement in order to protect the existing utility system.
- D. Permits are not required for City Public Works Department construction projects, even though SEPA may be required.
- E. Permits are not required for the ordinary construction and maintenance of landscaping or irrigation systems in the planter strip of the right-of-way. Blockage of the right-of-way associated with ordinary maintenance of landscaping requires the appropriate permit.
- F. Permits are not required for community, nonprofit, or other activities for which a special event permit has been issued.
- G. The director shall have authority to reduce or waive permit requirements when it is determined that the work being done is “minor repair or construction” as defined herein.
- H. The director shall also have the authority to reduce or waive permit requirements when it is determined that the work being done is for site “investigative” work as defined herein, where surface intrusions are minimal such as for potholing to locate underground utilities and plans for repair and restoration have been agreed to prior to the work being performed.

13.35.120 PERMIT FEES AND CHARGES.

- A. The base fee for each permit shall be set forth in a fee schedule to be adopted by the City Council. The overall fee for a permit shall be the total cost of labor and materials to the City for processing, reviewing, and issuing the permit, and field inspection of the work, as necessary. Final payment of all fees and charges must be paid to the City prior to final approval and acceptance by the City. (Note: State law prohibits state

agencies from donating services or contributing to any individual, organization or cause.)

B. Fees and Charges.

1. Type A, Short-Term Use Permit. Fees for Type A Permits shall be established for the following categories:
 - a. Regular. A base fee shall be charged for each regular Type A Permit accepted for processing. This fee shall cover the administrative cost of the permit.
 - b. Additional. Use of portions of right-of-way for special events such as those listed in BMC 13.35.080 (A)(3) may be assessed additional charges for City services and equipment including but not limited to overtime incurred by city personnel, the use of police officers and public works employees for traffic and crowd control, pickup and delivery of traffic control devices, picnic tables, extraordinary street sweeping, and any other needed, requested or required city service and the cost of operating city equipment to provide such services.
2. Type B, Disturbance of Right-of-Way Permit. Fees for Type B Permits shall be established for the following categories:
 - a. Application Fee. A nonrefundable base application fee as established by the taxes, rates and fees schedule adopted by resolution shall be charged for each Type B right-of-way use permit application or renewal that is accepted for processing. Permit fees shall be established for minor and major classification of work categories as defined in BMC 13.35.040.
 - b. Processing of Application Fee. The permit applicant shall pay to the city all costs incurred by the City that are associated with processing the proposals and/or permits, including consultant costs. City and consultant reimbursables include, but are not limited to staff time for application review, assessment, engineering, plan review, inspections, traffic control, legal, secretarial, administrative costs, cost of publications, and other city processing costs; provided, however, that no charge will apply for one preapplication meeting. City will notify the applicant, in writing, of the applicability of hourly charges for further consultation on a project after the pre-application meeting.
 - c. Repair and Replacement Charges. If the City should incur any costs in repairing or replacing any property as the result of the permittee's actions, the costs of repair and replacement will be charged to the permittee. These charges will be for the actual costs to the City.
3. Type C, Long-Term Use Permit. Fees for Type C Long-Term Use Permits shall include the following categories:

- a. Application and Processing. A non-refundable application and processing base fee will be charged for each Type C Permit application accepted for processing.
 - b. Use Fee. A use fee will be established which incorporates the value of the land used and the length of the use.
 - c. The Director may modify or waive fees for Type C Permits for government agencies or improvements which provide a benefit to the City.
4. Type D, Franchised Utility Routine Maintenance Permit.
- a. Regular. A base fee shall be charged for each regular Type D Permit accepted for processing. This fee shall cover the administrative cost of the permit.
- C. Waiver of Fees. Franchised utilities, which must apply for permits because of City-initiated construction projects, may be granted a waiver by the director of normal permit fees. This provision only applies to work that would not otherwise have been done by the utility.
- D. Exemption from Fees for City Projects. City projects are exempt from fees for right-of-way use permits.

13.35.130 SPECIFICATIONS.

- A. All work to be performed under any permit issued under this chapter shall conform to all other City codes, the current development and construction standards of the Department and all other standards used by the City in the administration of this chapter. Such standards include, but are not limited to,
- 1. the current version of the Manual of Uniform Traffic Control Devices as amended or superseded, published by the Federal Highway Administration and
 - 2. the Standard Specifications for Road, Bridge, and Municipal Construction as amended or superseded, published by the Washington State Department of Transportation and the American Public Works Association.

13.35.140 NOTICE OF INTENT TO START WORK.

Permittee shall provide a minimum of one (1) working day written notice to the Department of the intent to start work in the right-of-way.

13.35.145 PAVEMENT CUTTING PROHIBITION.

All pavement types shall not be cut for a period of five years after the pavement has been constructed or resurfaced. During this period, untrenched construction techniques such as

pushing, jacking, or boring shall be explored on all new or existing pavement road crossings. In cases of emergency or construction failures, or if all alternatives to pavement cutting have been exhausted, provisions for cutting the pavement may be obtained if approved by the director of public works or his designee. Provisions may be conditioned upon providing a standard grind and asphalt patch and minimum 150-linear-foot full-width overlay for asphalt concrete pavement and bituminous surface treatment pavement or standard cement concrete restoration for cement concrete pavements.

13.35.150 INSPECTIONS.

As a condition of issuance of any permit or authorization that requires approval of the Department, each applicant shall consent to inspections by the Department or any other appropriate City representative. Permittee shall provide a minimum of one (1) working day notice prior to a requested or required inspection.

13.35.160 COMPLETION OF WORK.

At completion of the work, the permittee shall:

- A. Provide notice that the work is complete and request a final inspection.
- B. Provide record drawings of the improvements made in the right-of-way when required.
 1. Record drawings of improvements to be maintained by the City shall meet the format requirements of the City.
 2. All record drawings shall show at a minimum the actual location, depth and profile of the improvements in the right-of-way.
 3. Record drawings acceptable to the Department must be provided prior to release of the Performance Deposit.

13.35.170 SHARED USE OF EXCAVATIONS.

If at any time, or from time to time, a utility company submits a permit request to excavate for installation of its facilities, the City may request in writing that such utility company provide an opportunity to install City facilities within the excavation; provided, that:

- A. Such joint use shall not unreasonably delay the work of the utility company; and
- B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties and in accordance with the applicable codes, rules and regulations.

- C. To the extent reasonably possible, the utility company shall, at the direction of the City, cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic-related impacts.

13.35.180 UNDERGROUND UTILITY LOCATION REQUIRED.

All permittees shall, before commencing any construction in City right-of-way, comply with all requirements of Chapter 19.122 RCW, the one (1) number locator service.

13.35.190 WARNING AND SAFETY DEVICES.

- A. The permittee is responsible for the safety of the work area and shall provide and maintain warning lights, safety devices, signs and barricades on all rights-of-way when at any time there might be an obstruction or hazard to vehicular or pedestrian traffic in accordance with the Specifications. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the Department.
- B. The applicant shall submit a traffic plan as required in BMC 13.35.090 (B)(6). No work in the right-of-way will be allowed until the traffic plan is approved.
- C. The Director may require that the permittee provide a person certified as a Washington State Traffic Control Flagger be on site during construction activities to monitor the setup and maintenance of the warning and safety devices.
- D. On right-of-way use permits that require a flagger for the purpose of traffic control during the construction, the flagger will be either a properly attired and certified Washington State Traffic Control Flagger, or an off-duty law enforcement officer.
- E. All decisions of the City inspector shall be final in all matters pertaining to the number, type, location, installation, and maintenance of warning and safety devices in the public right-of-way during any actual work or activity for which a duly authorized right-of-way use permit has been issued. Lack of notice or comment by the City on the warning and safety devices does not relieve the permittee of responsibility for the safety of the work area.

13.35.200 TEMPORARY PARKING RESTRICTION NOTIFICATION.

- a. Where the Director determines that parking is a hazard to through traffic, or to the construction work or other right-of-way activity, parking may be restricted either entirely or during the time when it creates a hazard.
- b. In areas where public parking areas must be used in which fees are collected by the City for parking, the applicant shall pay the appropriate fees for uses of the parking

spaces. No permit shall be issued until the applicant shows proof of payment for the parking spaces.

- c. The permittee shall be responsible for placement and maintenance of the signs.
- d. Placement of the signs shall be as approved by the Director.
- e. Parking restriction signs shall be placed at least seventy-two (72) hours in advance of parking removal, with the start date of the "no parking" clearly shown.
- f. The area to be restricted shall be clearly marked with Type I barricades carrying signs that give the specific period (dates and times) that the area is to be free of vehicles.
- g. Signs shall be large enough to be easily read from a distance of fifty (50) feet and shall advise where impounded vehicles will be stored or indicate a twenty-four (24) hour telephone number for obtaining that information.
- h. No towing of vehicles shall occur unless the signs are placed at least seventy-two (72) hours prior to the beginning of the restricted parking.
- i. All signs must be approved by the Director prior to placement, and must conform generally to the following wording:

WARNING! TOW AWAY ZONE

NO PARKING

FROM: (DATE & TIME)

TO: (DATE & TIME)

FOR CONSTRUCTION WORK

ALL VEHICLES REMAINING WILL BE TOWED

(IMPOUND INFORMATION)

- j. The permittee shall notify the Director when the signs are placed.

13.35.210 MATERIALS TESTING.

Material tests may be ordered by the Director to assure conformity with the Specifications. Material tests may include, but are not limited to: gradation analysis, compaction testing, concrete strength, asphalt content analysis and pipe strength. When ordered by the Director, the permittee shall have the material test performed by a certified

laboratory and the results provided to the Director. Location and timing of material testing shall be coordinated with the Director.

13.35.220 PERFORMANCE AND WARRANTY DEPOSITS.

- A. Performance Deposit. A performance deposit shall be required for all projects and/or permits that construct improvements in the right-of-way to ensure conformance with the plans, specifications, standards, permit requirements, development guidelines and other requirements. The minimum amount of the performance deposit shall be one hundred fifty (150) percent of the estimated value of the work and the estimated cost to restore existing improvements as determined by the Director. Performance deposits shall not be released until a warranty deposit is received.
- B. Warranty Deposit. A warranty deposit shall be required to warrant the workmanship and material of constructed improvements in the right-of-way for a period of two (2) years. The minimum amount of the warranty deposit shall be twenty-five (25) percent of the value of the actual construction costs.
- C. Deposit Instruments. The deposit instrument for the performance or warranty deposit shall be cash, a non-revocable letter of credit, an assignment of funds, bond or other readily accessible source of funds approved by the City. The deposit instruments shall be on a form acceptable to the City. Any issuer of a deposit instrument shall pay invoices presented by the City pursuant to this chapter within forty-five (45) days. A bond will be accepted only for amounts over one thousand dollars (\$1,000) or when State law requires a bond.
 - 1. Interest on deposited funds will accrue to the benefit of the depositor, except that any interest earned on a cash deposit will be retained by the City for account administration.
- D. Notice of Incomplete or Defective Work. If the permitted work is determined to be incomplete or defective, damage of existing improvements is observed, a defect is observed during the warranty period or other activities which do not comply with the permit and require corrective action by the permittee as determined by the Director, the Director shall notify the applicant in writing prior to applying proceeds of the deposit to correct the work. The notice must state:
 - 1. The work that must be done or the improvement that must be made to comply with the requirements of the permit or deposit; and
 - 2. The amount of time that the applicant has to commence and complete the required work or improvements; and
 - 3. That, if the work or improvements are not commenced and completed within the time specified, the City will use the proceeds of the deposit to have the required work or improvements completed.

E. Default on Deposit.

1. If the work or improvements covered by the deposit are not completed within the time specified in the notice given under this chapter, the City shall obtain the proceeds of the deposit and do the work or make the improvements covered by the deposit. The City may either have employees of the City do the work or make the improvements or have a contractor do the work or make the improvements.
2. If at any time the Director determines that actions or inaction associated with any permit work has created an emergency situation endangering the public health, safety, or welfare, creating a potential liability for the City, or endangering City streets, utilities, or property; and if the nature or timing of such an emergency precludes the notification of applicants as provided in this chapter while still minimizing or avoiding the effects of the emergency, the City may use the deposit to cover costs incurred by the City to correct the emergency situation. The City may either have employees of the City do the work or make the improvements, or have a contractor do the work or make the improvements. If the City uses the deposit as provided by this section, the applicant shall be notified in writing within four (4) working days of the commencement of emergency work. The notice must state the work that was completed and the nature or timing of the emergency that necessitated the use of the deposit without prior notification.
3. The permittee is responsible for all costs incurred by the City in doing the work and making the improvements covered by the deposit. The City shall release or refund any proceeds of a deposit remaining after subtracting all costs for doing the work covered by the deposit. The permittee shall reimburse the City for any amount expended by the City that exceeds the deposit.
4. In each case where the City uses any of the proceeds of the deposit, it shall, within thirty (30) days, provide the owner of the permit an itemized statement of all proceeds and funds used.

13.35.230 INSURANCE.

- A. General Provision. Before any permit is granted to any person, firm or corporation, for the work within or use of the right-of-way, such person, firm or corporation shall secure and deliver to the City and file with the Director a copy of comprehensive general liability insurance in the sum of five hundred thousand dollars (\$500,000) for bodily damage and property. The City shall be listed as an additional insured on the policy. Alternate methods of meeting these insurance requirements must be approved by the City.
- B. Limited Exception. A homeowner or tenant who repairs, constructs, or uses the right-of-way fronting his/her residence and who, in the case of repair or construction, performs all the labor him/herself shall not be required to obtain insurance as set forth

in subsection (A) of this section. Prior to the issuance of such a permit, the homeowner or tenant shall be required to provide proof of homeowner's or renter's insurance in the amount of at least one hundred thousand dollars (\$100,000) for bodily injury and property damage unless, in the Director's discretion, this requirement is waived after consideration of the nature of the proposed use or work and the need to reasonably protect the City's interest as well as the health, safety, and welfare of the public.

13.35.240 HOLD HARMLESS.

As a condition to the issuance of any permit under this chapter, the permittee shall agree to defend, indemnify and hold harmless the City, its officers, employees and agents, for any and all suits, claims or liabilities caused by or arising out of any work or use authorized by any such permit.

13.35.250 CORRECTION AND DISCONTINUANCE OF UNSAFE, NONCONFORMING, OR UNAUTHORIZED CONDITIONS.

- A. Whenever the Director determines that any condition on any right-of-way is in violation of, or any right-of-way is being used contrary to, any provision of this chapter or policies adopted hereunder or other applicable codes or standards, or without a right-of-way use permit, the Director may order the correction or discontinuance of such condition or any activity causing such condition.
- B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as the Director determines appropriate:
 - 1. Serving of oral directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;
 - 2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within a reasonable period as the Director may determine;
 - 3. Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;
 - 4. Revocation or suspension of previously granted permits pursuant to this chapter;
 - 5. Seek enforcement pursuant to BMC 13.35.320.
- C. Any permit fees required for after-the-fact work or uses shall be tripled.

13.35.260 NUISANCE IN THE RIGHT-OF-WAY.

A. Debris and Spilled Loads.

1. The owner or operator of any vehicle that has spilled, dropped, dumped or in any manner whatsoever deposited any matter ("debris") upon the right-of-way shall cause the right-of-way to be cleaned using suitable methods to the satisfaction of the Director. Upon failure to do so the Director may cause to have cleaned the right-of-way and the costs thereof shall be charged to the person or persons so responsible. The Department has the authority to designate haul routes and time of day for operations involving hauling over public right-of-way.
2. Earth-hauling contractors, builders, or anyone else utilizing vehicles upon rights-of-way shall provide persons or equipment to keep the right-of-way clean at all times to the satisfaction of the Department. Upon failure to do so, the Department may issue an immediate stop work order, revoke City permits, and the responsible person or persons may be directed to immediately clean the right-of-way to the satisfaction of the Department. Upon failure to do so the Department may cause to have cleaned the right-of-way and charge the costs thereof to the person or persons so responsible.

B. Unauthorized Property.

1. Any object, equipment, structure, or personal property ("property") which occupies any right-of-way without the legal authorization required by this chapter is declared a nuisance. The Department may attach a notice to any such property stating that if it is not removed from the right-of-way within twenty-four (24) hours of the date and time stated on the notice, the property may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the property is a hazard to public safety, it may be removed summarily by the City. Notice of such removal shall be thereafter given to the owner, if known.
2. All expenses incurred by the City in abating the nuisance condition or any portion thereof, or to repair any damage to the right-of-way, shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the property or placed it in the right-of-way, which debt shall be collectable in the same manner as any other civil debt.

C. Enforcement. If the nuisance debris or property has not been removed or remedied as directed above or in lieu of the above, the Director may seek enforcement pursuant to BMC 13.35.320.

13.35.270 NUISANCE UTILITY FACILITIES.

A. Purpose. To establish a procedure for the identification and elimination or remediation of nuisance utility poles and other utility facilities located within or upon the right-of-way.

- B. Utility Facilities Defined. "Utility facilities" means poles (with or without cross arms), wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto within the right-of-way, whether the same be located over or underground and whether installed and/or maintained by permit pursuant to this chapter or by franchise or by no such authority.
- C. Nuisance Utility Facility Defined. "Nuisance utility facility" as used in this section, includes a utility facility that limits ADA accessibility, creates sight distance problems, has disconnected wires or cable, is deteriorating, is creating a hazardous condition, and/or is not used or is abandoned for a period of ninety (90) days or longer unless such nonuse or abandoned status is approved by the Director at his or her sole discretion.
- D. Determination of Appropriate Remedy. Upon a determination by the Director that a nuisance utility facility exists, the Director shall notify the permittee, franchisee, owner or other person responsible for the nuisance utility facility and direct said entity or person to remove or remedy the nuisance utility facility upon terms and conditions as directed by the Director.
- E. Enforcement. If the nuisance utility facility has not been removed or remedied as directed above or in lieu of the above, the Director may seek enforcement pursuant to BMC 13.35.320.

13.35.280 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;
 - 5. The right-of-way is being used in violation of a permit issued under this chapter or is being used in violation of any provision of this chapter.

- 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.
- C. Notice of Revocation. Notice of revocation shall be by letter.
- D. Appeal of Revocation. A revocation may be appealed pursuant to this chapter.

13.35.290 STOP WORK ORDERS.

Work in the right-of-way may be suspended by the issuance of an oral or written stop work order by the City inspector.

13.35.300 APPEALS.

Administrative interpretations and administrative decisions made pursuant to this chapter may be appealed, by applicants or parties of record, to the board of adjustment subject to the provisions of BMC [20.01.260](#).

13.35.305 TRIPLE CHARGES FOR WORK DONE WITHOUT A PERMIT.

In addition to any other penalty provided by the Buckley Municipal Code, work started without a permit will be penalized by triple charges for the permit and associated inspection, except in the event of an emergency as herein provided.

13.35.310 VIOLATION - PENALTY.

- A. In lieu of or in conjunction with any remedy provided for in this chapter, any violation of any provision of this chapter constitutes a civil violation under Chapter 1.12 BMC for which a monetary penalty may be assessed and abatement and/or enforcement may be required as provided therein.
- B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor pursuant to BMC 1.04. Each day, or a portion thereof, during which a violation occurs shall constitute a separate violation.
- C. Additional Relief. The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this chapter when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties set forth in this section, violation of the terms of this chapter may also result in the revocation of any authorization, approval, lease, or permit issued or granted hereunder.

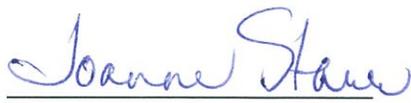
Section 2. Severability. If any portion of this ordinance is found or rendered invalid or ineffective, all remaining provisions shall remain in full force and effect.

Section 3. This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as provided by law.

Passed by the City Council on the 9th day of June, 2015.


Mayor Pat Johnson

Attest:


Joanne Starr, City Clerk

APPROVED AS TO FORM:


Phil Olbrechts, City Attorney

PUBLISHED: June 17, 2015
EFFECTIVE: June 22, 2015