

ORDINANCE NO. 2019-05-012

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING PUBLIC WORKS PERMITS FOR USE OF CITY RIGHT-OF-WAY; AMENDING THE BELLINGHAM MUNICIPAL CODE AS FOLLOWS: REPEALING CHAPTER 6.08 (CARNIVALS AND SIDEWALK VENDING); AMENDING CHAPTER 13.12 (STREET OBSTRUCTION PERMITS); AND REPEALING AND REPLACING CHAPTER 13.14 (RIGHT-OF-WAY USE PERMITS)

WHEREAS, the City of Bellingham manages public rights-of-way within its jurisdiction for the primary purpose of transportation and for many secondary uses, which include (1) the construction or installation of permanent improvements such as private utility side services which require ground disturbance work and (2) uses which are more temporary in nature and generally do not involve ground disturbance work, including sidewalk cafés, food trucks, and encroachments associated with work on adjacent properties, such as scaffolding, staging, fencing and dumpsters; and

WHEREAS, the City desires to update and clarify the permitting requirements that apply to certain secondary uses of the right-of-way, including as follows:

1. Amend Chapter 13.12 (Street Obstruction Permits) to clarify that its requirements apply to the construction or installation of permanent improvements and/or the performance of ground disturbance work in the right-of-way; and
2. Repeal and replace Chapter 13.14 (Right-of-Way Use Permits) to clarify that its requirements apply to temporary right-of-way uses which do not involve significant ground disturbance work, including sidewalk cafés, food trucks, and encroachments associated with work on adjacent properties, such as scaffolding, staging, fencing and dumpsters, and also to update the chapter's requirements and procedures to align with current permitting practices; and
3. Repeal Chapter 6.08 (Sidewalk Vending); sidewalk vending is subject to Chapter 13.14 (Right-of-Way Use Permits); and

WHEREAS, amendments to Chapter 13.14 reflect the City's commitment, memorialized in the Bellingham Comprehensive Plan, to support efforts to enhance quality of life amenities and encourage an environment supportive of entrepreneurial activities and activation of the public realm through the adoption of code provisions that support commercial and leisure uses of the right-of-way in a manner that is protective of public health, safety and convenience; and

WHEREAS, other chapters of the Bellingham Municipal Code which regulate other specific right of way uses, including, but not limited to, Chapter 13.13 (Special Events), Chapter 13.15 (Utilities and Telecommunications Franchises), and Chapter 13.16 (Small Cell Permits), are not affected by this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:

Section 1. BMC 6.08 - Business Licenses - Carnivals and Sidewalk Vending - is Repealed.

BMC Chapter 6.08 - "Business Licenses - Carnivals and Sidewalk Vending" is hereby repealed in its entirety.

Section 2. BMC 13.12 – Street Obstruction Permits – is Amended.

BMC Chapter 13.12 – Street Obstruction Permits – is amended as follows:

13.12.010 Street obstruction permit required.

A. A street obstruction permit, issued by the public works department on written application, is required for all work involving the construction or installation of permanent improvements and/or the performance of ground disturbance work conducted in the city's alley or street rights-of-way, whether developed or undeveloped, in all cases except those projects governed by a written contract between the city and the person conducting the work, or activities authorized covered by a right-of-way use permit issued under another chapter of the Bellingham Municipal Code, including, but not limited to, Chapters 13.12 (Temporary Right of Way Use Permits), 13.15 (Utilities and Telecommunications Franchises), 13.16 (Small Cell Permits), 13.40 (Street Trees and Other Vegetation), and 13.52 (Driveways Giving Access to Arterial Streets).

~~B. Such a permit shall be required whether or not any prior improvement of the right of way has been made and the term "work" shall be liberally construed to include any kind of activity within the right of way, exclusive of that covered by BMC 13.14.010, the movement of vehicles and pedestrians, and work exempted by the director of public works.~~

~~BC. The director of public works has the authority to waive the permit requirement whenever the scope of work is small, or the work is being done adjacent to the residence of the person doing the work.~~

Section 3. BMC 13.14 - Right-of-Way Use Permits - is Repealed and Replaced.

BMC Chapter 13.14 - "Right-of-Way Use Permits" is hereby repealed and replaced in its entirety as follows:

Chapter 13.14
TEMPORARY RIGHT-OF-WAY USE PERMITS

Sections:

- 13.14.010 Purpose
- 13.14.020 Definitions
- 13.14.030 Permit — Required
- 13.14.040 Permit — Application Requirements
- 13.14.050 Permit — Application Review
- 13.14.060 Permit — Term
- 13.14.070 Permit — Fees
- 13.14.080 Permit — Revocation
- 13.14.090 Insurance Requirements
- 13.14.100 Violation
- 13.14.110 Appeal
- 13.14.120 Administrative Procedures
- 13.14.130 Severability

13.14.010 Purpose

The purpose of this chapter is to establish reasonable regulations and permit requirements for right-of-way uses other than transportation, which are temporary in nature and do not involve significant ground disturbance activities, including, but not limited to, sidewalk cafés, food trucks, parklets, encroachments associated with work on adjacent properties, such as scaffolding, staging, and dumpsters, and other temporary uses or encroachments by abutting property owners or occupants. The requirements of this Chapter do not apply to right-of-way uses that are separately regulated or permitted under other chapters of this code, as identified below in Section 13.14.030(B).

13.14.020 Definitions

In this chapter, the following definitions shall apply:

- A. "Applicant" means any person who seeks a right-of-way use permit from the City under this chapter.
- B. "Area of operation" means the area for which a right-of-way use permit has been issued.
- C. "City" means the City of Bellingham.

- D. "Conduct business" means that act of selling services or personal property, including consumable items.
- E. "Director" means the public works director of the City of Bellingham
- F. "Food trucks and mobile food vendors" means trucks or trailers licensed as vehicles and equipped with facilities for cooking and/or selling food.
- G. "Newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser installed, used, or maintained for the display and sale of newspapers or other news periodicals, including but not limited to area real estate guides.
- H. "Parklet" means a platform constructed in a former curbside parking space that includes seating and/or other amenities.
- I. "Permit" means a permit issued pursuant to this chapter by the public works department.
- J. "Person" means any individual, receiver, assignee, firm, co-partnership, joint venture, corporation, company, joint stock association, society or any group of individuals acting as a unit whether mutual, cooperative or fraternal.
- K. "Right-of-way" means land acquired or dedicated for use as a public road, street, alley, and/or sidewalk, whether or not such land has been opened or improved for such use.
- L. "Sidewalk café" means tables, seating, and other amenities such as umbrellas, landscaping or fencing adjacent to a lawfully-operating business establishment in or on the public right-of-way, maintained by the owner of such establishment for the use of patrons of the business.
- M. "Sidewalk vendor" shall mean any person not associated with an adjacent business engaged in selling, offering for sale or distributing food or other products on a public sidewalk.
- N. "Traffic" means circulation or movement of vehicles, bicycles, and pedestrians.

13.14.030 Permit — Required

- A. Except as provided in subpart B below, a temporary right-of-way use permit is required for any temporary use of a right-of-way that interferes with the free use, but the public, of such right-of-way. Such a permit is required for improved and unimproved rights-of-way.
- B. Exemptions. The requirements of this chapter do not apply to the following:
1. Activities permitted under other chapters of the Bellingham Municipal Code, including Chapters 6.10 (Ambulances), 6.17 (Cable Television), 6.54 (Taxicabs and For-Hire Vehicles), 6.55 (Transportation Network Company Services), 13.12 (Street

Obstruction Permits), 13.13 (Special Events), 13.15 (Utilities and Telecommunications Franchises) 13.16 (Small Cell Permits), and 13.40 (Street Trees and Other Vegetation);

2. Displays of merchandise and portable advertising signs, placed by an abutting business, conforming with applicable city codes and policies;
3. Trash receptacles or street furniture placed by the city or by an abutting business or property owner, conforming with applicable city codes and policies;
4. Persons selling produce and other food products produced by themselves, as exempted by RCW 36.71.090.
5. Placement of newsracks in the right-of-way in designated locations.
6. Those uses which the director determines will have little or no impact on the right-of-way or adjacent properties such that the effort and expense associated with permitting is not warranted.

13.14.040 Permit — Application Requirements

A. Permit applications shall be on a form provided by the city which, at a minimum, shall require:

1. The name, address and telephone number of the applicant and the contact person;
2. A description of the intended use of the right-of-way, proposed location (abutting address), and dates and hours of operation;
3. If the applicant does not own or lease the abutting business or property, written permission of the abutting business owner(s) or, if no business is present, the abutting property owner(s). Such permission shall be kept current for the entire term of the permit;
4. A detailed site plan showing the proposed Area of Operation and compliance with requirements for pedestrian clearance and accessibility;
5. Administrative fee;
6. Such other information as the city may deem necessary in order to adequately consider and address impacts to the right-of-way and adjacent properties.

13.14.050 Permit — Application Review

A. The city shall review the application and either approve, conditionally approve or deny the application. In deciding whether to approve, approve with conditions, or deny a permit, the city shall consider whether the proposed use will:

1. Unreasonably interfere with previously-approved businesses or other typical uses or activities within the right-of-way;
2. Unreasonably disrupt the orderly or safe circulation of traffic as would present an unreasonable risk of injury or damage to the public;
3. Unreasonably interfere with the City's operation and maintenance of public infrastructure within the right-of-way;
4. Conflict with the underlying purpose and intent of the zoning district in which it is located.

B. The city may condition the issuance of a permit by imposing reasonable requirements concerning the time, place and manner of the activity as necessary to protect the safety and/or convenience of persons and property and the control of traffic. The city shall issue the required conditions in writing to the applicant. Conditions may include, but are not limited to, requirements for:

1. The provision of insurance.
2. Proper disposal of refuse or debris and/or clean-up of spills;
3. Adjusted operating hours;
4. Elimination of an activity which cannot be mitigated to a point as to ensure public safety and welfare, or which possesses an unacceptable level of risk to the city;
5. Accommodation of pedestrian, bicycle or vehicular parking or traffic, including restricting the activity to only a portion of a public place;
6. Reduction of noise and odors, including but not limited to those resulting from amplified music, generators, or cooking of food;
7. Storage of materials within the public right-of-way;
8. Providing notice to, or approval from, surrounding property and/or business owners;
9. Securing objects within the right-of-way;

10. Compliance with any relevant ordinance or law and obtaining any legally required permit(s) or license(s); or
11. Compliance with allowable permitted uses in the underlying zone.
12. Any other restriction or requirement deemed necessary to ensure public convenience, health, safety and welfare.

13.14.060 Permit — Term

A. Initial term. The term of each permit issued under this chapter is at the discretion of the public works department but shall be a maximum of one year, subject to renewal. The director may authorize an initial term in excess of one year for minor encroachments by abutting property owners.

B. Renewal term(s). Permits issued under this chapter may be renewed for successive terms upon application by the permit holder and payment of the applicable renewal fee, provided that all conditions of the original permit are currently being met, including but not limited to insurance, where required.

13.14.070 Permit — Fees

All permit applications under this chapter, including renewal applications, shall be accompanied by a reasonable administrative fee in an amount to be determined by city council by periodic resolution in order to defray the cost of processing and administering the permit.

13.14.080 Permit — Revocation

A. Responsibilities of Applicant. The applicant is responsible for maintaining the permitted use of the right-of-way in accordance with all conditions of said permit. This includes providing current evidence of insurance coverage, when required, for the duration of the permit. Failure to comply with these conditions may result in revocation of the permit and additional fines, as authorized.

B. Any permit issued pursuant to this chapter may be summarily revoked by the city at any time when, by reason of disaster, riot or other emergency, the city determines that the safety of the public or property requires such revocation.

C. The city may also summarily revoke any permit issued pursuant to this chapter if it finds that the permit has been issued based upon false information, when the permittee exceeds the scope of the permit, or the activities occurring under the permit are found to cause unreasonable impacts to public health, safety or welfare or city operations and maintenance. Notice of such action revoking a permit shall be delivered in writing to the permittee by personal service, or by certified mail to the address specified within the application.

13.13.090 Hold Harmless

As a condition to the issuance of any permit under this Chapter, the applicant 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 negligent acts or omissions or intentional misconduct of the applicant, its officers, agents, or employees in connection with the permitted event or activity.

13.14.100 Insurance Requirements

The applicant shall provide commercial general liability insurance naming the city as an additional insured, with minimum limits of \$1,000,000 per occurrence and in the aggregate. Said coverage shall be primary and noncontributory and shall include a waiver of subrogation. Certificates of insurance and all necessary endorsements shall be submitted to the city for approval prior to permit issuance. Acceptability of insurance is subject to approval by the office of the city attorney. The Applicant is responsible for ensuring that insurance requirements as detailed herein, or as may be revised, are maintained throughout the duration of the permitted right-of-way use. The director, in consultation with the legal department, may waive or modify the insurance requirements contained herein when the permitted activity poses minimal risk to persons and property.

13.14.110 Violation

Violation of this Chapter is a civil infraction.

13.14.120 Appeal

Any affected person may appeal the interpretation, implementation, and/or decision of the city concerning any aspect of this chapter to the hearing examiner. The appeal notice shall be in writing and submitted to the hearing examiner within ten (10) calendar days of the date of the action or decision being appealed. The notice shall include, at a minimum, the following information: name, address, telephone number of applicant, location and type of right-of-way use involved in the appeal, decision being appealed, reference to any applicable code or ordinance, and a concise statement of the reasons for the appeal.


13.14.130 Administrative Procedures

The city may prepare and adopt policies and/or guides for the purpose of implementing this code or to carry out other responsibilities as may be required by this code or other codes, ordinances of the city or other agencies. Such policies and/or guides do not require approval by the city council.

13.14.140 Severability

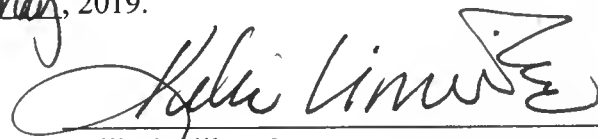
If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

PASSED by the Council this 6th day of May, 2019.



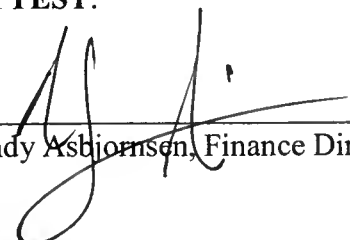
Dan Hammill, Council President

APPROVED by me this 14th day of May, 2019.



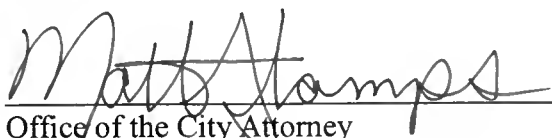
Kelli Linville, Mayor

ATTEST:



Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

May 10, 2019
