

ORDINANCE NO. 2014-24

AN ORDINANCE of the City of Bainbridge Island, Washington repealing the existing Chapter 15.12, Construction Work Affecting City Utilities, in its entirety and adopting a new Chapter 15.12, Right-of-Way Use.

WHEREAS, the City of Bainbridge Island (the “City”) regulates construction and uses in the right-of-way; and

WHEREAS, the City desires to address issues relating to right-of-way use not previously addressed in the Bainbridge Island Municipal Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 15.12 of the Bainbridge Island Municipal Code, Construction Work Affecting City Utilities, is hereby repealed in its entirety.

Section 2. A new Chapter 15.12 of the Bainbridge Island Municipal Code, Right-of-Way Use, is hereby adopted to read as follows:

Chapter 15.12

RIGHT-OF-WAY USE

Sections:

- 15.12.010 Purpose.
- 15.12.020 Territorial application.
- 15.12.030 Construction - intent.
- 15.12.040 Definitions.
- 15.12.050 Authority of the director.
- 15.12.060 Permit required.
- 15.12.070 Additional permits.
- 15.12.080 Right-of-way use permits.
- 15.12.090 Applications and processing of permits.
- 15.12.100 Renewal of permits.
- 15.12.110 Permit exception.
- 15.12.120 Permit fees and charges.
- 15.12.130 Specifications.
- 15.12.140 Notice of intent to start work.
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- 15.12.220 Performance and warranty deposits.
- 15.12.230 Insurance.
- 15.12.240 Hold harmless.
- 15.12.250 Correction and discontinuance of unsafe, nonconforming or unauthorized conditions.
- 15.12.260 Prohibition of illegal discharges.
- 15.12.270 Debris and spilled loads in the right-of-way.
- 15.12.280 Nuisance in the right-of-way.
- 15.12.290 Revocation of permits.
- 15.12.300 Stop work orders.
- 15.12.310 Adoption of policies.
- 15.12.320 Appeals.
- 15.12.330 Violation - penalty.
- 15.12.340 Enforcement.

15.12.010 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 city's rights-of-way 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.

15.12.020 Territorial application.

The procedures set forth in this chapter shall be applicable to all rights-of-way within the city.

15.12.030 Construction - Intent.

A. This chapter is enacted to protect and preserve the public health, safety and welfare. It shall be liberally construed to accomplish these purposes.

B. The purpose of this chapter and any procedures adopted hereunder is 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 especially be protected by or benefit from any procedures adopted hereunder.

C. The specific intent of this chapter and any procedures adopted hereunder places the obligation of compliance upon the permittee. No provision is intended to impose any duty upon the city, or any of its officers, employees, or agents. Nothing contained in this chapter is intended to be, nor shall be, construed to create a basis for liability on the part of the city or its officers, employees or agents for any injury or damage resulting from the failure of a 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, its officers, employees or agents.

15.12.040 Definitions.

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

- A. "Citation" means a written document initiating a proceeding pursuant to Chapter 1.26 BIMC.
- B. "City inspector" means the designated employee(s) of the department assigned to inspect permitted work.
- C. "Department" means the public works department or other department designated by the director.
- D. "Director" means the director of public works or his/her designated representative.
- E. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city. This includes, but is not limited to, damage to persons or property from natural or manmade occurrences, such as storms, earthquakes, riots or wars.
- F. "Engineering division" means the engineering division of the department.
- G. "Franchised utilities" means utilities that have city approval to use city rights-of-way in accordance with RCW 35A.47 for the purpose of providing their services within the city, whether by written franchise granted by the city, state tariff, or other similar city authorization.
- H. "Notice of violation" means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.
- I. "Oral directive" means a directive given verbally by city personnel designated by the director to correct or discontinue a specific condition.

J. "Permit" means a document issued by the city granting permission to engage in an activity not allowed without a permit.

K. "Permittee" means the person so designated on the permit application, or designee.

L. "Person" means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, and includes their lessors, trustees and receivers.

M "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.

N. "Policy" means a policy adopted by the director to implement this chapter, or to carry out other responsibilities assigned by codes, ordinances, or resolutions of the city or other agencies.

O. "Revocation" means cancellation of an issued permit.

P. "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for streets, walkways, sidewalks, bikeways, parking, and horse trails, whether improved or unimproved, including the air rights, sub-surface rights, and related easements.

Q. "Stop work order" means an oral directive or written notice posted at the site of activity that requires all work to be stopped until the city approves continuation of work.

R. "Suspension" means a temporary stay of a permit.

S. "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. This includes any condition that does or may impair or cause damage to any portion of the right-of-way.

15.12.050 Authority of the director.

The director shall have the authority to:

A. Administer the provisions of this chapter including but not limited to interpreting the chapter and issuing necessary rules and procedures.

B. Issue permits granting use of the rights-of-way in accordance with this chapter.

C. Administer and coordinate the enforcement of this chapter and all policies adopted hereunder relating to the use of rights-of-way.

D. Adjust the fees required by this chapter to be proportional to any increased scope of work for which a permit is required.

E. Coordinate with other city departments to administer and enforce this chapter.

F. Assign responsibility for interpretation, application and enforcement of specified procedures to department staff.

G. Correct any condition that is a violation of, or used contrary to, this chapter.

H. Revoke a permit.

15.12.060 Permit required.

A. It is unlawful for anyone to make private use of any public right-of-way without first obtaining a right-of-way use permit from the city, or to use any right-of-way without complying with all the provisions of such right-of-way use permit.

B. The city does not waive its right to use the right-of-way by issuance of any permit.

C. The city reserves the right to exempt those activities that are judged to be incidental uses.

15.12.070 Additional permits.

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

15.12.080 Right-of-way use permits.

The following types of right-of-way use permits are established:

Permit	Regulates	Duration
Type A - Short Term Use	Temporary street and/or sidewalk closures or blockage (moving trucks/vans, dumpsters, scaffolds, lifting equipment, house/modular/mobile moving, oversize loads, special events)	30 days
Type B1 - Disturbance of the Right-of-Way	Disturbance of the surface or the subsurface of the right-of-way on a temporary or permanent basis (boring, jacking, cutting or pushing, culverts, curb cuts, handicap ramps, driveway approaches, curbs, gutters and sidewalks, drainage, painting, paving,	30 days

	trenching, utility installation, road approaches, new streets / unopened rights-of-way)	
Type B2 - Annual Bulk Purchase Right-of-Way Permit	Available to utility companies: (1) that fully comply with city engineering standards for road restoration using control density fill (CDF) for perpendicular cuts and full lane repaving for all other disturbances, and (2) guarantee restoration of any failures within 2 years of the final work day at the permitted site, (3) are secured by the required bonding.	1 year
Each B1 Permit issued under Bulk Purchase	Disturbance of the surface or the subsurface of the right-of-way on a temporary or permanent basis (Ref. Type B1 above)	30 days
Type C - Long Term Use	Long-term right-of-way use for activities that will not further physically disturb the right-of-way once in place	5 years
Type D - Franchised Utility	Franchised utilities only; performing routine maintenance on existing overhead lines and entry into existing underground facilities. Does not authorize disturbance of the surface or subsurface.	1 year

A. Type A - Short-term use.

1. Type A permits may be issued for use of the right-of-way for up to 30 days if it does not involve physical disturbance of the right-of-way, such as:
 - a. Temporary street and/or sidewalk closures.
 - b. Temporary blockage of streets and sidewalk, for uses such as moving trucks or vans, dumpsters, scaffolds, and lifting equipment.
 - c. House/modular/mobile moving.
 - d. Oversize loads.
 - e. Special events.
2. Special events permits are provided for in accordance with Chapter 12.06 BIMC.
3. This type of use may involve disruption of pedestrian and vehicular traffic and may require inspections, cleanup and traffic control.
4. For periods longer than 30 days the uses will be considered Type C, long-term use.

B. Type B Permits - Disturbance of the right-of-way.

1. Type B1 permits may be issued for activities that alter the appearance of or disturb the surface or the sub-surface of the right-of-way on a temporary or permanent basis. Type B1 permits are also required for the initial construction of improvements within the right-of-way including privately maintained rights-of-way required to conform to city standards. Type B1 permits may be issued for up to 30 days.

Type B1 permits include, but are not limited to, activities associated with:

- a. Boring, jacking, or pushing;
- b. Construction adjacent to the right-of-way that may physically impact the right-of-way;
- c. Culverts;
- d. Sidewalk impacts including curb cuts, handicap ramps and driveway approaches;
- e. Curbs, gutters and sidewalks;
- f. Drainage;
- g. Painting;
- h. Paving;
- i. Trenching;
- j. Utility installation;
- k. Road approaches; and
- l. New streets / unopened rights-of-way.

2. Type B2-Annual Bulk Purchase Right-of-Way Permit.

- a. Available to utility companies that: (1) fully comply with city engineering standards for road restoration using control density fill (CDF) for perpendicular cuts and full lane repaving for all other disturbances, and (2) guarantee restoration of any failures within 2 years of the final work day at the permitted site, and (3) are secured by the required bonding.
- b. Type B1 permits are required for activities that alter the appearance of or disturb the surface or the subsurface of the right-of-way at a reduced fee.

C. Type C - Long-term use.

1. Type C permits may be issued for long-term right-of-way use for activities that will not further physically disturb the right-of-way once in place. This may include structures, facilities and uses that involve capital expenditures and a long-term commitment of use. Sidewalk cafes and sidewalk retail displays are

regulated by Chapter 12.36 BIMC and excluded from Type C permits.

2. Type C permits authorized by this chapter are of a temporary nature, vest no permanent rights and are revocable as provided for in Section 15.12.290. The director may suspend any right-of-way use permit for transportation mobility or public safety purposes or to coordinate with permitted special events authorized by Section 15.12.080 or any other permitted activity.
3. Type C permits may be issued or required for up to five years except as provided for in subsection 8 below.
4. A Type B1 permit may be required for construction activities in conjunction with Type C use.
5. Type C permits include but are not limited to:
 - a. Accessory business activities such as parking;
 - 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, and decorations;
 - h. Underground rights;
 - i. Landscaping; and
 - j. Waste facilities.
6. Signage uses, placement and specifications are regulated by Chapter 15.08 BIMC.
7. The permittee shall not create a condition that in any way restricts or interferes with access to abutting properties; or creates a nuisance or hazard to public health, safety, or welfare; or increases traffic congestion or delay; or which constitutes an obstruction for fire, police, or sanitation vehicles.
8. Utilities 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.
9. Type A uses that exceed 30 days duration will be treated as Type C uses.
10. If a Type C permit is revoked or expires without renewal, the permittee must remove improvements constructed in the right-of-way and restore it to its original condition or better.

11. Under the following conditions, Type C permits may be issued for right-of-way use for an extended term not to exceed ten years for activities such as the installation and maintenance of structures, facilities and uses that involve capital expenditures.

- a. Type C permits will only be issued for extended terms unless the city determines that:
 - i. There is no reasonable likelihood that the city will need to utilize the area for which the permit is granted within the permit term;
 - ii. That the proposed use is consistent with the city's comprehensive plan;
 - iii. That the use is not detrimental to the public health, safety, or welfare; and
 - iv. That the proposed use is not aesthetically incompatible with the city's standards.
- b. 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 years. If the use of the right-of-way under the jurisdiction of a Type C permit is changed so as to affect the permitted installation, the director shall require the permittee to remove or modify the installation to accommodate the new use of the right-of-way. The director shall set the time for removal or modification. The time for removal or modification shall be at least 90 days after the date the request for removal or modification is submitted unless the director finds that a lesser amount of the permitted installation shall be borne by the permittee.

D. Type D - Franchised utility routine maintenance permit.

1. Type D permits may be issued for franchised utilities, as defined in this chapter, performing routine maintenance on existing overhead lines and for entry into existing underground facilities. Type D permits may be issued for up to one year.
2. Type D permits do not authorize disturbance of the surface or subsurface of the right-of-way. Activities that disturb the surface or subsurface require a Type B1 permit.
3. Type D permits may be revoked if the permittee does not comply with the requirements of this chapter. In the event the Type D permit is revoked, the permittee must obtain a Type B1 permit for each work site.
4. Obtaining an issued Type D permit does not abolish the requirement to obtain a Type B1 permit for construction activities.

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 shall be cause for immediate revocation.

15.12.090 Permit 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:

1. A scale drawing showing the location of the proposed right-of-way use; the location of existing and proposed improvements, surface features such as curbs and gutters, underground features such as the location of utilities, topographic details such as ditches, wetlands, streams, bluffs, etc.; and the limits of the work area;
2. A description of the proposed 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;
6. An estimate of construction costs; and
7. Payment of the required fees.

C. The director shall examine each application to determine if adequate information is provided and if it complies with the applicable provisions of this chapter. Other departments that have authority over the proposed use will review and recommend approval or disapproval of the application. If the director finds that the application conforms to the requirements of this chapter, he or she may approve the permit imposing such conditions as are reasonably necessary to protect the public health, welfare and safety, to mitigate impacts resulting from the use and to coordinate activities or address potential conflicts with other uses of the area.

D. Permit applications must be submitted at least ten working days prior to the requested start, or as required to obtain other city permits.

E. Concurrent with submittal of a complete application, the applicant shall pay the

established application fee.

15.12.100 Renewal of permits.

A. Type A and Type B1 permits 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 a permittee desires continued use of the right-of-way after expiration of a renewed permit, he/she must apply for a new permit.

B. Type C and D permits cannot be renewed. Reapplication is required.

15.12.110 Permit exceptions.

A. A right-of-way use permit shall not be required of franchised utilities when responding to emergencies, provided that the department shall be notified by the responding utility or contractor verbally or in writing as soon as practicable following the onset of an emergency. A utility or contractor must still apply for a right-of-way use permit as provided in this chapter within 48 hours after beginning emergency work in the right-of-way.

B. Permits are not required for routine maintenance and construction work performed by the city.

C. Permits are not required for public works department construction projects.

D. Permits are not required for ordinary landscape maintenance in the right-of-way. Blockage of the right-of-way associated with ordinary landscape maintenance requires a permit.

15.12.120 Permit fees and charges.

A. Permit fees shall be set forth in a fee schedule adopted by city council by resolution. Fees and charges adopted pursuant to this section may be increased or decreased by the council on the city manager's recommendation in accordance with changes in costs incurred by the city.

B. Fees and charges.

1. Type A, short-term use permit. A fee shall be charged for each Type A permit accepted for processing. This fee shall cover the administrative cost of issuing the permit.

2. Type B1, disturbance of right-of-way permit. Type B1 Permit fees shall be established for the following categories:

- a. Repair of existing sidewalks, not associated with other development activity.
 - b. A driveway approach, transverse street patch or spot patches or other localized work;
 - c. Construction of new curb, gutter, and sidewalk, as well as patching;
 - d. Construction of a new street, extension of an existing street, construction of a privately maintained street within the public right-of-way, frontage improvements on an existing street and construction of a new pavement surface;
 - e. Work in unimproved areas, such as boring pits in shoulders, landscaping, etc; and
 - f. Fees established for permits include an initial review, initial site visit and final inspection. Additional fees are assessed for additional levels of effort associated with the permitted project.
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 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 direct benefit to the city.
4. Type D, franchised utility, routine maintenance permit. A fee shall be charged for each regular Type D permit accepted for processing. This fee shall cover the administrative cost of issuing the permit.
- C. The director will assign Type B1 permit work to the most appropriate category and establish a fixed fee or charge for city costs at an hourly rate for any special work not covered in these categories.
- D. Additional work. The city may establish fees for activities beyond normal and customary services, such as repeated plan reviews or site inspections, special work, inspection of re-worked areas, calls for inspection when the site is not ready and construction site emergencies.

E. Waiver of fees for city-initiated projects. Utilities in the right-of-way under the authority of a franchise agreement, state tariff or other similar city authorization which must apply for permits because of city-initiated construction projects, may be granted a waiver of normal permit fees by the director. This provision only applies to work that would not otherwise have been done by the utility.

15.12.130 Specifications.

All work performed under a right-of-way permit shall conform to all city codes, the current development and construction standards of the department, and all other standards used by the city including, but not limited to, the current version of the *Manual of Uniform Traffic Control Devices* published by the Federal Highway Administration and 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.

15.12.140 Notice of intent to start work.

Permittee shall provide a minimum of one working day's notice of the intent to start work in the right-of-way.

15.12.150 Inspections.

Consent to inspections by the department or other city representative is a condition of issuance of every right-of-way use permit. Permittee shall provide a minimum of one working day's notice prior to a requested or required inspection.

15.12.160 Completion of use.

At the completion of use of the right-of-way, the permittee shall:

- A. Provide notice that the work is complete and request an inspection; and
- B. Provide record drawings of the improvements made in the right-of-way when required. Record drawings of improvements that are accepted for maintenance by the city shall meet the format requirements of the city. All record drawings shall show at a minimum the actual location, depth and profile of the improvements in the right-of-way. Record drawings acceptable to the department must be provided prior to release of the performance surety described in Section 15.12.220.A.

15.12.170 Shared use of excavations.

If a utility company submits a permit request to excavate, 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;
- 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; and
- 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 impacts.

15.12.180 Underground utility location required.

All permittees shall, before commencing any construction in the city right-of-way, comply with Chapter 19.122 RCW, the one number locater service (811).

15.12.190 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 in accordance with the specifications. Warning and safety devices may be removed when the work for which the right-of-way use permit was granted is complete and the right-of-way restored to the conditions directed by the department.
- B. The director may require an applicant to submit a traffic control plan showing proposed shoulder closures, lane closures, detour routing, parking adjustments, and the location and type of warning lights, safety devices, signs and barricades intended to protect vehicular or pedestrian traffic. If a traffic control plan is required, no right-of-way use permit will be issued until the plan is approved.
- C. The director may require that the permittee provide a certified Washington state traffic control flagger to be on site during construction activities in order to monitor the setup and maintenance of the warning and safety devices.
- D. If flaggers are required to control traffic during construction, they will be either properly attired and certified Washington state traffic control flaggers or off-duty law enforcement officers.
- E. Decisions of the director 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. Lack of notice or comment by the city does not relieve the permittee of responsibility for the safety of the work area.

15.12.200 Temporary parking restriction notification.

A. If the director determines that parking is a hazard to through traffic, construction work, or other right-of-way activity, he may restrict parking.

B. Parking restriction signs shall be placed at least 72 hours in advance of parking removal with the start date of "no parking" clearly shown. The area to be restricted shall be clearly marked with Type I barricades carrying signs that state the specific period (dates and times) that the area is to be free of vehicles. Signs shall be large enough to be easily read from a distance of 50 feet and advise where impounded vehicles will be stored or indicate a 24-hour telephone number for obtaining the information.

C. The permittee shall be responsible for placement and maintenance of the signs as approved by the director. The permittee shall notify the city when the signs are placed. No vehicles shall be towed until the restricted parking signs have been in place for 72 hours or more.

D. 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 WILL BE TOWED
(IMPOUND INFORMATION)

15.12.210 Materials testing.

Material tests may be ordered by the director to assure conformity with the specifications stated in this chapter. Material tests may include, but are not limited to, gradation analysis, compaction testing, concrete strength, asphalt content analysis and pipe strength. The permittee shall have the material test performed by a certified laboratory and the results provided to the city. Location and timing of material testing shall be coordinated with the director.

15.12.220 Performance and warranty deposits.

A. Performance Surety. The city may require permit applicants to provide a performance surety to ensure conformance with the plans, specifications and standards. The minimum amount of the performance surety shall be 125 percent of the estimated value of the work or the estimated cost to repair damage to existing improvements as determined by the director. The performance surety shall not be

released until after final acceptance of the permitted work and receipt of a warranty deposit, if required.

B. Warranty Deposit. The city may require a warranty deposit to warrant the workmanship and the material of the constructed improvements in the right-of-way for a period of one year from the final inspection date. The minimum amount of the warranty deposit shall be 20 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, assignment of funds, bond or other readily accessible source of funds approved by the city finance director. The deposit instruments shall be on a form acceptable to the city finance director. Any issuer of a deposit instrument shall pay invoices presented by the city pursuant to this chapter within 45 days. A bond will be accepted only for amounts over \$1,000 or when state law requires a bond.

Interest on deposited funds will accrue to the benefit of the depositor, except 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 director determines permitted work to be incomplete or defective or observes a defect during the warranty period or other activities which do not comply with the permit and shall require corrective action by the permittee, the director shall notify the applicant in writing prior to applying proceeds of the deposit to correct the work. The notice will state:

1. Work that must be done to comply with the requirements of the permit or deposit;
2. The amount of time that the applicant has to complete the required work; and
3. If the work is not completed within the time specified, the city will use the proceeds of the deposit to have the required work completed.

E. Default on deposit.

1. If the work covered by the deposit is 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 covered by the deposit. The city may either have employees of the city or a contractor complete the work.
2. If, at any time, the director determines that actions or inactions associated with permit work have created an emergency situation endangering public health, safety or welfare, created a potential liability for the city or endangered 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 or a contractor complete the work. If the City uses the deposit, as provided by this section, the applicant shall be notified in writing within four working days of the commencement of emergency work. The notice must state which work 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 completing the work covered by the deposit. The city shall release or refund any proceeds of any deposit remaining after subtracting all costs incurred. The permittee shall reimburse the city for any amount expended by the city that exceeds the deposit.

4. If the city uses any of the deposit it shall, within 30 days, provide the owner of the permit an itemized statement of all proceeds and funds used.

15.12.230 Insurance.

A. General provisions. Before any permit is granted for the use of, or work within the right-of-way, the permittee shall secure and deliver to the city and the director a copy of comprehensive general liability insurance in the sum of \$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 finance director.

B. Limited exception. A homeowner or tenant who repairs, constructs or uses the right-of-way fronting his/her residence and who performs all the labor him/herself shall not be required to obtain insurance as set forth in subsection A. Prior to the issuance of such a permit, the homeowner or tenant shall be required to provide proof of homeowners or renters insurance in the minimum amount of \$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.

15.12.240 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, from any and all suits, claims or liabilities caused by or arising out of any work or use authorized by any permit.

15.12.250 Correction and discontinuance of unsafe, nonconforming or unauthorized conditions.

A. If at any time the director determines that any condition on any right-of-way is in violation of any provision of this chapter, the director may order the correction or discontinuance of such 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 activities as the director determines appropriate:

1. Serving of oral directives to the permittee or other responsible person requesting immediate correction or discontinuance of activity;
2. Service of a written notice of violation, ordering correction or discontinuance within a reasonable period as the director may determine appropriate;
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. Issuance of a citation upon the permittee or other responsible person who is in violation of this chapter; and
6. Seek to impose penalties pursuant to Chapter 1.24 BIMC.

15.12.260 Prohibited discharges.

No permitted activity shall be allowed that would cause the discharge of pollutants or waters containing pollutants to discharge into the city's stormwater drainage system or waters of the state in accordance with Chapter 15.22 BIMC.

15.12.270 Debris and spilled loads in the right-of-way.

A. The owner or operator of any vehicle that has spilled, dropped, dumped, tracked or otherwise deposited any matter upon the right-of-way shall clean and remove the material using suitable methods to the satisfaction of the department. If the owner/operator fails to resolve the issue, the department shall have the right-of-way cleaned and charged to the person or persons responsible. The department has authority to designate haul routes and times of day for operations involving hauling over the public right-of-way.

B. Earth-hauling contractors, builders or anyone else utilizing vehicles upon the right-

of-way shall provide persons or equipment to keep the right-of-way clean at all times to the satisfaction of the department. On failure to fulfill this obligation, the department may issue an immediate stop work order, revoke city permits and direct the responsible person or persons to immediately clean the right-of-way to the satisfaction of the department.

15.12.280 Nuisance in the right-of-way.

A. Any object which occupies the right-of-way without a permit is declared a nuisance. The department may attach a notice to any such object stating that if it is not removed from the right-of-way within 24 hours, the object shall 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 object is a hazard to public safety, it shall be removed by the city without prior notice.

B. All expenses incurred by the city in abating the nuisance condition or in repairing any damage to the right-of-way shall constitute a civil debt owed to the city jointly and severally by such persons who have been given notice or who own the object or placed it in the right-of-way, which debt shall be collectable in the same manner as any other civil debt.

15.12.290 Revocation of permits.

A. The director may revoke any permit issued under this chapter when in the director's sole determination:

1. The work or activity does not proceed in accordance with the approved plans, conditions, or is not in compliance with the requirements of this chapter or other city ordinances, state or federal law;
2. The city has been denied access to investigate or perform inspection;
3. The permittee has made a misrepresentation of a material fact in applying for a permit; and
4. The progress or condition of the approved work, activity or excavation indicates that it is inadequate to protect the public and adjoining property, the street or utilities in the street.

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 shall be by letter.

D. A revocation may be appealed pursuant to this chapter.

15.12.300 Stop work orders.

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

15.12.310 Adoption of policies.

The director may adopt policies and procedures to implement this chapter. Such policies do not require approval by the city council.

15.12.320 Appeals.

An applicant whose application has been denied or permittee whose permit has been revoked pursuant to this chapter must first request the director reconsider or reverse the decision. If the director denies the request, the applicant or permittee may appeal the decision to the administrative hearing examiner pursuant to Chapter 2.16 BIMC.

15.12.330 Violation –enforcement and penalty.

A. In addition to any other sanction or remedy that may be available, a violation of or failure to comply with any provision of this chapter shall be a civil infraction and shall be subject to enforcement and civil penalties as provided for in Chapter 1.26 BIMC.

B. A violation of or failure to comply with any provision of this chapter shall be a misdemeanor punishable, upon conviction, as provided for in Chapter 1.24 BIMC.

Section 3. If any one or more section, subsections or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

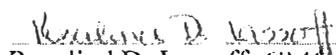
Section 4. This ordinance shall take effect on and be in force five (5) days from and after its passage, approval and publication as required by law.

PASSED by the City Council this 11th day of August, 2014.

APPROVED by the Mayor this 11th day of August, 2014.


Anne S. Blair, Mayor

ATTEST/AUTHENTICATE:


Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:	July 1, 2014
PASSED BY THE CITY COUNCIL:	August 11, 2014
PUBLISHED:	August 15, 2014
EFFECTIVE DATE:	August 20, 2014
ORDINANCE NUMBER:	2014-24