

TIGARD MUNICIPAL CODE

Chapter 15.04 WORK IN RIGHT-OF-WAY

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15.04.010 Definitions

A. “City Engineer” means the City Engineer for the City of Tigard or his or her designee.

B. “Emergency” means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

C. “Person” means every natural person, firm, co-partnership, association, corporation or entity, or district, but does not include the City of Tigard.

D. “Right-of-way” includes City streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the

City. “Right-of-way” also includes public utility easements (PUEs) to the extent that the easement allows use by the permittee planning to use or using the public utility easement. “Right-of-way” includes the subsurface under and airspace over these areas. “Right-of-way” does not include the airwaves for purposes of Commercial Mobile Radio Services, broadcast television, Direct Broadcast Satellite, and other wireless providers, or easements or other property interests owned by a single utility or entity.

E. “Right-of-way permit” means a permit issued by the City authorizing work in the right-of-way. A right-of-way permit may also be referred to as a public facility improvement (PFI) permit.

F. “Sidewalk” means an area specifically delineated and constructed for pedestrian use located behind a curb but within the rights-of-way or within an easement specifically established for that purpose.

G. “Street” or “alley” means every way or place open as a matter of right to the use of the public for vehicular or pedestrian traffic between right-of-way lines.

H. “Work” means any activity that alters or disturbs the right-of-way and includes, but is not limited to, construction and trenching. (Ord. 18-26 §1; Ord 06-11, Ord. 74-14 § 1, 1974)

15.04.020 Jurisdiction

The requirements of this chapter shall apply to all rights-of-way under the jurisdiction of the City of Tigard, dedicated by plat or deed, created by user, or the use thereof controlled by the City pursuant to agreements with Washington County or the Oregon Department of Transportation. (Ord. 06-11)

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15.04.030 Permit Required

A. It is unlawful for any person to perform any work in the right-of-way without first obtaining a right-of-way permit from the City. The City may also require a right-of-way permit for certain stormwater quality and detention facilities located on private property. Notwithstanding, for routine maintenance or repair that does not alter or disturb the right-of-way, such as replacement of a light fixture or trimming of trees, the city may elect to not require a right-of-way permit provided the city receives notice of the planned maintenance repair, along with emergency contact information, as soon as reasonably practical.

B. The City will not issue a right-of-way permit to place or maintain a utility system in any portion of the right-of-way unless the applicant has first complied with the provisions of Chapter 15.06 of the Code.

C. The applicant must pay a fee in the amount established by resolution of the City Council. (Ord. 18-26 §1; Ord. 06-11, Ord. 02-22, Ord. 99-31, Ord. 74-14 § 2, 1974)

15.04.040 Standards of Approval

The City Engineer may approve the issuance of a right-of-way permit where compliance with the following standards is demonstrated or found to be not applicable. The City Engineer may attach any conditions to the issuance of the permit that are reasonably related to ensuring compliance with this section, other applicable city codes and ordinances, and protection of the public interest. The City Engineer may require drawings, plans, engineering calculations, and specifications sealed by a professional engineer currently licensed in the State of Oregon and in sufficient detail to demonstrate compliance.

A. All work will be performed and any facilities will be constructed in accordance with all applicable codes, rules and regulations.

B. The construction methods to be employed protects existing structures, fixtures, and facilities or proposes to temporarily or permanently remove or relocate them.

C. Appropriate traffic control measures will be used to minimize disruption to motorized and non-motorized traffic and pedestrians, provide for the safety of the general public, and prevent injury or damage to any person, vehicle, or property.

D. Standard street sections and standard construction details will be as specified in city's design and construction standards. No deviation from these standards will be allowed without written findings documenting the need and written approval of the deviation being granted by the City Engineer.

E. A 24-hour emergency contact name and phone number must be provided. (Ord. 18-26 §1; Ord. 06-11)

15.04.050 Review by City Engineer

The City Engineer will review the application to determine if it complies with the standards in this chapter. The City Engineer may approve, modify and approve, or deny the application for a right-of-way permit based on the standards in Section 15.04.040. (Ord. 18-26 §1; Ord. 06-11)

15.04.060 Permit Issuance

Upon a determination that the application and supporting information complies with the requirements of this chapter, the City Engineer will issue a permit authorizing construction in the rights-of-way, subject to conditions that the City

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Engineer deems appropriate to ensure compliance with this chapter. In order to minimize disruption to transportation and to coordinate work to be performed in the right-of-way, the permit may specify a time period within which all work must be performed and require coordination of construction activities. The City Engineer may impose conditions regulating the location and appearance of facilities, subject to applicable laws and regulations. (Ord. 18-26 §1; Ord. 06-11)

15.04.070 Compliance with Permit

All construction must be in accordance with the permit and approved plans and specifications. The permittee will provide the City Engineer access to the work site to inspect any work in the right-of-way. The permittee will provide, upon request, any information needed by the City Engineer to determine compliance with applicable requirements. All work that does not comply with the permit requirements must either be corrected or removed at the sole expense of the permittee. The City is authorized to issue stop work orders to assure compliance with this chapter. (Ord. 18-26 §1; Ord. 06-11)

15.04.080 Notice of Construction

Except in an emergency, the permittee must notify the City Engineer not less than two working days prior to any excavation or construction in the right-of-way. The notice must state the anticipated location, project schedule, and general description of the proposed work. (Ord. 18-26 §1; Ord. 06-11)

15.04.090 Construction in Right-of-Way

A. The permittee must complete all construction within the right-of-way so as to minimize disruption of the right-of-way and utility service and without interfering with other public and private property within the rights-of-way. All construction work within rights-of-way, including restoration, must be completed within the time

specified by the City Engineer. Upon issuance of a right-of-way permit, the permittee must commence work within 180 days, unless otherwise specified by the City Engineer, at which time the right-of-way permit expires and is voided.

B. Upon completion of daily work, all work zone areas must be left in a safe condition with all trenches covered.

C. Access must be maintained at all times in compliance with the Americans with Disabilities Act (ADA). (Ord. 18-26 §1; Ord. 06-11)

15.04.105 Coordination of Construction

The permittee will make a good faith effort to coordinate construction schedules with those of the city and other users of the rights-of-way. (Ord. 18-26 §1; Ord. 06-11)

15.04.110 As Built Drawings

A permittee must provide city with two complete sets of engineered plans in a form acceptable to the city showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit. (Ord. 18-26 §1; Ord. 06-11)

15.04.120 Restoration of Rights-of-Way and City Property

A. When a permittee does any work in or affecting any rights-of-way or city property, the permittee must, at its own expense, repair and restore the area in which the work was performed to as good or better condition than before such work was undertaken.

B. If weather or other conditions do not permit the complete restoration required by this section, the permittee will temporarily restore the

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affected rights-of-way or property at the permittee's sole expense. When the weather or other conditions no longer prevent such permanent restoration, the permittee will promptly complete permanent restoration of the site. Any corresponding modification to the construction schedule may be subject to approval by the city.

C. If the permittee fails to restore rights-of-way or property to good order and condition, the city will give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the rights-of-way or property. If, after notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city may cause such restoration to be made at the permittee's expense. (Ord. 18-26 §1; Ord. 06-11)

15.04.135 Right-of-Way Preservation Policy

A. Except as provided in subsection B of this section, after any street has been constructed, reconstructed, paved or improved by any person, the driving surface of the pavement may not thereafter be cut or opened for a period of four years.

1. The City Engineer will make the final determination on what construction or improvement will result in a limitation set forth in subsection A of this section and will create, maintain, and make available to the public a list of the streets and street segments subject to the limitation. Only streets named on the list will be subject to the limitation set forth in subsection A.

2. The four-year limitation period begins upon the city's final acceptance of the completed street or street improvements.

B. The City Engineer may grant an exception to the prohibition set forth in subsection

A of this section: (1) in an emergency, (2) when cutting or opening the street is required to locate existing facilities when tunneling, boring, or pushing under the street (e.g., "potholing"), (3) to provide or maintain utility services to a property when no other reasonably practicable alternative exists within the right-of-way or existing utility easement, or (4) when, in the sole discretion of the City Engineer, compelling circumstances warrant the cutting or opening of the street.

C. In granting an exception, the City Engineer may impose conditions determined to be appropriate to completely restore the street and provide equivalent surface quality, durability and rideability. Conditions may include surface grinding, base and sub-base repairs, or similar work, and may include up to a full-width surface paving of the roadway.

D. Notwithstanding the provisions of this section, in an emergency, any person cutting or opening a street, will, when reasonably feasible, seek verbal authorization from the City Engineer for an exception. Whether or not verbal authorization was given, the person must apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work. The person must ensure the right-of-way or city property is restored pursuant to Section 15.04.120 and complies with any conditions pursuant to this Section 15.04.135. (Ord. 18-26 §1; Ord. 06-12)

15.04.140 Financial Guarantees

When the city, in its sole discretion, determines that a permittee's work or manner of performance warrants, the city may require the permittee provide a cash deposit, bond, or other financial guarantee in a form acceptable to the city in an amount equal to at least 125% of the estimated costs of construction in the rights-of-way. The financial guarantee must remain in force until the city accepts the work and the work is

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covered by a satisfactory financial guarantee or maintenance bond in the amount of 25% of the public improvements installed in the right-of-way for the maintenance period of two years from the date of acceptance by the city. The financial guarantee will guarantee timely completion, construction in compliance with applicable plans, permits, codes and standards, proper location, restoration of rights-of-way and other property, and timely payment and satisfaction of all claims, demands or liens for labor, material or services. (Ord. 18-26 §1; Ord. 06-11)

15.04.150 Insurance

As a condition of permit issuance, when the city determines that the proposed work may subject the city to potential liability, the city may require the applicant to obtain general liability insurance and file a certificate of insurance with the city from an insurance company acceptable to the city. The policy will name the city, its officers, agents, and employees as additional insureds. The amount of the insurance policy will be determined by the city, but in no case will it be less than the limits of public body liability under the Oregon Tort Claims Act. The policy must also contain a provision that the city will be notified at least 10 days prior to any cancellation of such insurance. The permittee must maintain the insurance for the term of the permit issued. Failure to maintain the insurance results in automatic revocation of the permit. (Ord. 18-26 §1; Ord. 06-11, Ord. 02-22, Ord. 74-14 §17, 1974)

15.04.160 Inspection and Acceptance

The permittee must notify the City Engineer or designee upon completion for inspection of the work to determine compliance with the requirements of this chapter, prior to final acceptance of the work. The permittee will not be relieved of obligations under any guarantee given pursuant to Section 15.04.140 until the work is in accordance with the terms of the permit and has

been accepted by the city. Acceptance by the city does not relieve the permittee of its obligation to maintain, repair, or reconstruct the site of the excavation so as to maintain a condition acceptable to the City Engineer until the right-of-way is reconstructed, repaved, or resurfaced by the city. (Ord. 18-26 §1; Ord. 06-11, Ord. 02-22, Ord. 74-14 §14, 1974)

15.04.170 Liability; Indemnification

The permittee is responsible and liable for all accidents, environmental clean-up, damages or injuries to any person or property resulting from work performed by or under the direction of the permittee, permittee's agents, or employees in the right-of-way. The permittee will indemnify, defend, and hold harmless the city, its elected officials, and all officers, employees or agents against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which they or any of them may sustain by reasons of the acts, conduct or operation of the permittee, the permittee's agents, or employees in connection with their work in the right-of-way. (Ord. 18-26 §1; Ord. 06-11, Ord. 74-14 §16, 1974)

15.04.180 Violation—Penalties

Failure to comply with a provision of this chapter is a Class 1 Civil Infraction. (Ord. 18-26 §1; Ord. 06-11, Ord. 02-22, Ord. 74-14 §21, 1974)■