

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2186

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON,
REVISING THE CITY'S RIGHT-OF-WAY USE REGULATIONS AND
AMENDING CHAPTER 12.12 OF THE SNOHOMISH MUNICIPAL CODE**

WHEREAS, the City's current right-of-way use regulations are in need of updating, as proposed in the revisions to Chapter 12.12 SMC set forth below; and

WHEREAS, the City has complied with the State Environmental Policy Act by issuing a determination of nonsignificance with regard to the proposed revisions to Chapter 12.12 SMC;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH,
WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:**

Section 1. Chapter 12.12 of the Snohomish Municipal Code is hereby amended to read as follows:

Chapter 12.12

RIGHT-OF-WAY USE PERMIT

Sections:

- 12.12.010 Purpose
- 12.12.020 Activities Regulated
- 12.12.030 Definitions
- 12.12.040 Permit Required
- 12.12.050 Permit Exceptions
- 12.12.060 Other Permits
- 12.12.070 Permit Application
- 12.12.080 Conditions
- 12.12.090 Permit Pre-Inspection
- 12.12.100 Refusal of Application
- 12.12.110 Permit Limitation
- 12.12.120 Permit Expiration
- 12.12.130 Permit Fees
- 12.12.140 Performance Deposits and Warranty Guarantee
- 12.12.150 Insurance Required
- 12.12.160 Debris and Spilled Loads in the Rights-of-Way
- 12.12.170 Truck/Haul Routes
- 12.12.180 Variances
- 12.12.190 Permit Suspension or Revocation

- 12.12.200 Methods of Enforcement
- 12.12.210 Civil Infraction – Penalties
- 12.12.220 Adoption of Standards and Procedures
- 12.12.230 Liability
- 12.12.240 Severability

12.12.010 Purpose. It is the purpose of this ordinance to establish a method to regulate, by permit, activities that involve construction, disturbance, modification, permanent and temporary uses, and maintenance within the rights-of-way in the City of Snohomish in the interest of public health, safety, and welfare.

12.12.020 Activities Regulated. This ordinance shall regulate the following activities and uses:

Street Alteration or 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.

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: Chapter 12.20 of the Snohomish Municipal Code contains additional provisions concerning sidewalk regulations.

Utility Connections. Activities involving the installation or repair of utilities (such as, side sewers, natural gas, power, and water services) not installed by the City, whether or not City rights-of-way are disturbed. Title 15 of the Snohomish Municipal Code outlines specific requirements for filing applications for water and sewer service and shall be read as supplemented by this ordinance.

Miscellaneous Permanent Uses and Alterations. Activities, uses, and alterations that involve disturbance to, occupation of, or installation or construction within the rights-of-way of a long-term permanent nature, such as installation of street trees, landscaping, planters, bus shelters, fountains, clocks, flag poles, fences, awnings, marquees, benches, permanent structures, permanent signs, fixed street furniture, or similar fixtures.

Temporary Uses and Alterations. Activities, uses, and alterations that involve disturbance to, or occupation of, or installation or construction within the rights-of-way of a temporary nature, such as temporary street or sidewalk closures, haul routes of limited duration, placement of materials, fencing, overhead protection, etc. during development or construction upon private property, storage containers, special events, and community or neighborhood celebrations.

12.12.030 Definitions. The following words and phrases when used in this ordinance shall have the meanings ascribed to them in this section:

City Utility Easements. All private areas specified on appropriate documents, whether of record or not, as being reserved for installation of City utilities, including sewer, storm, and water facilities.

Minor Repair or Construction. 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 and mechanical equipment other than ordinary domestic tools are not required. 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, or pruning vegetation within the right-of-way.

Multiple Use Permit. A permit issued to a public utility or other entity by the City authorizing repetitive activities within City rights-of-way. Such permit will be issued in lieu of separate permits for each activity, where in the City Engineer's discretion a separate permit for each activity would be unduly burdensome.

Rights-of-Way. All public streets and property granted or reserved for, or dedicated to, public use for streets and all public utilities therein, including easements in favor of the City, together with public property granted or reserved for, or dedicated to, public use for curbs, gutters, and walkways or sidewalks, whether improved or unimproved, including the air rights, subsurface rights, and all easements in favor of the City related thereto.

Unsafe Condition. Any condition which the City Engineer determines poses a hazard to the health, safety, or welfare of the public or endangers the safe use of the rights-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the rights-of-way, or which may cause damage to the right-of-way.

12.12.040 Permit Required. No person, partnership, corporation, or other entity shall use or alter the City rights-of-way or easements with activities described in Section 2 above, without first obtaining from the City a separate right-of-way permit for each disturbance from the City. Multiple use permits may be issued by the City Engineer for public utility companies or other entities who, as their principal business, regularly conduct activities in the rights-of-way at various locations in the City. Such permits shall not eliminate the responsibility of an owner of a multiple use permit from notifying the City prior to use or alteration of any City right-of-way, or from obtaining any franchise easement or license authorized by law and required by the City.

12.12.050 Permit Exceptions. A right-of-way use permit shall not be required in advance of work performed in the rights-of-way in responses to emergencies such as gas leaks, down lines, or similar emergencies, provided that the City shall be notified by the responding utility or contractor by telephone as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or contractor from the requirement to obtain a right-of-way use permit and to comply with all standards and procedures after beginning emergency work in the right-of-way.

Permits shall not be required for work performed by City maintenance crews, or contractors working for the City.

The City Engineer 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.

12.12.060 Other Permits. Additional permits for activities in the City rights-of-way for any use may be required by other City ordinances. If the permitting requirements of this ordinance conflict with the provisions of other City ordinances, this ordinance shall control.

12.12.070 Permit Application. To obtain a permit, the applicant shall file a complete application in writing on a form provided by the City for that purpose, including any attachments as may be required by the City, and in accordance with instructions provided in the application form.

12.12.080 Conditions-General Conditions (required of all applicants):

1. Comply with all applicable City ordinances, City design and construction standards, specifications, policies, and administrative procedures.
2. Agree to defend, indemnify, and hold harmless the City of Snohomish, its officers, employees, and agents, for any and all suits, claims, causes of action, or liabilities caused by or arising out of any activities conducted by the permittee resulting from issuance of the permit.
3. Agree to maintain ingress and egress for vehicles and persons to abutting property at all times, unless written consent for an alternative plan is obtained from the City and impacted business or property owner.
4. Agree to provide all safety equipment such as barricades, caution lighting, and personnel for traffic control.
5. Agree to be responsible for restoration and clean-up of the street, sidewalk, or curb and gutter to original or better condition immediately upon completion of the project.
6. Agree to special notification of the City, affected property owners and tenants, or other agencies as specified by the City Engineer.
7. The City Engineer may specify time limits on temporary uses, structures, and activities. If applicable, the permit shall identify the start and end dates, times, and scope of use, occupancy, or disturbance of a public right-of-way. Activities that affect pedestrian and vehicular passage may be limited to the time of day and dates of disturbance identified on the permit.
8. **Special Conditions.** The City Engineer may, at his or her discretion, attach other special conditions to any permit. Such condition(s) shall be necessary to satisfy the purpose of this Chapter and to protect the public's health, safety, and welfare.

12.12.090 Permit Pre-Inspection. Prior to the issuance of any right-of-way permit, the location may be inspected by a City official for the purpose of determining the most satisfactory location for the installation, or for other conditions that may be placed on the permit.

12.12.100 Refusal of Application. Wherever a proposed use or alteration in the public streets or rights-of-way within the City will create an exceptional traffic hazard or will unreasonably restrict the use of City streets, or create an unreasonable hazard to the travel or safety of pedestrians thereon; or where reasonable alternatives are available which will meet the applicant's needs with lesser impact to public rights-of-way, or where adequate provisions have not been made for the complete restoration and repair of the right-of-way after its use, the City Engineer, at his/her discretion, may refuse or require modification of any application made under the terms of this ordinance.

12.12.110 Permit Limitation. The issuance or granting of a right-of-way permit or approval of plans and specifications shall not be construed to be a permit for, or approval of, any violation of the provisions of this ordinance, or any other ordinance or rule or regulation of the City.

12.12.120 Permit Expiration. Unless provided otherwise on the face of the permit, every permit issued by the City under the provisions of this ordinance shall expire ninety (90) days after issuance of the permit. At the discretion of the City Engineer, the City may extend the expiration date of a valid permit for up to an additional ninety (90) days. Any additional extensions of time may be granted by the City Engineer and shall require payment of an additional fee equal to the original permit application fee, provided a written request for extension is submitted to the City prior to the expiration of the permit as extended.

12.12.130 Permit Fees. Permits required under this ordinance shall be issued by the City Engineer upon proper application therefor and upon payment of fees to be set by separate Council resolution.

12.12.140 Performance Deposits and Warranty Guarantee. Before a permit may be issued under the provisions of this ordinance, the applicant shall satisfy the conditions established in the City Design and Construction Standards and Specifications for guarantee of performance and warranty which are adopted by this reference. Deposit of funds or instruments for satisfying these conditions shall be made with the City Treasurer. Said cash deposit or bond shall further guarantee that all excavation and street restoration work shall be free from settling and defects in workmanship or materials for a period of up to two (2) years after the date said work is completed and accepted by the City.

12.12.150 Insurance Required. No permit shall be issued until the permittee has filed with the City a certificate of commercial general liability insurance with limits of at least \$1,000,000 combined single limit per occurrence, including the City as a named insured and stating that the City will receive 45 days notice prior to any insurance policy changes or cancellation.

12.12.160 Debris and Spilled Loads in the Rights-of-Way. Whenever it is necessary for the safety of the public, the City may remove any obstructions, hazards, or nuisances from the rights-of-way; and anyone causing the obstructions, hazards, or nuisances shall be responsible for reimbursing the City for the expense of such removal. The owner or operator of any vehicle which has spilled, dropped, dumped, or in any manner deposited any matter upon the right-of-way shall cause the right-of-way to be cleaned to the satisfaction of the City Engineer. Upon failure to do so, the City may cause to have cleaned the rights-of-way, and the costs thereof shall be charged to the person or persons so responsible.

12.12.170 Truck/Haul Routes. Consistent with state or federal requirements and SMC Chapter 11.12, the City Engineer shall have the authority to designate haul routes and time of day for operations involving public rights-of-way and may issue special permits as provided in SMC 11.12.040.

12.12.180 Variances. The land use hearing examiner shall have authority to grant variances from any and all provisions of this ordinance and any standards adopted hereunder. All applications for a variance shall be in writing to the City Clerk and shall be accompanied by a \$500 application fee. The applicant shall be given ten (10) days' notice of the date on which the land use hearing examiner shall consider the variance. The land use hearing examiner may grant a variance only upon a finding that all of the following facts and conditions exist:

A literal enforcement of this ordinance would cause practical difficulties or a unique hardship which was not self-generated; and

No material detriment will result to public health, safety, or welfare; and

No material increase in the likelihood of exposure of the City to liability for claims or damages; and

No violation of any other laws, rules, regulations, or policies applicable to the applicant's intended use.

In approving a variance request, the land use hearing examiner may impose such conditions as it deems necessary and appropriate to carry out the spirit and purposes of this ordinance and to protect the long-range plans of the City right-of-way system and the public interest. Each variance shall be considered on a case-by-case basis and shall not be construed as setting precedent for any subsequent application. The decision of the land use hearing examiner shall be final. Any party aggrieved by the decision of the land use hearing examiner shall have a right to file an application for Writ of Certiorari in the Snohomish County Superior Court; PROVIDED, that the application must be filed and served within a twenty (20) day period after the effective date of the decision.

12.12.190 Permit Suspension or Revocation. The City Engineer may, in writing, suspend or revoke a permit issued under the provisions of this ordinance for any of the following reasons:

Whenever the permit was issued in error or on the basis of incorrect information supplied.

Whenever the work does not proceed in accordance with the plans as approved, or conditions of approval.

Whenever, in the judgment of the City Engineer, the work is not being performed in compliance with the requirements of this ordinance, or other City ordinances or state or federal law.

Whenever the City has been denied reasonable access to investigate and permitted work is proceeding.

Whenever any excavation or fill endangers or may reasonably be expected to endanger the public, the adjoining property or street, or utilities in street.

Upon suspension or revocation of a permit, all work in the right-of-way shall cease, except as authorized or directed by the City Engineer.

12.12.200 Methods of Enforcement. The City is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions:

Serving of oral and written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition.

Service of a written notice of violation, ordering corrections or discontinuance of a specific condition or activity within a reasonable period of time.

Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work.

Suspension or revocation of a permit as provided above.

Commencement of a civil action by the City Attorney or issuance of a civil violation or other legal process pursuant to SMC 1.01.080 and Chapter 1.14 SMC.

(Ord. 2155, 2008)

12.12.210 Civil Infraction – Penalties. It is unlawful for any person, firm, or corporation to disrupt a street or cause the same to be done in violation of any of the provisions of this ordinance. Both the contractor and owner and/or permittee and/or any agents of the owner will be held jointly and severally responsible and liable under this ordinance. Additionally, the City shall have the right to require full restoration of the street to original or better condition immediately upon completion of the project, or to require that the applicant reimburse the City for all costs of street restoration. Violation of this Chapter shall be considered a civil violation pursuant to SMC 1.01.080 and Chapter 1.14 SMC, except as otherwise provided therein. (Ord. 1927, 1999; Ord. 2155, 2008)

12.12.220 Adoption of Standards and Procedures. The City Engineer shall prepare and the City Council shall adopt by resolution standards and procedures for the purpose of implementing this ordinance. Policies for implementing procedures may be developed by the City Engineer as needed.

12.12.230 Liability. The obligation of complying with the requirements of this ordinance rests upon the permittee, and no provision is intended to impose any special duty upon the City, or any of its officers, employees, or agents. Nothing contained in this ordinance or any procedures adopted hereunder is intended to be or shall be construed to create a special relationship with any contractor, owner, permittee, or member of the public, or form the 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 the permittee to comply with the provisions thereof, or by reason or in consequence of

any act or omission in connection with the implementation of enforcement of this ordinance or any procedures adopted hereunder by the City, its officers, employees, or agents.

Section 2. Effective Date. This Ordinance shall take effect five days after publication by summary.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

ADOPTED by the City Council and **APPROVED** by the Mayor this 5th day of January, 2010.

CITY OF SNOHOMISH

By _____
KAREN GUZAK, MAYOR

Attest:

By _____
TORCHIE COREY, CITY CLERK

Approved as to form:

By _____
GRANT K. WEED, CITY ATTORNEY