

CITY OF ROSLYN

WASHINGTON

ORDINANCE NO. 1133

AN ORDINANCE OF THE CITY OF ROSLYN, WASHINGTON, RELATED TO USE OF PUBLIC RIGHTS OF WAY, AMENDING CHAPTER 8.40 OF THE ROSLYN MUNICIPAL CODE RELATING TO SPECIAL USES; AMENDING CHAPTER 12.05 OF THE ROSLYN MUNICIPAL CODE RELATED TO USE OF STREETS AND PUBLIC WAYS FOR TELECOMMUNICATIONS PURPOSES; AMENDING CHAPTER 18.30 OF THE ROSLYN MUNICIPAL CODE RELATED TO PROJECT REVIEW CLASSIFICATIONS; ENACTING A NEW CHAPTER 12.50 OF THE ROSLYN MUNICIPAL CODE ENTITLED, "USE OF STREETS AND RIGHTS-OF-WAYS"; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City generally holds right-of-way easements for public travel and regulates use of such rights-of-way to avoid interference with the public's rights; and

WHEREAS, the City Council finds that permitting certain use of the public rights of way will promote the public interest; and

WHEREAS, the City Council desires to amend the Roslyn Municipal Code to provide for the use of the public rights of way in a manner which furthers the public interest;

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

Section 1. RMC Section 8.40.010, Amended. Roslyn Municipal Code Section 8.40.010, "Purpose," is hereby amended to read as follows:

8.40.010 Purpose and application.

The purpose of this chapter is to establish the conditions under which certain special and temporary uses of ~~buildings and public~~ and private property and structures may be permitted for a limited period of time when safe and compatible with the general vicinity and adjacent uses. Applications for special uses, ~~special events,~~ and temporary uses shall be subject to a Class 1 review unless referred to the Planning and Historic Preservation Commission by the Mayor and/or his or her designee for a Class 1A or Class 2 review. This section does not apply to special events governed by

Chapter 5.20 RMC or the use of public property governed by Title 12.

Section 2. RMC Section 8.40.040, Amended. Roslyn Municipal Code Section 8.40.040, “Use of public right-of-way”, is hereby amended to read as follows:

8.40.040 Use of public right-of-way.

Any person proposing a special or temporary use which also proposes or affects the use of public right-of-way shall obtain a special event permit pursuant to Chapter 5.20 RMC or a right-of-way permit pursuant to Chapter 12.50 RMC, as applicable.

Section 3. RMC Chapter 12.05, Amended. The title of Chapter 12.05 of the Roslyn Municipal Code Section is hereby amended to, “Use of Streets and Public Ways for Telecommunications Purposes.”

Section 4. RMC Section 18.30.020, Amended. Roslyn Municipal Code Section 18.30.020, “Project Review Classifications,” is hereby amended to read as follows:

Class of Review	Permit/Actions	Decision Maker	Hearing Body	Appellate Body
Class 1	-Accessory Dwelling Unit Permit -Binding Site Plan (Final approval) -Building Permit ¹ -Business License ⁵ -Certificate of Occupancy -Certificate of Zoning Compliance -Clearing and Grading Permits ³ -Code Enforcement Actions -Code Interpretations -Completeness Determination -Deck and Fence Permit -Demolition Permit ³ -Determination of Consistency -Determination of Exempt Activity -Home Businesses -Lot Line Adjustment	Planning or Building Official <u>Mayor or his/her Designee</u>	None	City Council ⁹

Class of Review	Permit/Actions	Decision Maker	Hearing Body	Appellate Body
	<ul style="list-style-type: none"> -Public Agency Utility Exception -Reasonable Use Exceptions⁷ -Right-of-Way Use Permit -SEPA Actions -Sign Permit -Significant Tree Removal Permit -Special Use Permit⁶ - Special Events Permit, Minor or Moderate -Unclassified Permits -Wireless Communication Facility – Personal 			
Class 1A	<ul style="list-style-type: none"> -Architectural Design Review -Historic Register Design Review -Special Property Tax Valuation Agreement⁴ 	Planning and Historic Preservation Commission	None	City Council ⁹
Class 2	<ul style="list-style-type: none"> -Conditional Use Permit -Reasonable Use Exception (Referrals) -Short Plat Approvals (Less than five lots) -Variance -Wireless Communication Facility – Minor - Special Events Permit, Major 	Planning and Historic Preservation Commission	Planning and Historic Preservation Commission	City Council ⁹

Class of Review	Permit/Actions	Decision Maker	Hearing Body	Appellate Body
Class 3	-Binding Site Plan -Essential Public Facility Permit -Subdivision Approvals (Five+ lots) -Master Planned Development ⁸ -Street and Alley Vacation	City Council	City Council ²	Superior Court
Class 4	-Comprehensive Plan Amendment -Rezone or Code Amendment -Future Land Use or Official Zoning Map Amendment	City Council	City Council ²	Superior Court

Footnotes:

1. Required architectural or historic register review must be completed before a building permit may be issued. Appeals of building permit decisions shall be heard by the Mayor and/or his/her designee in accordance with the provisions of this title.
2. The city council may request that the Planning and Historic Preservation Commission or a professional hearing examiner conduct the required public hearing and make a recommendation.
3. Must be processed concurrent with all associated permits and approvals.
4. Appeals of decisions of the Planning and Historic Preservation Commission on special property tax valuation shall be made in Kittitas County superior court.
5. Business licenses shall be processed by the clerk-treasurer unless otherwise designated by the Mayor. New businesses must apply for, receive, and maintain in good standing at all times a city business license, which shall include a certificate of zoning compliance.
6. Special use permits shall be processed by the ~~clerk-treasurer~~ planning official unless otherwise designated by the Mayor. Special use permits may be referred to the Planning and Historic Preservation Commission as a Class 1A or Class 2 permit.
7. Reasonable use exceptions may be referred by the planning official to the Planning and Historic Preservation Commission for processing as a Class 2 permit.

8. The Planning and Historic Preservation Commission shall conduct such public meetings and discussions as may be necessary to make a recommendation on proposed master planned developments in accordance with the provisions of this title.

9. The city council may delegate appeals of Class 1 decisions to the Planning and Historic Preservation Commission or a professional hearing examiner, and may delegate appeals of Class 1A and 2 decisions to a professional hearing examiner.

Section 5. New RMC Chapter 12.50 Established. A new Roslyn Municipal Code Chapter 12.50, "Use of Streets and Right-of-Ways," is hereby established to read as follows:

CHAPTER 12.50

USE OF PUBLIC STREETS AND RIGHT-OF-WAYS

12.50.010 Purpose and application.

The purpose of this chapter is to establish conditions for the use of a public right-of-way. This Chapter does not apply to uses of public ways for telecommunication purposes governed by RMC Chapter 12.05. Permits under this chapter shall not be required for public use; i.e., persons using the right-of-way as pedestrians or while operating motor or non-motorized vehicles for routine purposes such as travel, commuting, or personal business.

12.50.020 Permit Requirements.

A. It is unlawful for anyone to perform work of any kind in a public right-of-way, or to make private use of any public right of way without a right of way use permit issued by the City.

B. The decision by the City to issue a permit shall include, among other factors determined by the City, the following:

1. The capacity of the public right-of-way to accommodate the facilities or structures proposed to be installed in the public right-of-way.
2. The capacity of the public right-of-way to accommodate wire in addition to cables, conduits, pipes or other facilities or structures of other existing users of the public right of way, such as electrical power, gas, surface water, sewer and water.
3. The damage or disruption, if any, of public or private facilities, improvements, or landscaping previously existing in the public right-of-way.

4. The public interest in minimizing the cost and disruption of construction caused by numerous excavations of the public right-of-way.

C. The issuance of a permit for use of a right-of-way is subject to the use and needs of the City and the general public, whether such needs are temporary or permanent, or for public or private purposes (i.e., utility construction work in the right of way by private service provider), and is a grant of a temporary revocable privilege to use a portion of the public right-of-way to serve and benefit the general public. The applicant shall have the burden to prove that any proposed use will enhance and further the public interest consistent and not in conflict with the use of the right-of-way by the general public and the City for other authorized uses and activities.

12.50.030 Right-of-Way Use Permits.

A. Type A – Short-Term.

1. Type A permits may be issued for use of a right-of-way for 72 or fewer continuous hours, which do not involve any physical disturbance of the right-of-way.
2. This type of use may involve disruption of pedestrian and vehicular traffic or access to private property, and may require inspections, cleanup and police surveillance. For periods longer than 72 hours, these uses will be considered Type C, long-term.
3. Type A permits include but are not limited to the following:
 - a. Temporary sale of goods.
 - b. Temporary street closures.
4. Type A permits do not include those events or activities which require a special event permit pursuant to Chapter 5.20 RMC.

B. Type B – Infrastructure and Grading on Private Property and City Right of Way and Disturbance of City Right of Way.

1. Type B1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. Type B2 permits

shall be required for infrastructure work and grading within the public right-of-way. Type B1 and B2 permits may be issued for a period not in excess of 180 continuous days, for activities that may alter the appearance of or disturb the surface or subsurface of the City right-of-way.

2. Type B1 and B2 permits include, but are not limited to:
 - a. Boring.
 - b. Culverts.
 - c. Curb cuts.
 - d. Paving.
 - e. Drainage facilities.
 - f. Driveways.
 - g. Fences.
 - h. Landscaping.
 - i. Painting/Striping.
 - j. Sidewalks.
 - k. Street trenching.
 - l. Utility installation, repair, replacement.

D. Type C – Long-Term

1. Type C permits may be issued for use of a right-of-way, for any period in excess of 72 hours, for activities occurring for extended periods of time.
2. The use of the right-of-way for structures, facilities, and uses that involve capital expenditures and long-term commitments of use require this type of permit.
3. Type C permits include, but are not limited to:
 - a. Air rights and aerial facilities.
 - b. Bus shelters and stops.
 - c. Access to construction sites and haul roads.
 - d. Loading zones.
 - e. Newspaper sale, distribution, and storage facilities.
 - f. Recycling facilities.
 - g. Sales structures.
 - h. Sidewalk cafes.
 - i. Special and unique structures, such as awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture.
 - j. Underground rights.

- k. Utility facilities.
- l. Waste facilities.
- m. Retaining walls.
- n. Other long-term disturbances of the right of way.

E. Type D – Short-term Disturbance of City Right of Way

1. Type D permits may be issued for use of a right-of-way, for a period not in excess of 180 continuous days, for those activities that have the potential of altering the appearance of, or disturbing the surface or subsurface of, the right-of-way.
2. Type D permits include, but are not limited to:
 - a. Frequent use hauling involving an average of six loaded vehicles per hour during any eight hour period in one day, for two or more consecutive days.
 - b. Any hazardous waste hauling.
 - c. Type D permits may be issued to a general contractor to authorize construction and fill activities by the said general contractors or subcontractors.

F. Type E – Blanket Permits

The Director of Public Works (hereafter referred to as the “Director”) may issue blanket permits to any person to make utility service connections, to locate trouble in utility conduits or pipes, for making repairs thereto, or for emergency purposes. Blanket permits shall be issued for a period of 365 days (one year), and shall only authorize work referred to in this chapter.

12.50.040 Application Contents.

A. To obtain a right-of-way use permit, the applicant shall submit, in the format and manner specified by the Director, an application with the City.

B. Every application shall contain:

1. The name, address, telephone and facsimile number of the applicant, or other sufficient contact information. Where an applicant is not the owner of the facility to be installed, maintained or repaired in the public right-of-way, the application shall also include the name, address, telephone and facsimile number of the owner.

2. A description of the location, proposed use of the public right-of-way, method of excavation, surface and subsurface area of proposed excavation, and method of restoration.
3. A plan showing the proposed location and dimensions of the excavation; the facilities to be installed, maintained, or repaired in connection with the excavation; and such other details as the City may require.
4. A copy or other documentation of the franchise, easement, encroachment permit, license or other legal instrument that authorizes the applicant or owner to use or occupy the public right-of-way for the purpose described in the application. Where the applicant is not the owner of the facility or facilities to be installed, maintained, or repaired, the applicant must demonstrate in a form and manner specified by the Director their authorization to act on behalf of the owner.
5. The proposed start date of the use or excavation.
6. The proposed duration of the use or excavation, which shall include the duration of the restoration of the public right-of-way physically disturbed by the excavation.
7. Written acknowledgment that the applicant and owner are in compliance with all terms and conditions of this title, the orders, regulations, and standard plans and specifications as promulgated by the Director; and that the applicant and owner are not subject to any outstanding assessments, fees or penalties that have been finally determined by the City or a court of competent jurisdiction.
8. A current business license issued by the City of Roslyn, if applicable.
9. Evidence of insurance as required by Section 12.50.110.
10. A deposit as required by Section 12.50.120.
11. A traffic control plan to be approved by the Department.
12. Any other information that may be reasonably required by the City.

13. An application fee as required by RMC 12.50.070.

C. The Director or his/her designee shall examine each application submitted for review and approval to determine if it complies with the applicable provisions and procedures of this chapter. Other departments that have authority over the proposed use or activity may be requested to review and approve or disapprove the application. If the Director finds that the application conforms to the requirements of this chapter and the procedures adopted under this chapter, that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by another department with authority, the Director may approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety, and to mitigate any impacts resulting from the use.

D. All applications for permits will be submitted at least 30 days before the planned need for the permit. If unforeseen conditions require expedited processing, the City will attempt to cooperate, but additional fees to cover additional costs to the City may be charged to the applicant.

12.50.050 Permit – No Assignment or Transfer.

Permits shall not be transferable or assignable, and work shall not be performed under a permit in any place other than that specified in the permit. Nothing herein contained shall prevent a permittee from subcontracting the work to be performed under a permit; provided, however, that the permit holder shall be and remains responsible for the performance of the work under the permit, and responsible for all bonding, insurance and other requirements of this title and under said permit.

12.50.060 – Emergency Work.

A. Any authorized permit or franchise holder maintaining pipes, lines, or facilities in the public right-of-way may proceed with work upon existing facilities without a permit when emergency circumstances demand that work be done immediately, provided that a permit cannot be reasonably and practicably obtained beforehand.

B. In the event that emergency work is commenced on or within any public right-of-way of the City during regular business hours, the Director shall be notified within 1/2 hour from the time the work commences. The permit or franchise holder commencing and conducting such work shall take all necessary safety precautions for the protection of the public, the direction and control of traffic,

and shall insure that work is accomplished according to City Standards, regulations, the Manual on Uniform Traffic Control Devices, and other applicable laws, regulations or generally recognized practices in the industry.

C. Nothing contained in this chapter shall be construed to prevent any permit or franchise holder from taking any action necessary for the preservation of life or property or for the restoration of interrupted service provided by a municipal or utility excavator when such necessity arises during days or times when City offices are closed. In the event that any permit or franchise holder takes action to excavate or cause to be excavated the public right-of-way, such permit or franchise holder shall apply for an emergency permit within 24 hours after the City's offices first open. The applicant for an emergency permit shall submit a written statement that addresses the basis of the emergency action, and describes the excavation performed and work remaining to be performed.

12.50.070 Permit Fees and Charges.

A. Except where such authority is delegated to the Planning and Historic Preservation Commission, the Director shall be responsible for the plan review, plan approval, inspection and acceptance of all construction within any public right-of-way and all public works improvement projects, such as streets, sidewalks and walkways, street lighting systems, storm drainage systems (public and private), water systems (public and private), sewer systems (public and private), and utilities; and shall make a charge therefor to the developer.

B. The fee for these services shall be set forth in a fee schedule to be adopted by motion or resolution of the Roslyn City Council.

C. Type A, B, D, and E permit fees will be a flat rate.

D. Type B1 permits shall be required for on-site development including, but not limited to, infrastructure work and grading performed on private property. The total fees for Type B1 permits shall consist of the following parts:

1. An Application Base Fee, which is associated with establishing the necessary files;
2. A fee associated with the plan review and approval of the construction plans;
3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to

be determined from the value of the construction on private property; and

4. A Grading Plan Review. For Type B1 permits, the developer shall submit separate cost estimates for each item of improvement. The City will check the accuracy of these estimates.

E. Type B2 permits shall be required for infrastructure work and grading performed within the City right-of-way. The total fees for Type B2 permits shall consist of the following parts:

1. An Application Base Fee, which is associated with establishing the necessary files;
2. A fee associated with the plan review and approval of the construction plans, the fee amount determined from the value of the construction within the public right-of-way;
3. A fee associated with the issuance of the permit and the required inspection of the construction, the fee amount to be determined from the value of the construction within the public right-of-way;
4. A pavement mitigation fee associated with the loss of pavement life from the proposed excavation in the public right-of-way, the fee amount determined from the square footage of excavation being performed and the age of the pavement; and
5. A Grading Plan Review.

F. A non-refundable deposit, equal to the fee associated with an application base fee and the review and approval of construction plans, is due and payable prior to starting the review, with the balance of the total fee due and payable prior to issuance of the permit. Two reviews of the construction plans are included in the above referenced fee, an original review and a follow-up review associated with a correction letter. Each additional re-review, which is attributed to the developer's action or inaction, shall be charged as a separate transaction in accordance with the fee schedule. Should additional fees for re-review be imposed, they will be added to the balance due and be payable prior to issuance of the permit.

12.50.080 Revocation of Permits.

A. The Director may revoke or suspend any permit issued under this chapter whenever:

1. The activity does not proceed in accordance with the plans as approved, in accordance with conditions of approval, or is not in compliance with the requirements of this chapter or procedures, or other City ordinances, or State laws;
2. The City has been denied access to investigate and inspect how the right-of-way is being used;
3. The permittee has misrepresented a material fact in applying for a permit (a material fact is a fact which, had the truth been known at the time of the issuance of the permit, the permit would not have been granted);
4. The progress of the permitted activity indicates that it is – or will be – inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers – or appears reasonably likely to endanger – the public, the adjoining property or 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 by the Director.

C. Continued activity following revocation or suspension under this section shall subject each and every violator to the maximum penalties provided by this chapter, with every day constituting a new violation.

12.50.090 Renewal of Permits.

Each permit shall be of a duration as specified on the permit. A permit may be renewed at the discretion of the Director, if requested by the permit holder before expiration of the permit; provided, however, that the use or activity is progressing in a satisfactory manner as reasonably determined by the Director.

12.50.100 Insurance.

A. Unless the Director determines that there is not a probability of injury, damage, or expense to the City arising from an applicant's proposed use of the right-of-way or public place, the permittee shall maintain in full force and effect, throughout the term of the permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the Director, having a policyholders' surplus of at least \$20,000,000, or if insurance is

written by more than one company, each company shall have policyholders' surplus of at least 10 times the amount insured. Policy or policies shall afford insurance covering all operations, vehicles, and employees with the following limits and provisions:

1. Comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability; personal injury; explosion hazard, collapse hazard, and underground property damage hazard; products; and completed operations.
2. Business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired auto coverage, as applicable.
3. Contractors' pollution liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, and any deductible not to exceed \$25,000 each occurrence.
4. Said policy or policies shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered there under, and shall provide for severability of interests.
5. Underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policy so affected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
6. The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.
7. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its employees, officers, officials, agents, volunteers, and assigns.

8. Each insurance policy shall be endorsed to state that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested sent to the City.
9. Each policy shall be endorsed to indemnify, save harmless and defend the City and its officers and employees against any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of permit work done by Permittee, his/her subcontractor or agent, whether or not the work has been completed and whether or not the right-of-way has been opened to public travel.
10. Each policy shall be endorsed to indemnify, hold harmless and defend the City, and its officers and employees against any claim or loss, damage or expense sustained by any person occurring by reason of doing any work pursuant to the permit including, but not limited to, falling objects or failure to maintain proper barricades and/or lights as required from the time work begins until the work is completed and the right of way is opened for public use.

B. The permittee shall furnish the City with certificates of insurance and original endorsements affecting coverage required by the permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City expressly reserves the right to require complete, certified copies of all required insurance policies at any time. Consequently, the permittee shall be prepared to provide such copies prior to the issuance of the permit.

C. If any of the required policies are, or at any time become, unsatisfactory to the City as to form or substance, or if a company issuing any such policy is, or at any time becomes, unsatisfactory to the City, the permittee shall promptly obtain a new policy, submit the same to the City for approval, and thereafter submit verification of coverage as required by the City. Upon failure to furnish, deliver and maintain such insurance as provided herein, the City may declare the permit to be in default and pursue any and all remedies the City may have at law or in equity, including those actions outlined in this chapter.

D. The permittee shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements

for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

E. A property owner performing work adjacent to his/her residence may submit proof of a homeowner's insurance policy in lieu of the insurance requirements of this section.

12.50.110 Deposits, Fees and Bonds.

A. Except as noted in this chapter, each applicant, before being issued a permit, shall provide the City with an acceptable security (this may include a corporate surety bond, cash deposit or letter of credit) in the amount of 150% of the value of the work being performed within the public right-of-way in order to guarantee faithful performance of the work authorized by the permit granted pursuant to this chapter. The amount of the security required may be increased or decreased at the discretion of the Director whenever it appears that the amount and cost of the work to be performed may vary from the amount of the security otherwise required under this chapter.

B. Public utilities franchised by the City shall not be required to file any security if such requirement is expressly waived in the franchise documents.

C. The applicant shall provide a Maintenance Bond that guarantees workmanship and materials for a period of two years following the completion of the work, with reasonable wear and tear excepted. Notwithstanding the foregoing, utilities shall guarantee workmanship and materials;

D. The security required by this section shall be conditioned as follows:

1. That the permittee shall fully comply with the requirements of the City ordinances and regulations, specifications and standards promulgated by the City relative to work in the Public right-of-way, and respond to the City in damages for failure to conform therewith;
2. That after work is commenced, the permittee shall proceed with diligence and shall promptly complete such work and restore the public right-of-way to City standards, so as not to obstruct the public place or travel thereon more than is reasonably necessary;
3. That unless authorized by the Director on the permit, all paving, resurfacing or replacement of street facilities on

principal arterial, major or collector streets shall be done in conformance with the regulations contained herein within three calendar days, and within seven calendar days from the time the excavation commences on all other streets, except as provided for during excavation in winter or during weather conditions which do not allow paving according to City standards. In winter, a temporary patch must be provided. In all excavations, restoration or pavement surfaces shall be made immediately after backfilling is completed or concrete is cured. If work is expected to exceed the above duration, the permittee shall submit a detailed construction schedule for approval. The schedule will address means and methods to minimize traffic disruption and complete the construction as soon as reasonably possible.

12.50.120 Hold Harmless.

As a condition to the issuance of any permit under this chapter, the permittee shall be required to execute a written agreement to forever hold and save the City free and harmless from any and all claims, actions or damages of every kind and description that may accrue to or be suffered by any person by reason of the use of such public place or the construction, existence, maintenance, use or occupation of any such structure, services, fixtures, equipment, and/or facilities on or in a public place pursuant to this chapter. In addition, such agreement shall contain a provision that the permit is wholly of a temporary nature, and that it vests no permanent right whatsoever.

12.50.130 Compliance with Specifications, Standards, and Traffic-Control Regulations.

A. The work performed in the public right-of-way shall conform to the requirements of the Development Guidelines for Public Works Standards, the Standard Specifications for Road, Bridge and Municipal Construction, and the City's Municipal Code as currently exists and as hereafter amended, copies of which shall be available from the City, kept on file in the office of the City Clerk for public inspection during office hours.

B. When a job is left unattended, before completion of the work, signage with minimum two-inch high letters shall be attached to a barricade or otherwise posted at the site, indicating the permittee's name, or company name, telephone number, and after-hours telephone number.

12.50.140 Inspections.

As a condition of issuance of any permit or authorization that require approval of the City, each applicant shall be required to consent to inspections by the Department or any City department.

12.50.150 Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions.

A. Whenever the Director determines that any condition on any right-of-way is in violation of, or any right-of-way is being used contrary to any provision of, this chapter, procedures adopted under this chapter or other applicable codes or standards, or without a right-of-way use permit, the Director may order the correction or discontinuance of such condition or any activity causing such condition.

B. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions, or activities as the Director determines appropriate:

1. Service of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition;
2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within five days of notice, or such other reasonable period the Director may determine;
3. Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed or notices served;
4. Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;
5. Service of notice and order or service of a criminal citation to appear by a law enforcement officer upon the permittee or other responsible person who is in violation of this chapter or other City ordinances.

C. Any object that shall occupy any 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 of the date and time stated on the notice, the object may be taken into custody and stored at the owner's expense. The notice shall provide an address and telephone number where additional information may be obtained. If the object is a hazard to

public safety, the City may remove it summarily. Notice of such removal shall be thereafter given to the owner, if known. This section shall not apply to motor vehicles.

D. All expenses incurred by the City in abating any violation or condition shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice or who own the object or who placed it in the right-of way, which debt shall be collectible in the same manner as any other civil debt.

E. The City shall also have all powers and remedies whether legal or equitable that may be available under law or ordinance, this chapter, and procedures adopted under this chapter for securing the correction or discontinuance of any conditions specified by the City.

12.50.160 Failure to Conform to Design Standards.

For failure to conform to the Design Standards and Regulations as identified in Section 12.50.130, the Director may:

1. Suspend or revoke the permit;
2. Issue a stop work order;
3. Order removal and replacement of faulty work;
4. Require an extended warranty period; and/or
5. Negotiate a cash settlement to be applied toward future maintenance costs.

12.50.170 Warning and Safety Devices.

A. Warning lights, safety devices, signs, and barricades shall be provided on all rights-of-way when there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on rights-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the Public Works Department.

B. As a condition of the issuance of any right-of-way use permit, the Director or his/her designee may require an applicant to submit a traffic detour plan showing the proposed detour routing and location and the type of warning lights, safety devices, signs, and barricades intended to protect vehicular or pedestrian traffic at the

site for which the right-of-way use permit is requested. If a traffic plan is required, no right-of-way use permit shall be issued until after the traffic plan is approved.

C. Any right-of-way use permit that requires a partial lane or street closure may require a certified flag person, properly attired, or an off-duty police officer for the purpose of traffic control during the construction.

D. All decisions of the Director or his/her designee shall be final in all matters pertaining to the number, type, locations, installation and maintenance of warning and safety devices in the public right-of-way during any actual work or activity for which a duly authorized right-of-way use permit has been issued.

E. Any failure of a permit holder to comply with the oral or written directives of the Director or his/her designee related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way shall be cause for correction or discontinuance as provided in this chapter.

12.50.180 Clearance for Fire Equipment.

Unless when specifically authorized by the Director, all excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free from obstructions at all times.

12.50.190 Protection of Adjoining Property – Access.

The permittee shall at all times and at the permittee's expense preserve and protect from injury adjoining property by complying with such measures as the Director or designee may deem reasonably suitable for such purposes. The permittee shall at all times maintain access to all property adjoining the excavation or work site.

12.50.200 Preservation of Monuments.

The permittee shall not disturb any survey monuments or markers found on the line of excavation work until ordered to do so by the Director. All street monuments, property corners, bench marks, and other monuments disturbed during the progress of the work shall be replaced by a licensed surveyor, at the expense of the permittee, to the satisfaction of the Director or his/her designee.

12.50.210 Protection from Pollution and Noise.

The permittee shall comply with all State laws, City ordinances, and procedures adopted hereunder by the Director to protect the public from air and water pollution and excessive noise. The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work, and shall replace the same in as good condition as the permittee found them. The permittee shall not obstruct the gutter of any street, but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, or other runoff pumped from excavations or resulting from sluicing or other operations, and shall be responsible for any damage resulting from permittee's failure to so provide.

12.50.220 Impact of Work on Existing Improvements.

A. If any sidewalk or curb ramp is blocked by excavation work, a temporary sidewalk or curb ramp shall be constructed or provided. Said temporary improvement shall be safe for travel, convenient for users, and consistent with City standards.

B. Each permittee shall cover an open excavation with non-skid steel plates ramped to the elevation of the contiguous street, pavement, or other public right-of-way, or otherwise protected in accordance with City standards.

C. All excavated material that is piled adjacent to any excavation shall be maintained in such a manner so as not to endanger those working in the excavation, pedestrians, or users of the right-of-way. When the confines of the area being excavated are too small to permit the piling of excavated material next to the excavation, the Director shall have the authority to require the permittee to haul the excavated material to a storage site and then return the excavated material to the excavation at the time of backfilling. It is the responsibility of the permittee to secure the necessary permission and make all arrangements for any required storage and disposal of excavated material.

D. At any time a permittee disturbs the yard, residence or the real or personal property of a private property owner or the City, such permittee shall insure at the permittee's expense that such property is returned, replaced and/or restored to a condition that is comparable to the condition that existed prior to the commencement of the work.

E. Existing drainage channels, such as gutters or ditches, shall be kept free of dirt or other debris so that natural flow will not be interrupted. When it is necessary to block or otherwise interrupt flow of the drainage channel, a method of rerouting the flow must

be submitted for approval by the Director prior to the blockage of the channel.

12.50.230 Restoration of the Public Right of Way.

A. Restoration. In any case in which the sidewalk, street, or other public right-of-way is or is caused to be excavated, the owner and permittee shall restore or cause to be restored such excavation in the manner prescribed by the orders, regulations, and Department standards.

B. Backfill, and replacement of pavement base. Backfilling in a right-of-way opened or excavated pursuant to a permit issued under the provisions of this chapter shall be compacted to a degree equivalent to that of the undisturbed ground in which the excavation was begun, unless the Director determines a greater degree of compaction is necessary to produce a satisfactory result. All backfilling shall be accomplished according to City standards and specifications. All backfills shall be inspected and approved by the Director or his/her designee prior to any overlaying or patching.

C. Pavement restoration. The permittee shall restore the surface of any public right-of-way to its original condition and replace any removed or damaged pavement with the same type and depth of pavement as that which is adjoining, including the gravel base material. All restoration shall conform to the City Standards and shall be accomplished within the time limits set forth in the permit.

12.50.240 Coordination of Right of Way Construction.

The permittee, at the time of receiving a Type B right of way use permit, shall notify all other public and private utilities using or proposing to use the same right-of-way as the applicant's proposed construction, and the proposed timing of such construction. A utility so notified may, within seven days of such notification, request of the Director a delay in the commencement of any proposed construction for the purpose of coordinating other right-of-way construction with that proposed by the permittee. The Director may delay the commencement date of the permittee's right-of-way construction, except in emergencies, if the Director finds that such a delay will reduce the inconvenience to City right-of-way uses and if the Director finds that delay of the construction activities will not create undue economic hardship on the applicant.

12.50.250 Relocation of Structures in the Public Right of Way.

A. The Director may direct any permit or franchise holder or any other entity owning or maintaining facilities or structures in the public right-of-way to alter, modify, or relocate such facilities or

structures as may be required herein. These facilities include, but are not limited to, sewers, pipes, drains, tunnels, conduits, vaults, trash receptacles, newspaper dispensers, overhead and underground gas, electric, telephone, telecommunication and communication facilities. The City shall notify the permit or franchise holder or other entity in writing no less than 60 days and no greater than 120 days in advance, except in the case of emergencies, of Roslyn's intention to perform or have such work performed. The permit or franchise holder or other entity owning or maintaining the facilities or structures shall, at their own cost and expense, promptly protect or promptly alter or relocate such facilities or structures, or part thereof, but in no event later than three working days prior to the date Roslyn has notified the permittee, franchise holder or other entity, that it intends to commence its work, or immediately in the case of emergencies. In the event that such permit or franchise holder refuses or neglects to conform to the directive of the City, the City shall have the right to break through, remove, alter or relocate such part of the facilities or structures without liability to such person. Such person shall pay to the City all costs incurred by the City in connection with such work performed by the City, including also design, engineering, construction, materials, insurance, court costs, and attorney fees. Upon the permittee, franchise holder or other entity's failure to accomplish such work and after three working days' notice, all other work permits held by permittee, franchise holder, or other entity, may be summarily suspended, except in only an emergency, until such time as the work required under this section is completed or the City has been reimbursed for work performed.

B. Any directive by the Director shall be based upon one or more of the following:

1. The facility or structure was installed, erected, or is being maintained contrary to law, or determined by the Director to be structurally unsound or defective.
2. The facility or structure constitutes a nuisance as defined under this chapter, the RMC or State statute.
3. The permit under which the facility or structure was installed has expired or has been revoked.
4. The public right-of-way is about to be repaired or improved and such facilities or structures may pose a hindrance to construction.

5. The grades or lines of the public right-of-way are to be altered or changed.

C. Any directive of the Director under this section shall be under and consistent with the City's police power. Unless an emergency exists, the Director shall make a good faith effort to consult with the permit or franchise holder regarding any condition that may result in a removal or relocation of facilities in the public right-of-way, to consider possible avoidance or minimization of removal or relocation requirements; and the Director shall provide the directive as far enough in advance of the required removal or relocation to allow the permit or franchise holder a reasonable opportunity to plan and minimize cost associated with the required removal or relocation.

D. This obligation does not apply to facilities or structures originally located on private property pursuant to a private easement, which property was later incorporated into the public right-of-way, if that prior private easement grants a superior vested right.

E. The City may at any time, in case of fire, disaster or other emergency as determined by the City, cut or move any parts of the system and appurtenances on, over or under the public right-of-way, in which event the City shall not be liable therefore to a permit or franchise holder.

12.50.270 Abandonment and Removal of Facilities.

A. Notification of Abandoned Facilities. Any permittee, franchise holder, or other entity that intends to discontinue use of any facilities within the public rights-of-way shall notify the Director, in writing, of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use (the date shall not be less than 30 days from the date such notice is submitted), and the method of removal and restoration of the rights of way. The permittee, franchise holder, or other entity may not remove, destroy, or permanently disable any such facilities during said 30-day period without written approval of the Director. After 30 days from the date of such notice, the permittee, franchise holder, or other entity shall remove and dispose of such facilities as set forth in the notice and shall complete such removal and disposal within six months, unless additional time is requested from and approved by the Director. The Director may place conditions upon the removal and restoration in order to protect public health and safety and the public rights of way.

B. Conveyance of Facilities. At the discretion of Roslyn, and upon written notice from the Director within 30 days of the notice of abandonment, the permittee, franchise holder, or other entity may abandon the facilities in place, and shall further convey full title and ownership of such abandoned facilities to Roslyn. The consideration for the conveyance is Roslyn's permission to abandon the facilities in place. The permittee, franchise holder, or other entity is responsible for all obligations as owner of the facilities, or other liabilities associated therewith, until conveyance to Roslyn is completed.

Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 7. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 13th DAY OF June, 2017.

CITY OF ROSLYN



Brent Hals, Mayor

ATTEST/AUTHENTICATED:



Brandi Taklo, City Clerk

Approved as to form:

Ann Marie Soto, City Attorney

Filed with the City Clerk:

Passed by the City Council: June 13, 2017

Date of Publication: June 22, 2017

Effective Date: June 29, 2017