
Approval

Effective Date

Title: Sidewalk and Utilities Easements Director's Rule

Date Issued: **Month Day, 2021**

Sponsor's Name: Andrew Singelakis, Director
Transportation Department

Sponsor's Department: Transportation Department

Purpose/Short Description: To provide guidelines for reviewing applications for private use of existing public sidewalk and utility easements under the Right-of-Way Use Code, Chapter 14.30 BCC.

I. Background

The City of Bellevue Right-of-Way Code, Chapter 14.30 Bellevue City Code (BCC), regulates activities within the right-of-way in the interest of public health, safety and welfare. "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto. BCC 14.30.050(R). On occasion, the City receives requests to install underground parking, balconies and other structures above and below sidewalks.

Most of the City's sidewalks are within dedicated or deeded right-of-way, while others are located within designated sidewalk and utilities easements. For those sidewalks located within sidewalk and utilities easements, the underlying property owner retains the right to use the easement area, so long as such use does not interfere with the City's rights granted under the easement.

Under Chapter 14.30 BCC, the City requires a permit for any private use of the public right-of-way, including sidewalks, regardless of whether the sidewalk is located within dedicated or deeded right-of-way or an easement. Pursuant to BCC 14.30.090, the

Transportation Department Director¹ has authority to approve or disapprove applications for private use of the right-of-way (including sidewalks) by determining whether the application conforms to the requirements of the code and adopted procedures, provided that the proposed use will not unduly interfere with the rights and safety of the public.

Pursuant to BCC 14.30.060.A, the Transportation Department Director has authority to issue rules necessary for the administration of Chapter 14.30 BCC. The purpose of this rule is to outline the guidelines for reviewing applications for private use of existing public sidewalk and utility easements under the Right-of-Way Use Code, Chapter 14.30 BCC.

In many cases, requests to install underground parking, balconies and other structures above and below sidewalks are associated with new development proposals. Such development proposals may be required to dedicate new sidewalk and utilities easements to the City pursuant to Chapter 14.60 BCC. Each development will be evaluated on a case-by-case basis to determine the easements necessary to serve the development and mitigate the direct impacts of such development. The clearances set forth in Table 1 and depicted in Attachment C are intended as a resource for applicants and City reviewers in evaluating new development proposals to utilize the space above and below sidewalk and utilities easements that will be dedicated as part of a new development. However, the City will continue to review each private request for new development above or below City sidewalks, as well as the necessary sidewalk and utility easements, on a case-by-case basis consistent with City code.

II. Existing Sidewalk and Utility Easements

A. Subsurface Uses/Interests

Sufficient depth under sidewalks and utilities easements shall be kept clear for public and private utilities, streetlights, traffic signal equipment, and underground cabinets. Depending on the existing or anticipated facilities to be located within the easement, the necessary depth to remain clear typically ranges from 12-35 feet as outlined in Table 1 below and depicted in Attachment C. Applications for use of the subsurface area within a sidewalk and utility easement shall be evaluated on a case-by-case basis to determine the necessary depth to be preserved for existing or anticipated future utility needs. Applicants may be required to provide engineering drawings or other plans as part of such request to determine the necessary depth. In determining the minimum depth to be preserved, the Director may consider site conditions and information submitted by the applicant showing that such use will not interfere with the intended use of the easement to provide adequate space for public or private facilities.

Table 1

¹ Other departments that have authority over the proposed use activity will be required to review and approve or disapprove the application. BCC 14.30.090.

Permanent Transportation/Utility Easement Depths:					
		Minimum Vertical Depth of Esmt.⁽¹⁾⁽³⁾	Minimum Horizontal Depth of Esmt.⁽²⁾⁽³⁾	Minimum Linear Length of Esmt. ⁽³⁾	Applicable Street Classification / Designation
Typical Improvements:					
	City of Bellevue Utilities & Transportation Illumination Systems, Street Trees and Landscaping	12'	Required width of Sidewalk & Planter Strip	Length of frontage	All Arterials, Residential, Local & Alleys
	Non- City Utilities operating under Franchise or Right-of-Way Agreement only	12'	Required width of Sidewalk & Planter Strip	Length of frontage	All Arterials, Residential, Local & Alleys
	Puget Sound Energy Transmission & Distribution Systems	20'	Required width of Sidewalk & Planter Strip	Length of frontage	All Arterials, Residential, Local & Alleys
	Mono-Tube & Traffic Signal Poles & Bases	25'	Required width of Sidewalk	5' beyond Point of Curvature to 5' beyond Point of Tangency	All Arterials, Residential, Local & Alleys
	Storm Water Detention/WQ Vaults	35'	Required width of Sidewalk & Planter Strip	10' beyond limits of structure	All Arterials, Residential, Local & Alleys
⁽¹⁾	Vertical depth is measured from finished grade working line (top of curb), and must be accomplished along the entire frontage regardless of the running grade of the sidewalk.				
⁽²⁾	Horizontal depth is measured from back of curb, which generally is fee right-of-way limit				
⁽³⁾	Jogs within limits are to be avoided to the maximum extent possible				
⁽⁴⁾	Non-City Utilities operating under Franchise or Right-of-Way Agreements or pre-statehood are eligible to use permanent easement rights				

B. Aerial Uses/Interests

The City utilizes the surface and air rights associated with sidewalk and utility easements for the installation and maintenance of streetlights, traffic signals, public and private utilities (including telecommunications/wireless), and related facilities and equipment. In addition, the area is utilized for street trees and other landscaping elements required by City code. Requests for private use of this area must be evaluated based on the City's existing and anticipated future needs. Advances in technology have led to an increase in demand for attachments to streetlights and utility poles for small cell and 5G wireless facilities which require a certain clear zone to comply with federal RF emissions standards.

Like applications for private use of subsurface areas, applications for private use of the area above the sidewalk and utility easement area shall be evaluated on a case-by-case basis. City evaluation of any application requesting private use of the City's aerial rights shall consider the necessary height/clear zone to be preserved for existing or anticipated future needs at the specific location identified in the application. Applicants may be required to provide engineering drawings or other plans as part of such request to determine the necessary height. For any application requesting private use of City aerial rights, the vertical clearance to be preserved between the sidewalk grade and private structure in most cases shall be a minimum of 60 feet but in no event less than as authorized in the Land Use Code (LUC). In addition, such intrusion shall not extend into the sidewalk and utility easement area beyond the distance that is authorized by the LUC. The vertical clearance between the top of a streetlight pole, including any small wireless facility attachments, and the bottom of the building's overhang of the sidewalk area shall be 10 foot minimum to accommodate crane clearance for the installation and remove of the streetlight pole. The horizontal clearance between the center of a streetlight or SWF purpose built pole, a utility pole, the anticipated mature edge of a tree canopy, or other such use and the private structure in most cases shall be a minimum of 8 feet. In determining the minimum height to be preserved, the Director may consider information submitted by the applicant showing that such use will not interfere with the intended use of the easement to provide adequate space for public or private facilities (including but not limited to streetlight poles, street trees (at mature height/width), and Small Wireless Facilities).

III. Approval Process

A. Existing Sidewalk and Utility Easements – ROW Use Permit

Requests for use of the subsurface or aerial rights within an existing sidewalk and utility easement shall be reviewed as part of the land use process and authorized through a ROW Use permit. Approval of private subsurface and aerial uses including any approved deviations will be documented in the final land use decision and ROW Use Permit and include the conditions outlined in Attachment B. These conditions will also be included in the ROW Use permit for the subsurface or aerial improvements. A plan

sheet shall be included showing aerial and subsurface improvements as prescribed in Attachment C “Plan Sheet Drawing Requirements.” A Memorandum of Permit may also be required and

recorded against the property referencing the relevant land use, building and ROW Use permit(s) that include the obligations of the property owner with respect to the subsurface and/or aerial improvements, conditions of approval for those improvements, and plan sheet. See Attachment A.

B. New Sidewalk and Utility Easements – Limited Depth/Height Easement or Memorandum of Permit

Requirements for sidewalk and utility easements dedicated as part of a new development shall be evaluated based on the criteria set forth in Chapter 14.60 BCC. New sidewalk and utility easements with improvements above grade or below grade may be documented through the Memorandum of Permit process outlined above or may be conveyed with upper and lower limits identified. If conveyed by easement with upper and lower limits identified, such easement shall include the conditions outlined in Attachment B and shall include Attachment C showing the improvements covering both the existing and new sidewalk and utility easement if applicable.²

C. Applicability and Compliance with Code

The provisions of this rule shall not apply to removable awnings or weather protection. Such removable features are reviewed as part of the land use process, and if approved require an indemnity and hold harmless agreement be recorded against the property. In all cases the development must comply with the BCC and LUC. In the event of a conflict between the provisions of this Rule or the BCC or LUC, the BCC and LUC shall govern.

Attachment A – Memorandum of Permit Form

Attachment B – Conditions of Approval (to include in Land Use Approval and subsequent Permits)

Attachment C – Plan Sheet Drawing Requirements for Below Grade Building Permit, Building Permit, ROW Use permit.

² New sidewalk and utility easements may overlap existing easements but shall be subordinate.

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Attachment A

WHEN RECORDED, RETURN TO:

City of Bellevue

Attn: _____

Real Property Division

P.O. Box 90012

Bellevue, WA 98009

(COB use only) CR# _____ DATE _____ LOC _____

Memorandum of Permit

Grantor:

Grantee: City of Bellevue, a Washington municipal corporation

Abbreviated Legal:

Additional Legal: see attached Exhibit A

Assessors Tax Parcel ID#:

This Memorandum of Permit (the "Memorandum") is entered into on this ____ day of _____, 20__, by and between the GRANTOR, _____ and GRANTEE, CITY OF BELLEVUE, a Washington municipal corporation. Grantor has plans to use and occupy the subsurface of the public right-of-way in order to erect, install and maintain a subsurface parking garage (the "Improvements"). Under Chapter 14.30 of the Bellevue City Code (Right-of-way Use Code), as adopted or hereinafter amended, a permit is required for any private use of the right-of-way.

1. Grantee has issued to Grantor that [those] certain permit[s] numbered _____ [insert permit number(s)] _____ (the "**Permit**") concerning the real property located in King County, Washington, legally described on Exhibit A (the "**Property**"), whose terms and conditions are incorporated herein by this reference. Under the terms of the Permit, Grantor has received approval to construct certain Improvements on the Property within the right-of-way. The Permit contains certain terms and conditions for locating the Improvements in the right-of-way, including but not limited to obligations related to maintenance, indemnification, and noninterference with Grantee's use of the public right-of-way. Such terms and conditions set forth in the Permit are incorporated herein by this reference and shall run with the land and survive for the lifetime of the Improvements constructed pursuant to the Permit.

2. Purpose. This Memorandum is prepared for the purposes of recordation and to provide constructive notice of the Permit, and it in no way modifies or amends the terms and conditions of the Permit. Provisions of this Memorandum should not be used in interpreting the provisions of the Permit. In the event of conflict between this Memorandum and the Permit, the Permit shall control.
3. This Memorandum shall be recorded with the Department of Records and Elections of King County, shall be a covenant running with the land, and shall bind all subsequent owners thereof.
4. The persons who have executed this Memorandum represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

Dated this ____ day of _____, 20__.

GRANTOR:

By: _____

Its: _____

Accepted and Approved:

CITY OF BELLEVUE, a Washington municipal corporation

Approved as to Form:

By: _____

Mark Poch
Assistant Director of Transportation

By: _____

Monica Buck
Assistant City Attorney

Individual Acknowledgment

STATE OF WASHINGTON

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ and _____ are the person(s) who appeared before me, and said person(s) acknowledged that they signed this instrument, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2020.

Notary Public _____

Residing at _____

My appointment expires _____

Corporate Acknowledgment

STATE OF WASHINGTON

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ signed this instrument and, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ (title) of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 20__.

Notary Public in and for the State of Washington
Residing in _____.
My commission expires _____.

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EXHIBIT A

PROPERTY LEGAL DESCRIPTION

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Attachment B
Conditions of Approval

Applicant shall have the right to construct, operate and maintain [(1) an underground parking garage structure and necessary appurtenances thereto, including but not limited to: associated foundations, footings, and structural soil and buffers necessary for the protection of the underground parking garage structure (collectively referred to herein as "Applicant's Parking Garage") or (2) balconies and necessary appurtenances thereto, including but not limited to: _____ (the "Balconies")] within those portions of the public sidewalk and utility easement as outlined in this [land use approval/permit] subject to the following conditions.

Applicant's Parking Garage must be located below _____, in order to provide a minimum clearance of ____ (___) feet below the surface of the sidewalk. A plan sheet shall be included with such permit showing _____.

Applicant's Balconies must be located above _____, in order to provide a minimum clearance of ____ (___) feet above the surface of the sidewalk. A plan sheet shall be included with the _____ permit showing how the vertical clearance is met.

If such use of the public sidewalk and utility easement area should at any time become a hazard to the presently installed public or private utilities or City facilities, or should such use of the public sidewalk and utility easement area interfere with the construction, operation, inspection, maintenance or repair of any public or private utilities or City facilities in any way or with access along such public sidewalk and utility easement area, then Applicant will be required to correct such hazard or interference at Applicant's sole expense.

The Parking Garage/Balconies shall remain the exclusive property and responsibility of the Applicant. Applicant shall construct, maintain, and operate [Applicant's Parking Garage/Applicant's Above Ground Structure] in good and safe condition for the protection of the public as authorized by this [land use approval/permit] and in compliance with the approved plans and applicable City codes and regulations. Applicant assumes all risk and liabilities relating in any way to the uses authorized under this land use approval/permit.

Applicant will protect, save and hold harmless, and defend, the City, its officers, employees and agents from all claims or actions (whether filed or threatened), costs, damages, or expenses of any nature whatsoever arising out of or in connection with Applicant's exercise of its rights under this [land use approval/permit]. The obligation to protect, save and hold harmless, and defend shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of the City or its officers, employees or agents; provided that if the claims, actions, costs, damages, or expenses are caused by or result from concurrent negligence of (a) the City or its officers, employees or agents and (b) Applicant, its agents, contractors or assigns, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Applicant, its agents, contractors or assigns. Applicant shall promptly notify Grantor and of any loss, damage, injury or

death arising out of or in connection with any acts or omissions of Applicant in connection with Applicant's exercise of its rights under this Consent.

Applicant's duties and responsibilities under this land use approval/permit shall be binding upon Applicant's successors and assigns.

Prior to issuance of any Certificate of Occupancy, whether Temporary or Final, a Memorandum of Permit shall be recorded against the property referencing the relevant land use, building and right-of-way permits that include the obligations of the property owner with respect to the subsurface and/or aerial improvements, conditions of approval for those improvements, and plan sheet.

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