

ORDINANCE NO. 653

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ESTABLISHING A PROCEDURE FOR APPLICATION AND ISSUANCE OF RIGHT-OF-WAY USE PERMITS AND CREATING A NEW CHAPTER 12.02 TO THE CITY OF GIG HARBOR MUNICIPAL CODE ENTITLED RIGHT-OF-WAY USE PERMITS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

Section 1. A new chapter, Chapter 12.02, entitled Right-of-Way Use Permits, is hereby added to the City of Gig Harbor Municipal Code to read as follows:

12.02.010 Permit Required. No person shall use any public right-of-way, street, sidewalk, or other public place without a right-of-way use permit. The term "use" means to construct, erect, or maintain in, on, over or under any public right-of-way, street, sidewalk or other similar public place, any building, fence, retaining wall, structure, scaffolding, or object in such a way as to obstruct a public parking strip, sidewalk, street or right-of-way within the City.

12.02.020 Applications. Application shall be made to the Director of Public Works on a format as prescribed and provided by said Director. The application shall contain such information as the Director deems necessary, including but not limited to evidence that the applicant is either the owner or entitled to possession of the property adjoining the public right-of-way or place sought to be used, and a full and complete description of the use to be made of the public right-of-way or place by the applicant and the duration of such proposed use. The decision to issue or not issue a right-of-way use permit, as authorized under this chapter, shall be at the sole discretion of the City. This ordinance shall in no way be construed as granting or creating a right in any applicant to obtain a right-of-way use permit. An application fee shall be paid at the time of filing of the application with the City. The fee shall be in such amount as established from time to time by the City Council, by ordinance, or by resolution.

12.02.030 Issuance of Permit. All permits shall be issued by the Director of Public Works, or the Director's designee. The permit may be issued to the applicant if all requirements deemed relevant by the Director of Public Works are met. Requirements shall include, but are not limited, to the following:

- A. The proposed use will not protrude into or over any portion of a public right-of-way or public place open to vehicle or pedestrian travel in such a manner as to create a likelihood of endangering the use of such public place by vehicle or pedestrian traffic.
- B. The proposed use will not protrude into or over any public utility lines including, water, sewer, storm drainage, cable, gas, power, or will not block access to said utility lines.

- C. The requested use must meet all other applicable requirements of the City of Gig Harbor Municipal Code.
- D. The applicant shall be required to indemnify and hold the City harmless from any and all claims for bodily injury or property damage that may arise out of or in connection with the applicant's permitted use.
- E. During all periods of use for temporary and commercial permits, the applicant shall maintain public liability and property damage insurance acceptable to the City and/or other insurance necessary to protect the public and the City on premises to be used unless waived by the Director of Public Works. The limits of said insurance shall be established by the Director of Public Works. A certificate evidencing the existence of said insurance or, upon written request of the Director of Public Works, a duplicate copy of the policy shall be provided to the City as evidence of the existence of the insurance protection. Said insurance shall not be cancelable or reduced without prior written notice to the City, not less than thirty (30) days in advance of the cancellation or alteration. Said insurance shall name the City as a named or additional insured and shall be primary as to any other insurance available to the City.
- F. Such other conditions as may be imposed by the Director of Public Works to reasonably assure that the requested use does not in any way create a likelihood of endangering those who are lawfully using the public right-of-way or public place.
- G. All conditions shall be subscribed on or attached to the permit.
- H. Applicant shall consent that in the event the City is required to take enforcement actions to enforce the terms and conditions of the permit, that the City shall be entitled to recover its costs, disbursements, and expenses including its attorneys fees, which sums may be filed as a lien against applicant's premises and enforceable in the manner provided for the enforcement of mortgages on real property.

12.02.040 Term of Permit Notwithstanding the provisions of Section 12.02.040 - Revocation, Right of Way Use Permits shall be issued for varying terms, at the discretion of the Director of Public Works and as generally set forth below:

- A. Right-of-Way Permit - Residential issued for construction of any fence or retaining wall shall be valid indefinitely unless revoked under Section 12.02.050. Any other non-commercial use of the public right-of-way will require a Right-of-Way Permit issued under the same terms as described under Right of Way Permit - Commercial (paragraph B.)
- B. Right-of-Way Permit - Commercial issued for any use of the right-of-way (as defined in Section 12.02.010) in connection with the operation of a business in the City of Gig Harbor, shall be for a period of twelve months from the date of approval. Property owners may make application to renew the Right-of-Way Permit upon permit expiration.

- C. Right-of-Way Permit - Temporary issued to property owners for uses of the right-of-way of a temporary nature and which involves the obstruction of a portion of a public sidewalk or other walkway, shall be issued for a period not to exceed thirty (30) days. Property owners may make application to renew the Right-of-Way Permit upon expiration.

12.02.050 Revocation.

- A. All permits issued pursuant to this chapter shall be temporary, shall vest no permanent right in the applicant, and may be revoked by the Director of Public Works upon the occurrence of any of the following:
  - 1. Immediate revocation in the event of a violation of any of the terms and conditions of the permit;
  - 2. Immediate revocation, in event such use becomes, for any reason, dangerous or any structure or obstruction permitted becomes insecure or unsafe;
  - 3. Upon thirty (30) days notice if the permit is not otherwise for a specified period of time and is not covered by the preceding subsections.
- B. If any use or occupancy for which the permit has been revoked is not immediately discontinued, the Director of Public Works may remove any such structure or obstruction or cause to be made to such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, the cost and expense of which shall be assessed against the permittee, including all fees, costs, and expenses incurred, including attorneys fees associated with the enforcement of or collection of the same.

12.02.060 Appeal. Any decision of the Director of Public Works or the Director's designed, with respect to the issuance, refusal to issue, or revocation or refusal to revoke a permit may be appealed to the City Council by filing a notice of intent to appeal such decision with the City Administrator/Clerk within ten (10) days of the date of issuance of the decision being appealed. If an appeal from any such decision is taken, the appellant shall be required to pay a non-refundable appeal fee in an amount of not less than one hundred dollars (\$100.00). Said appeal shall include a complete statement of the reason or reasons that form the basis of the appeal. The decision of the City Council shall be final, binding and conclusive, said decision being solely within the discretion of the legislative body.

Section 2. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. A Right-of-Way Permit will be required for any existing use of any public

right-of-way, street, sidewalk, or other public place. The owner or person entitled to possession of commercial property adjoining the public right-of-way that is responsible for the existing use, must make application for the appropriate Right-of-Way Permit within 90 days of the effective date of this ordinance in order to continue this use. Residential owners must obtain a permit within 730 days. Owners seeking temporary use of city right of way must obtain a permit before the use begins.

Section 4. Penalty for violation. Any person violating any of the provisions hereof shall, upon conviction, be subject to a penalty of \$100.00 as provided in Section 1.16.010D3 and for any costs incurred by the city relative to any violation. (Ord. 460 §17, 1985; Ord. 184 §2, 1974; Ord. 18 §6, 1949.)

Section 5. This ordinance shall take effect and be in full force five days after publication.

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Gretchen A. Wilbert, Mayor

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APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

BY:

ATTEST:

Mark E. Hoppen  
City Administrator/Clerk

Filed with City Clerk: 10/13/93  
Passed by City Council: 10/25/93  
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