

ORDINANCE NO. 836

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO PRIVATE USES OF PUBLIC STREETS, ROADS AND RIGHTS-OF-WAY, CHANGING THE NAME OF THE PERMIT GRANTED BY THE CITY FOR SUCH PRIVATE USES FROM "RIGHT-OF-WAY USE PERMIT" TO "ENCROACHMENT PERMIT," CLARIFYING THE PROCEDURES FOR REVOCATION TO ALLOW THE PUBLIC WORKS DIRECTOR TO REVOKE AN ENCROACHMENT PERMIT UPON 30 DAYS' NOTICE TO THE PERMITEE IN SITUATIONS WHERE THE PUBLIC STREET, ROAD AND/OR RIGHT-OF-WAY IS NEEDED FOR A PUBLIC USE; ELIMINATING AN EXPIRED TIME FRAME FOR PROPERTY OWNERS TO OBTAIN ENCROACHMENT PERMITS BEFORE 1997; AND DESCRIBING THE CITY'S ALTERNATE REMEDIES FOR ENFORCEMENT; AMENDING SECTIONS 12.02.010, 12.02.020, 12.02.030, 12.02.040, 12.02.050 AND 12.02.070 OF THE GIG HARBOR MUNICIPAL CODE.

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WHEREAS, the City desires to change the name of the permit granted under Chapter 12.02 of the Gig Harbor Municipal Code from a "right-of-way use permit" to an "encroachment permit"; and

WHEREAS, the current code provision on the subject of revocation of this permit upon 30 days' notice contains a typo; and

WHEREAS, Section 12.02.070 GHMC contains a deadline for property owners to apply for encroachment permits prior to 1997 and is no longer needed; and

WHEREAS, Section 12.02.050 should state that the City has alternate remedies for enforcement, including, but not limited to, abatement of a nuisance;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, DO ORDAIN as follows:

Section 1. Section 12.02.010 of the City of Gig Harbor Municipal Code is hereby amended 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, place or maintain in, on, over or under any public right-of-way, street, sidewalk or other similar public place, any fence, and scaffolding or objects for commercial uses.~~  
Before any person, firm or corporation shall commence or permit any other person, firm or corporation to commence any work to grade, pave, level, alter, construct, repair, remove, excavate or place any pavement, sidewalk, crosswalk, curb, driveway, gutter, drain, sewer, water, conduit, tank, vault, street banner or any other structure, utility or improvement

located over, under or upon any public right-of-way or easement in the City of Gig Harbor, or place any structure, building, barricade, material, earth, gravel, rock, debris or any other material or thing tending to obstruct, damage, disturb, occupy, or interfere with the free use thereof or any improvement situated therein, or cause a dangerous condition, an Encroachment Permit shall be obtained. A separate permit shall be obtained for each separate project.

In the case of work contracted for by the Department of Public Works, the signing of the contract shall constitute an Encroachment Permit.

Section 2. Section 12.02.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

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 an encroachment 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 an encroachment 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.

Section 3. Section 12.02.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

12.02.030 Issuance of Permit. All permits shall be issued by the Director of Public Works, or the Director's designee. The permit is not subject to the requirements in Title 19 GHMC, and 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:

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E. During all periods of use for encroachment ~~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.

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Section 4. Section 12.02.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

12.02.040 Term of Permit Notwithstanding the provisions of Section 12.02.050 - Revocation, Right of Way Use Encroachment 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 Encroachment - Residential issued for construction of any fence or retaining wall ~~shall be~~ are valid indefinitely unless revoked under Section 12.02.050. Any other non-commercial use of the public right-of-way will require an Right of Way Encroachment permit issued under the same terms as described under Right of Way Encroachment Permit - Commercial (paragraph B.)
- B. Right of Way Encroachment 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~~ are valid for a period of twelve months from the date of approval. Property owners may make application to renew the Right of Way encroachment permit upon permit expiration.
- C. Right of Way Encroachment 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~~ are valid issued for a period not to exceed thirty (30) days. Property owners may make application to renew the Right of Way encroachment permit upon expiration.

Section 5 Section 12.02.050 of the Gig Harbor Municipal Code is hereby amended to read as follows:

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 as follows: ~~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 the event such use, structure or obstruction 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~~ revoked for any reason and is not covered that is not covered by the preceding subsections, including, but not limited to, the City's desire to make public use of the road, street, public right-of-way or other public place subject to an existing permit.

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. The City may enforce this chapter in any manner provided by law, including the abatement of public nuisances.

Section 6. Section 12.02.070 of the Gig Harbor Municipal Code is hereby amended to read as follows:

Section 12.02.070 Existing Uses.

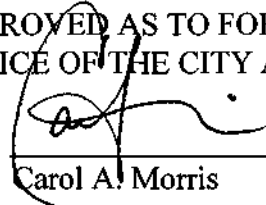
~~An right-of-way encroachment permit will be required for any existing use of any public right-of-way, street, sidewalk, or other public place. The owner or person entitled to possession of commercial property adjoining the public right-of-way that is responsible for the existing use must make application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

Section 7. 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 8. This ordinance shall take effect and be in full force five days after publication of an approved summary, which is attached hereto.

  
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Gretchen A. Wilbert, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

BY:   
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Carol A. Morris

ATTEST:

BY: Molly Towslee  
Molly Towslee, City Clerk

Filed with City Clerk: 12/08/99

Passed by City Council: 1/10/00

Date Published: 1/19/00

Date Effective: 1/24/00