



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 public sidewalk and utility easements under the Right-of-Way Use Code, Chapter 14.30 Bellevue City Code (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 public sidewalk and utility easements under the Right-of-Way Use Code, Chapter 14.30 BCC.

II. SCOPE OF SIDEWALK AND UTILITY EASEMENT RIGHTS

A. Subsurface Uses/Interests

Sufficient depth under sidewalks and utilities easements shall be kept clear for current and future 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 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. The depth to be preserved in all cases shall be a minimum of 12 feet, unless a deviation is granted by the Director.

Table 1

(see next page)

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. The area is also reserved by the City for future uses that have not yet been determined. In addition, the area is utilized for street trees and other landscaping elements. 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. For any application requesting private use of City aerial rights, the vertical clearance to be preserved between the sidewalk grade and private structure in all cases shall be a minimum of 60 feet unless a deviation is granted by the Director. 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 all cases shall be a minimum of 8 feet and no deviations shall be granted.

III. Land Use Approval

Requests for use of the subsurface or aerial rights within a sidewalk and utility easement shall be reviewed as part of the land use process. Approval of private subsurface and aerial uses including any approved deviations will be documented in the final land use decision and include the conditions outlined in Attachment B. These conditions will also be included in any building or right-of-way permit for the subsurface or aerial improvements. A plan sheet shall be included with such permit showing the information outlined in Attachment C "Plan Sheet Drawing Requirements for Below Grade Building Permit, Building Permit, ROW Use permit." Prior to Temporary Certificate of Occupancy, 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. See Attachment A.

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.

IV. Deviation Process

Deviations to the sidewalk and utility easement requirements may be requested during the Land Use approval process. Deviation requests shall be submitted, in writing, to the Transportation Development Review Manager. Deviations are not common and must have significant justification. The decision by the Transportation Director shall be final.

Deviation to minimum depth:

The Director may consider a deviation to the minimum depth requirement of 12' when site conditions such as topography or a shallow water table are present, and in no case shall the easement depth requirement be reduced to less than 10 feet.

Deviation to minimum vertical height for architectural features and non-conditioned spaces:

The Director may consider a deviation to the minimum vertical height requirement of 60' for architectural features of the building or for other non-conditioned spaces such as balconies, and in no case shall the easement height be less than 20 feet. Deviation requests must include information showing that the deviation will not interfere with the intended use of the easement to provide adequate space for public or private facilities such as streetlight poles, Small Wireless Facilities, street trees (at mature height/width), etc. Deviation requests to minimum height for architectural features and non-conditioned spaces will only be considered if the request meets the approval of the Development Services Director. If a deviation is granted, the minimum horizontal clearance shall still be a minimum of 8 feet.

Deviation to minimum height for permanent building/conditioned spaces:

The Director may consider a deviation from the minimum height requirement of 60' for permanent building/conditioned space for either of two conditions:

Condition 1 - Additional Setback for Public Benefit

This condition applies if the developer sets back the building frontage beyond the minimum requirement of the Transportation Department, and the extra setback is being provided by the developer for the benefit of the public. In such case, and if approved, the overhang of the conditioned space:

- Shall be no lower than 20';

- Shall not intrude into the sidewalk and utility easement area more than 25% of the distance of the required sidewalk/planter area width; and
- Shall not interfere with the space requirements for private and public facilities including but not limited to street light poles, Small Wireless Facilities, street trees (at mature height/width), etc.
- Meets the approval of the Development Services Director.

Condition 2 – Certain “D – Neighborhood Street” Streets

This condition will be considered for approval if and only if:

- 1) The development is along the selected “D- Neighborhood Street” (see Figure 20.25A.170.B.) streets listed below:
 - 106th Place NE – NE 12th St to end of road southward
 - 103rd Ave NE – NE 10th St to end of road northward
 - 109th Ave NE – NE 9th St to NE 10th St
 - NE 9th St – 109th Ave NE to 110th Ave NE
 - NE 11th St – 110th Ave NE to 112th Ave NE
 - 111th Ave NE – NE 11th St to NE 10th St
 - 111th Ave NE – NE 2nd St to NE 4th St
 - NE 3rd Place – 110th Ave NE to 111th Ave NE
 - NE 2nd Place – 108th Ave NE to 111th Ave NE
 - 107th Ave NE – NE 2nd St to Main St
 - NE 1st St – 103rd Ave NE to Bellevue Way NE
 - All “D- Neighborhood Street” designations south of Main Street including 102nd Ave SE, 105th Ave SE, 106th Ave SE, and 108th Ave SE

and

- 2) The conditioned space of the property directly across the street from the development does not overhang the public sidewalk and utility easement below 60’ above the sidewalk grade and there is adequate space for public or private facilities such as street light poles, Small Wireless Facilities, street trees (at mature height/width), etc.

and

- 3) Meets the approval of the Development Services Director.

Meeting these three conditions does not guarantee approval, but allows the deviation to be further considered by the Transportation Director.

If a deviation is granted for either Condition 1 or Condition 2, the minimum horizontal clearance shall still be a minimum of 8 feet.

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.

DRAFT

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, PE
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 _____.

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

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"), or (3) permanent building structure, including but not limited to: _____, or (4) other feature, including but not limited to: _____ 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 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 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.

Applicant's Permanent Building Structure must be located 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.

Applicant's Other Feature described as _____ must be located to provide a minimum clearance of (___) feet [above/below] 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 public or private utilities or City facilities added or constructed in the future, 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/Permanent Building Structure/Other Feature] shall remain the exclusive property and responsibility of the Applicant. Applicant shall construct, maintain, and operate [Parking Garage/Balconies/Permanent Building Structure/Other Feature] 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.