



ORDINANCE 2019-004

AMENDING SHERWOOD MUNICIPAL CODE CHAPTER 12.02 RELATING TO RIGHT OF WAY PERMITS

WHEREAS, Ordinance 2006-020 added a chapter to the Municipal Code requiring right of way permits and establishing related criteria and processes; and

WHEREAS, since that time, staff responsible for administering the permits have identified modifications to the existing code language which would help the process be more clear and effective; and

WHEREAS, there is a need to establish a process for review and approval of small wireless facilities, as regulated by the FCC, which was not contemplated at the time Ordinance 2006-020 was adopted; and

WHEREAS, there is also a need to establish a process, criteria, and permit for authorizing temporary use of the right of way to accommodate a construction or moving activity when there is not sufficient space on the involved private property; and

WHEREAS, based on the above, staff developed proposed amendments to Chapter 12.02 of the Sherwood Municipal Code, which were discussed by City Council in a work session on April 16, 2019; and

WHEREAS, the City Council held public hearings on the proposed ordinance on May 7, 2019 and May 21, 2019; and

WHEREAS, it appears to City Council that amendment of the Sherwood Municipal Code consistent with the foregoing is necessary and appropriate for the preservation of public safety and welfare.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the information presented at the public hearings, the City Council finds that the Sherwood Municipal Code, Chapter 12.02, should be amended as shown in Exhibit A, attached hereto.

Section 2. Approval. The proposed amendment to the Sherwood Municipal Code identified in Exhibit A is hereby APPROVED.

Section 3. Manager Authorized. The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this ordinance, including necessary updates to the Municipal Code.

Section 4. Effective Date. This Ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 21st of May, 2019.



Keith Mays, Mayor

5/21/2019

Date

Attest:



Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Scott	<input checked="" type="checkbox"/>	_____
Griffin	<input checked="" type="checkbox"/>	_____
Brouse	<input checked="" type="checkbox"/>	_____
Young	<input checked="" type="checkbox"/>	_____
Garland	<input checked="" type="checkbox"/>	_____
Rosener	<input checked="" type="checkbox"/>	_____
Mays	<input checked="" type="checkbox"/>	_____

Title 12 - STREETS, SIDEWALKS AND PUBLIC PLACES

Chapters:

Chapter 12.02 - RIGHT-OF-WAY PERMITS

Sections:

12.02.005 - Purpose.

The provisions of this chapter are intended to protect public health and safety and to insure the integrity and efficient use of existing streets, public utilities easements, and other public right-of-way.

The city has established standards to insure the safety, quality and longevity of existing streets and other items in the public ROW. This chapter is established to protect the public investment in those improvements as well as to insure the protection of the public.

12.02.010 - Definitions

Maintenance means:

- a) Maintenance and repair of facilities or utilities located in the ROW that does not disturb the ROW or existing improvements, and does not adversely affect school zone traffic, or close a pedestrian way, bikeway, or travel lane during peak hours (7 A.M. to 9 A.M. and 3 P.M. to 6 P.M.).
- b) Installation of an underground utility service pipe or conduit to a structure, of which 5 feet or less of its length is in the ROW, and which is located entirely outside hardscaped surface of any public street, and which is performed with minimal disturbance of the ROW and existing improvements, and which does not impact public travel as described in subsection (a) above.
- c) Installation of wire through conduit which is existing and which does not impact public travel as described in subsection (a) above.

Public Facilities means facilities owned and operated by the City of Sherwood.

Private Facilities means facilities owned and operated by an entity other than the City of Sherwood.

ROW means streets, public utility easements, and other public right-of-way.

Small Wireless Facilities means small wireless facilities as defined by FCC Rules and Regulations.

12.02.015 - Applicability.

This chapter applies to all work in and use of the ROW that is performed by individuals, organizations, contractors, and utilities, with the exception of motor vehicle operations. This chapter does not apply to the city or its agents with regard to work it may perform in the ROW. The requirements of this chapter are in addition to any other requirements imposed by the Sherwood Municipal Code or other applicable law.

12.02.020 – When permit required; general requirements.

A. A ROW Construction Permit is required for all construction of new facilities and additions to, and other work performed on, existing facilities located in the ROW (such as light poles), including utility work in a public utility easement, except maintenance as defined in this chapter.

B. A ROW Use Permit is required when there will be a temporary activity that will be utilizing or otherwise impacting the ROW such as for maintenance as defined in this chapter, use of the ROW for construction of facilities located outside the ROW, location of temporary debris containers in the ROW, and other similar activities.

C. Exemptions from ROW permit requirement:

1. No ROW permit shall be required for construction of a fence within a public utility easement consistent with SMC 16.58.

D. General requirements:

1. Unless otherwise provided in a specific permit, a permit shall automatically expire if the work authorized by the permit is not commenced within sixty (60) days after issuance of the permit.

2. Unless otherwise provided in a specific permit, a permit shall automatically expire ninety (90) days after work commences under the permit. If a permit holder submits a written request for an extension prior to the expiration of said ninety (90) day period, the City Engineer, or designee, may grant, in writing, one (1) extension of no more than ninety (90) additional days if the permit holder demonstrates that:

a. Substantial progress has been made during the initial ninety (90) day period.

b. The need for the extension is based on factors outside the control of the permit holder.

3. If any damage occurs to any private facilities located within the ROW, including private facilities attached to public facilities, the owner of such private facilities must fully repair the facilities (including, if applicable, the public facilities to which the private facilities are attached) within forty-eight (48) hours after such damage occurs, unless the City Engineer determines that such repair is not reasonably feasible within such time period and provides written authorization for an extension of such time.

4. GIS Data

a. If any private facilities located in the ROW are not already included in the City's Geographical Information System (GIS) database, whether through provision of as-builts or any other mechanism, the owner of such facilities is required to provide to the City a GIS file for such facilities. For new facilities, the facility owner must provide such file to the City within thirty (30) days after the completion of construction of the facility. For facilities existing as of the effective

date of the ordinance enacting this section, the facility owner must provide such file to the City within one-hundred eighty (180) days after the effective date of said ordinance.

b. Data in the GIS file must include locational coordinates, facility type, support type, mounting height, installation date, PGE pole ID (where applicable), and any other data the City Engineer may deem necessary for inventory management.

b. If any such facilities are abandoned or removed, the facility owner must notify the City within thirty (30) days.

5. When a replacement light pole or new standalone pole is required in connection with installation of a small wireless facility, the applicant shall be responsible for the cost of the replacement light pole or standalone pole, including its installation. After installation, and acceptance by the City, such replacement light pole or standalone shall be owned by the City.

12.02.025 - Authority delegated to the city engineer.

The City Engineer or designee is authorized to develop and revise ROW permits, standard permit conditions, and construction and other standards necessary to insure that all work performed in, and use of, the public ROW is conducted in a manner that minimizes disturbance to the public, controls quality of the construction and repairs, and otherwise protects the public interest.

12.02.030 -Review process and criteria

A. Review Process Generally

1. All ROW permit applications must be submitted on a form designated by the City Engineer. The City Engineer, or designee, will review a submitted application based on the criteria set forth in this chapter and the Engineering Design and Standard Details Manual.

2. All ROW permits shall require that the safe flow of traffic and pedestrians is not negatively impacted. Alternate accommodations may be made or required as part of the permit to ensure that the safe flow of traffic and pedestrians is maintained. This requirement is met when:

- a. Traffic control management conforms with requirements defined in the Manual of Uniform Traffic Control Devices (MUTCD) suitable for temporary lane impacts and restrictions, as approved by the City Engineer;
- b. A traffic management plan is submitted to the City Engineer for review and approval prior to any ROW permit being issued, if traffic control impacts are anticipated; and
- c. Staging and activities are conducted such that the disturbance and disruption to the public is minimized.

B. Criteria for ROW Construction Permits

1. Construction techniques and materials are compliant with City's Engineering Design Standard Details Manual and will not unreasonably degrade the life or functionality of existing infrastructure.
2. The duration of construction activities is minimized to the maximum extent reasonably feasible.
3. Construction within a public utility easement is prohibited with the exception of:
 - a. Easily movable structures such as fences or landscaping elements constructed by the abutting property owner;
 - b. Underground utilities; and
 - c. Minor appurtenances necessary to serve underground utilities, not exceeding two feet by two feet by two feet in dimensions.
4. No other structures shall be permitted to be constructed within a public utility easement. When work within a public utility easement conducted by either the City or a utility requires the removal or deconstruction of a structure within the easement, the City or utility is under no obligation to reconstruct or replace the deconstructed privately owned structure.
5. Construction of, and other work relating to, small wireless facilities, including the modification of existing structures within the ROW, shall comply with the applicable provisions of the Engineering Design and Standard Details Manual.

C. Criteria for ROW Use Permits:

1. The use will occur for no more than two consecutive weeks unless otherwise approved based on demonstrated necessity.
2. If the use is related to a construction or moving activity on an abutting property, there is not room on the applicant's property to accommodate necessary equipment, materials, or containers.
3. If on-street parking is being eliminated as a result of the temporary use of the ROW, adjacent property owners have been notified in writing and the applicant has provided documentation that they do not object to the proposed temporary use of the ROW.
4. Portable toilets are not permitted in the ROW via a ROW permit but may be approved through other means such as a Special Event Permit.
5. The use is compliant with any applicable City's Engineering Design and Standard Details Manual.

12.02.035 – Insurance, bonds, and fees.

A. Other than as exempted in Section 12.02.035.D, an application for a ROW permit shall be accompanied by the permit review and inspection fees established by City Council by resolution, as well as the required performance and maintenance bond and proof of insurance.

B. Bond requirements

Unless exempted pursuant to subsection D below, the applicant shall provide a performance and maintenance bond. The performance bond shall cover 125% of the estimated project cost. The maintenance bond shall be the greater of \$1,000 or 50% of the project estimate.

C. Insurance requirements

Unless exempted pursuant to subsection D below, an applicant shall provide proof of general liability insurance, including personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, in an amount not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate, or the then-current limits of the Oregon Tort Claims Act, whichever is greater.

D. Exemptions

1. The following types of work require a ROW permit but are exempt from insurance, permit fees and bond requirements:

- A. Development work permitted under a valid compliance agreement;
- B. Sidewalk or driveway repair (less than twenty (20) lineal feet);
- C. Relocation, installation or replacement of mailbox;
- D. Ditch cleaning that does not involve regrading;
- E. Weep-hole repair;
- F. Curb repair or replacement (less than thirty (30) lineal feet);
- G. Lawn sprinkler system installation or repair;
- H. Street tree pruning or planting;
- I. Planter strip landscape maintenance;
- J. Minor improvements valued less than one thousand dollars (\$1000.00) or as approved by the city engineer.

2. In addition to exemptions described in subsection 1 above, projects valued at less than \$5,000 are exempt from bond requirements. If a specific project is valued at less than \$5,000 but part of a larger project that is greater than this value, this exemption shall not apply.

3. Public utilities are exempt from posting performance and maintenance bonds if the project estimate is less than one hundred thousand dollars (\$100,000.00) and if the utility has provided a letter to the city demonstrating that it is both self-insured and bonded. The public utility is still required to pay all applicable fees. The utility must provide the city an exemption letter on a yearly basis in order to qualify for the exemption.

4. A franchise agreement entered under section 12.16.060(E) of this code may provide for requirements which vary from the requirements of this section.

12.02.040 Removal of Facilities Constructed within ROW

A. No less than thirty (30) days after written notice from the City, the owner of any private facilities located in the ROW (including private facilities attached to public facilities) shall, at its own expense, temporarily or permanently disconnect, remove, relocate, change, or alter the position of, any private facilities located within the ROW whenever the City has determined that such is reasonably necessary for the construction, repair, maintenance, or installation of any public improvement (regardless of whether the City or another entity is constructing said improvement) located in, or the operations of the City in, the ROW.

B. The City retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event of an emergency, as the City may determine to be necessary, appropriate, or useful in response to any imminent danger to public health, safety, or property.

C. If the owner of any private facilities located in the ROW (including private facilities attached to public facilities) ceases to use such private facilities for a period of thirty (30) days, the owner shall immediately remove such facilities from the ROW and restore the ROW and any other facilities located in the ROW which may be impacted by such removal. The thirty (30) day period set forth in this subsection may be extended by written approval of the City Engineer for good cause.

D. If the owner of any private facilities located within the ROW fails to meet any of the obligations set forth in this section, in addition to any other available remedies, the City may take the actions that were the obligation of the facility owner. If the City elects to do so, the City will provide written notice to the facility owner of the action taken and the costs incurred by the City in so doing, and the facility owner will reimburse the City in full within thirty (30) days.

E. This section 12.02.040 shall not apply to any facilities which are subject either to section 12.16.080 of this code or to alternative provisions pursuant to a franchise agreement entered under section 12.16.060(E) of this code.

12.02.045 Violations

A. The City Engineer, or designee, is authorized to revoke a ROW permit upon determining that the permit holder has violated this chapter, permit conditions, or any applicable construction or other standards.

B. Construction or use of the ROW as described in this chapter without a valid permit, and any other violation of this chapter, permit conditions, or any applicable construction or other standards, is a Class B violation. Each day on which a violation occurs shall constitute a separate violation.

C. The Municipal Court may order a person responsible for a violation of this Chapter to restore the property, damaged area, or street surface to the standards described in the Engineering Design and Standard Details Manual. The Court may include in the order such other conditions the Court deems necessary to ensure adequate and appropriate restoration. Alternatively, the Municipal Court may

direct the City to perform, either directly or indirectly, the restoration with the costs of such restoration assessed against the person responsible for the violation.

D. Violations of this Chapter may also constitute violations of other provisions of the Sherwood Municipal Code, including but not limited to SMC 10.12.190 (Obstructing Streets).