

12/10/18
12/17/18

ORDINANCE NO. M_____

AN ORDINANCE relating to public rights-of-way and Title 11 of the Vancouver Municipal Code; amending Vancouver Municipal Code sections 11.05.120, 11.60.110, 11.60.120, 11.60.170, and 11.60.190; providing for severability; and establishing an effective date.

WHEREAS, as set forth in SR _____, it is in the public interest to amend certain sections of Title 11 of the Vancouver Municipal Code (“VMC”) to clarify requirements for compensation for street vacation, increase the maximum insurance coverage requirement for right-of-way use permits to provide adequate coverage for higher risk activities in the right-of-way, streamline the process for reviewing Type E right-of-way use permits, and to correct typographical errors; and

WHEREAS, with proper public notice, the City Council conducted a first reading of the proposed ordinance on December 10, 2018, and a public hearing concerning the ordinance and proposed code changes on December 17, 2018.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. VMC 11.05.120, adopted by Ordinance M-4026, is amended as follows:

11.05.120 Compensation for vacation.

A. Payment for Vacation. Ordinances vacating the subject property will not become effective until the owners of the abutting property have compensated the City in the amount required by this subsection.

B. For vacated properties that were not acquired at public expense and have not been part of a dedicated public right of way for 25 years or more, the owners of abutting properties must compensate the City in an amount equal to one-half of the fair market value as shown in the appraisal of the area to be vacated.

C. *Compensation for Public Expense.* For vacated properties that were acquired at public expense ~~and~~ or have been part of a dedicated public right of way for 25 years or more, the owners of abutting properties must compensate the City in an amount equal to the full fair market value of the property to be vacated as shown in the appraisal.

D. ~~*Vacation Initiated by Council Resolution*~~ *Vacation Without Compensation.* The Council may pass an ordinance to vacate a property without requiring the abutting property owners to pay the City for such vacation where:

1. The subject property was not acquired at City expense,
2. The City determines that the subject property is not needed for public travel either now or in the foreseeable future, and
3. The City's maintenance or upkeep of the subject property is unrelated to its use for public travel.

E. *Compensation for Vacation of Streets Abutting Bodies of Water.* Pursuant to Section 11.05.100, the full market value, as shown in the appraisal, of the subject property, must be paid upon the vacation of streets that abut bodies of water.

F. *In-Lieu Transfers of Property.* Conveyance of other property or infrastructure acceptable to the City may be made in lieu of the payment required by this section, whether required to mitigate adverse impacts of the vacation or otherwise. When such conveyance is made for street purposes, one-half of the fair market value as shown in the appraisal of the land conveyed will be credited to the required payment. When the conveyance is made in fee for purposes other than street purposes, the full appraised value of the land conveyed will be credited to the required payment. When the value of the in-lieu parcel is less than the payment required by this section, the property owners must pay the difference to the City. When the value of the in-lieu parcel exceeds the payment required by this section, the City may ~~will~~ pay the difference to the property owner.

G. *Vacations of Streets or Alleys Subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (non-user statute).* The City Council's adoption of a vacation ordinance for those streets and alleys subject to the 1889-90 Laws of Washington, Chapter 19, Section 32 (non-user statute) will not require compensation by the abutting owners. However, the property owners requesting the vacation must pay the City's costs relating to researching and processing the vacation request as described in Section 11.05.040.

H. *Disposition of Revenue.* At least one-half of the received compensation will be dedicated to the acquisition, improvement, development, and related maintenance of public open space and/or transportation capital projects within the City, provided that all compensation for the vacation of property which abuts a body of water is deposited in a fund designated for the sole purpose of acquiring additional beach or water access, additional public view sites to a body of water, or additional moorage or launching sites. Any compensation received by the

City which is not dedicated to public open space or transportation capital projects or to the acquisition of additional water access, view sites or launching sites, will be deposited into the street fund. ~~The City Treasurer will make a written report of the payment to the City Council.~~

Section 2. VMC 11.60.110, adopted by Ordinance M-2876, and last amended by Ordinance M-4016, is amended as follows:

11.60.110 Decision procedures.

- A. *Application Processing.* Applications shall be processed according to the permit type and the following procedures.
- B. *Commencement of Review.* The review of an application will not commence until the application is complete as required in Section 11.60.080.
- C. *Approval Criteria.* The applicant must demonstrate compliance with the approval criteria contained in Section 11.60.120.
- D. Final action on a completed application shall consist of one of the following:
 - 1. Issuance of a right-of-way use permit in accordance with the terms of the application, or
 - 2. Issuance of a right-of-way use permit in accordance with the terms of the application as modified by any condition of approval imposed to satisfy requirements of this chapter or other applicable requirement, or
 - 3. Denial of the right-of-way use permit application by the responsible official pursuant to the criteria for approval listed in Section 11.60.120.
- E. *Decision Procedure for Type A, B, C, and D Right-of-way Use and Occupation Permits.*
 - 1. Type A, B, C, and D permit applications are decided by the Director.
 - a. *Review by the Director.* The Director shall approve, approve with conditions, or deny an application submitted under this subsection in no more than 28 calendar days after the date the application was submitted for Type A and Type B permit applications and not longer than 60 days for Type C and Type D permit applications. An applicant may agree in writing to extend the time in which the Director shall issue a decision. The Director's review shall include all of the relevant approval criteria.

b. The Director may grant a right-of-way use permit upon demonstration by the applicant of compliance with the approval criteria contained in Section 11.60.120. The Director may place conditions on the approval to require consistency with this chapter.

~~b. c.~~ *Final Decision.* The final decision on a Type A, B, C, or D application shall be mailed to the applicant by regular United States Postal Service mail to the applicant unless the applicant requests in writing an alternate method of notification.

2. The final decision on a Type A, B, C, or D permit application shall contain the following information:

a. A statement of the applicable criteria and standards pursuant to the Vancouver Municipal Code and other applicable law;

b. A statement that the proposed use complies with the criteria contained in Section 11.60.120 and any other applicable standards;

~~b. c.~~ The decision to approve or deny the application and, if approved, conditions of approval necessary to ensure the proposed use and occupation will comply with applicable law; ~~and~~

~~e. d.~~ The effective date and term of the permit; and

~~d. e.~~ The date the final decision is signed and the date the appeal period expires.

3. *Appeal of Final Decision.* Decisions on Type A, B, C, and D permits may be appealed as provided in Section 11.60.190.

F. *Decision Procedure for Type E Right-of-way Use and Occupation Permit.*

1. Applications for Type E right-of-way use permits shall be decided by the Director ~~a City Hearing Examiner~~ according to the procedures for Type II ~~III~~ decisions under VMC 20.210.060050. For the purpose of a Type E right-of-way use permit, the following modifications to VMC 20.210.060050 shall apply:

a. Type II ~~III~~ means a Type E right-of-way use permit;

b. Planning Official means Director;

c. A pre-application conference is not required.

~~e. d.~~ Any notification requirement based on distance shall be 200 feet;

~~d. e.~~ The ~~Director~~ ~~Hearing Examiner~~ shall apply the decision criteria from this chapter; and

~~e. f.~~ ~~Standing to Appeal of~~ any decision shall be pursuant to ~~this chapter~~ VMC Section 11.60.190(A)(1).

2. The ~~Director~~ ~~Hearing Examiner~~ may grant a Type E right-of-way use permit upon demonstration by the applicant of compliance with the approval criteria contained in Section 11.60.120. The ~~Director~~ ~~Hearing Examiner~~ may place conditions on the approval to require consistency with this chapter.
3. *Effective date.* A Type E permit is effective when both of the following have occurred: the permit has been issued; and the City has received proof of recording of the permit against any parcel served by the permitted use and occupation.
4. *Appeal of Final Decision.* A Type E permit decision may be appealed as provided in Section 11.60.190.

Section 3. VMC 11.60.120, adopted by Ordinance M-2876, and last amended by Ordinance M-4016, is amended as follows:

11.60.120 Approval criteria.

- A. If the ~~Director~~ ~~or Hearings Examiner~~ finds that the application for a right-of-way use permit conforms to the requirements and procedures of this chapter and to other applicable City code or regulations, and that the proposed use will not unduly interfere with the rights and safety of the public, the official may approve the permit and impose such conditions as are reasonably necessary to protect public health, welfare, and safety and mitigate any impacts resulting from the use.
- B. The ~~Director~~ ~~or Hearings Examiner~~ may approve, approve with conditions, or deny a right-of-way use permit. Approval of a proposed use is subject to compliance with all the following criteria.
 1. The proposed use must not:
 - a. impede reasonable ingress and egress to abutting properties, or
 - b. create the imminent possibility of conduct likely to endanger public safety or to result in significant property damage, or

- c. be conducted in the traveled way unless a portion of the traveled way is closed to vehicle traffic for the duration of the activity, or
 - d. violate public health or safety or laws, or
 - e. have a significant adverse impact upon residential or business access and traffic circulation in the area governed by the permit.
2. The proposed use must:
 - a. comply with the requirements for and implement a traffic control plan as directed by Section 11.40, and
 - b. obtain the approval of other agencies with authority over the proposal (e.g., the Clark County Health Department, Washington State Department of Transportation, etc.) if required by law for the proposed use, and
 - c. provide for safety and operations as approved by the Director, and
 - d. conform to the requirements of law or duly promulgated City regulations.
 3. If a right-of-way use permit was previously issued to the applicant for the same or similar purposes, the permittee must demonstrate compliance with any material term of this chapter or condition of the previously issued permit.
 4. Where the use includes a structure or appurtenance in the right-of-way, the proposed use must be approved by the City Building Official as meeting Title 17 standards.
 5. No new right-of-way use permit may be issued if an earlier right-of-way use permit has been issued for the same right-of-way to be used at the same time, except if the applicant for the later permit establishes that the two uses will not conflict.
 6. The applicant must demonstrate ability and willingness to conform to the terms and conditions of this chapter.

Section 4. VMC 11.60.170, adopted by Ordinance M-4016, is amended as follows:

11.60.170 Insurance Required.

A. Prior to the commencement of the permitted use, the permittee shall provide the City with satisfactory evidence in writing that the permittee has in force, and will maintain in force throughout the duration of the permitted use, Commercial General Liability insurance satisfactory in form and substance to the City, duly issued by an insurer approved by the State Insurance Commissioner pursuant to RCW Title 48 ~~insurance company authorized to do business in Washington.~~

B. The policy shall name the City of Vancouver as an additional insured, and as certificate holder, and apply as primary and non-contributory insurance, regardless of any insurance the City may carry. Also, the policy must include:

1. A “cross-liability” (severability of interest) clause; and

2. A provision that the City be notified not less than 30 days prior to cancellation of the policy, except in the case of non-payment, when less than 10 days prior notice is required; and

3. All policies shall be written on an occurrence form, with the exception of any Cyber Liability / Errors & Omissions policy(ies); and

4. The following coverage and minimum limits:

a. If Type A – Short-Term Permit, shall maintain a policy of Commercial General Liability insurance with the following minimum limits:

\$1,000,000 Each Occurrence

\$1,000,000 General Aggregate

\$2,000,000 Products & Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury, each offence

b. If Type B – Encroachment Permit, shall maintain a policy of Commercial General Liability insurance with the following minimum limits:

\$500,000 Each Occurrence

\$500,000 General Aggregate

\$1,000,000 Products & Completed Operations Aggregate

\$500,000 Personal & Advertising Injury, each offence

c. If Type C – Temporary Use and Occupation Permit, shall maintain a policy of Commercial General Liability insurance with the following minimum limits:

\$1,000,000 Each Occurrence

\$1,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury, each offence

d. If Type D – Long Term Right-of-Way Use and Occupation Permit, shall maintain a policy of Commercial General Liability insurance with the following minimum limits:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury, each offence

Excess or Umbrella Liability coverage at limits of \$5,000,000 per occurrence and annual aggregate.

e. If Type E – Material Encroachment Permit, shall maintain a policy of Commercial General Liability insurance with the following minimum limits:

\$1,000,000 Each Occurrence
\$1,000,000 General Aggregate
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury, each offence

Excess or Umbrella Liability coverage at limits of \$10,000,000 per occurrence and annual aggregate.

~~3. \$1 million comprehensive general liability insurance for bodily injury or death to any one person; and~~

~~4. \$2 million comprehensive liability insurance for bodily injury or death resulting from one accident; and~~

~~5. \$1 million comprehensive general liability insurance for property damage resulting from any one accident.~~

C. The Director may require submittal of proof of liability insurance for any vehicles to be used in the course of conducting the permitted use.

D. Notwithstanding subsection B above in this section, the Director may reduce the dollar value of insurance requirements where he determines that:

1. The risk profile of the permitted activity is low because of:
 - a. The length of time of the proposed activity; and
 - b. The nature and location of the activity; and
 - c. The low potential of the activity for injury to a person or damage to public or private property; and
 - d. The limited scope of the activity.
2. The permittee's prior performance has been satisfactory and not in violation of any requirement under the code or other applicable law or regulation.

E. Notwithstanding the insurance requirements in subsections B and C of this section and except for a right-of-way use where the sale of alcoholic beverages is authorized, the Director may waive the insurance requirements of this section. In making the determination of whether to waive insurance, the Director shall consider the following factors:

1. Whether it is objectively impossible to obtain insurance coverage. To claim that it is objectively impossible to obtain insurance coverage pursuant to this section, the applicant shall submit a statement from at least two independent licensed insurance brokers demonstrating the insurance is unavailable in the market place; and
2. Whether the proposed right-of-way use will involve the use of equipment (other than sound equipment), vehicles, animals, fireworks, or pyrotechnics; and
3. Whether a fee or donation is charged or required by the permit holder; and
4. Whether the proposed use is for a Type A permit for a block party for residential neighbors to be conducted on a local street that will be closed for the duration of the small event; and
5. Whether the proposed use is for landscaping or gardening in the right-of-way by a nearby property owner or owners; and
6. Whether the proposed use meets the criteria for reduction in the dollar value of insurance requirements as set forth in subsection D of this section.

Section 5. VMC 11.60.190, adopted by Ordinance M-4016, and last amended by Ordinance M-4026, is amended as follows:

11.60.190 Appeal.

A. *Appeal of decisions on Type A, Type B, Type C, and Type D permits.*

1. *Standing to appeal.* Only the applicant and the City have standing to appeal any Type A, Type B, Type C, and Type D permit decision on a right-of-way use permit. The applicant, the City, abutting property owners, and non-abutting property owners who can show a special injury caused by issuance of the permit have standing to appeal any Type E permit decision on a right-of-way use permit.
2. Appeal of decisions on Type A, Type B, Type C, and Type D permits shall be processed according to the procedures for appeals of Type I applications ~~appeals~~ under VMC Section 20.210.130. Appeals of decisions on a Type E permit shall be processed according to the procedures for appeals of Type II applications under 20.210.130.
3. Subsequent appeals therefrom shall be to Superior Court under Revised Code of Washington Chapter 7.16.

~~B. *Appeal of a Type E permit decision.*~~

- ~~1. *Standing to appeal.* The applicant, the City, abutting property owners, and non-abutting property owners who can show a special injury caused by issuance of the permit have standing to appeal any Type E permit decision on a right-of-way use permit.~~
- ~~2. Appeal of a Type E permit decision shall be to City Council. The City Council shall make a legislative decision regarding any such appeal.~~
- ~~3. Subsequent appeals therefrom shall be to Superior Court under Revised Code of Washington Chapter 7.16.~~

Section 6. Severability. 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 7. Effective date. This ordinance shall become effective thirty (30) days following the date of final adoption.

Read First Time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read Second Time:

PASSED BY THE FOLLOWING VOTE:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2018

Anne McEnery-Ogle, Mayor

Attest:

Natasha Ramras, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

E. Bronson Potter, City Attorney

SUMMARY

ORDINANCE NO. M_____

AN ORDINANCE relating to public rights-of-way and Title 11 of the Vancouver Municipal Code; amending Vancouver Municipal Code sections 11.05.120, 11.60.110, 11.60.120, 11.60.170, and 11.60.190; providing for severability; and establishing an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8799, or via www.cityofvancouver.us (Go to City Government and Public Records).