

Chapter 11.10

RIGHT-OF-WAY USE CODE

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- 11.10.030 Purpose.
- 11.10.040 Territorial application.
- 11.10.050 Definitions. – CHANGES PROPOSED**
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11.10.050 Definitions.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

- A. “Citation and notice” means a written document initiating a criminal proceeding issued by an authorized peace officer in accordance with the Criminal Rules for Courts of Limited Jurisdiction.
- B. “Department” means the [Public Works](#) Department ~~of Community and Economic Development~~.
- C. “Directive memorandum” means a letter from the City to a right-of-way use permittee, notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken.
- D. “Director” means the Director of the [Public Works](#) Department ~~of Community and Economic Development~~.
- E. “Expressive activity” means the conduct of activity for which the sole or principal object of which is the expression, dissemination, or communication by verbal, visual, literary, or auditory means of political or religious opinion, views, or ideas and for which no fee or donation is charged or required as a condition of participation in or attendance at such activity. For purposes of this chapter, expressive activity also includes activities related to

freedom of the press, including but not limited to press conferences and press coverage of breaking news. For purposes of this chapter, expressive activity does not include fairs, festivals, concerts, performances, athletic events, fundraising events, commercial advertising, or events the principal purpose of which is entertainment.

F. “Franchised utilities” means utilities that have City approval to use City rights-of-way for the purpose of providing their services within the City, whether by written franchise or otherwise.

G. “Hazardous waste” includes any and all such materials as defined by RCW 43.200.015 (radioactive wastes) and RCW 70.105.010(5), (6) and (15) (other hazardous wastes).

H. “Nonprofit” means for charitable purposes and not for monetary gain.

I. “Notice of violation” means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.

J. “One-way trip” means a construction activity related truck trip, whether loaded or empty, engaged in a qualifying material haul that passes a single point in a single direction on a haul route segment. Each passage of the single point in a single direction constitutes a single one-way trip.

K. “Permit” means a document issued by the City granting permission to engage in an activity not allowed without a permit.

L. “Private use” means use of the public right-of-way, other than as a thoroughfare for ordinary transit of vehicles, pedestrians, or equestrians, for the benefit of a particular person or entity.

M. “Qualifying material” means construction materials to include but not be limited to soil, concrete, gravel, building materials and asphalt.

N. “Right-of-way” means all public streets, alleys, and property granted or reserved for, or dedicated to, public use for streets and alleys, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, trails, shoulders, drainage facilities, bike ways and horse trails, whether improved or unimproved, including the air rights, subsurface rights, and easements related thereto.

O. “Security device” means any and all types of bonds, deeds of trust, security agreements, or other similar instruments.

P. “Stop work notice” means a notice posted at the site of an activity that requires all work to be stopped until the City approves continuation of work.

Q. “Underground location service” means the underground utilities location center that will locate all underground utilities prior to an excavation.

R. “Unsafe condition” means any condition which the Director reasonably determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto.

11.10.080 Right-of-way use permits.

The following classes of right-of-way use permits are hereby established.

A. Class A and B – Short-Term.

1. Class A and B permits may be issued for use of a right-of-way for seventy-two (72) or less continuous hours for the purposes which do not involve the physical disturbance of the right-of-way. These classes of use may involve disruption of pedestrian and vehicular traffic or access to private property and may require inspections, cleanup, and police surveillance. For periods longer than seventy-two (72) hours, these uses will be considered Class D, long-term and permanent.

2. Class A permits [are for events and activities that may temporarily close a street, and](#) include but are not limited to the following:

- a. Assemblies;
- b. Bicycle races;
- c. Block parties;
- d. Parades;
- e. Parking;
- f. Processions;
- g. Nonmotorized vehicle races;
- h. Street dances;
- i. Street runs and walks;
- [j. Roadway disturbances which require minor traffic control;](#)
- [h. Temporary sales of goods.](#)

3. Class B permits include but are not limited to the following:

- [a. Fairs;](#)
- [a.b.](#) House or other large structure moves other than those which require a Class E permit;
- [c. Delivery of oversized loads, including construction equipment or materials.](#)
- [e. Temporary sale of goods;](#)
- [d. Temporary street closures.](#)

B. Class C – Disturbance of City Right-of-Way.

[1. Duration, extension, expiration and renewal of Class C permits shall be governed by SMC 13.100.060. may be issued for use of a right of way, for a period not in excess of one hundred eighty \(180\) days, for activities that may alter the appearance of or disturb the surface or subsurface of the right of way on a temporary or permanent basis. For those projects associated with a building permit, Class C permit duration may be extended by the Director or designee to a maximum of two years in order to match building permit duration.](#)

2. Class C permits include but are not limited to:

- a. Boring;
- b. Culverts;
- c. Curb cuts;
- d. Paving;
- e. Drainage facilities;
- f. Driveways;

- g. Fences;
- h. Landscaping;
- i. Maintaining or removing street trees;
- j. Painting;
- k. Sidewalks;
- l. Street trenching;

m. Franchise and non-franchise utility construction;

n. Work associated with frontage improvements required by SMC 13.200;

o. Bus shelters and stops.

C. Class D – Long-Term and Permanent.

1. Class D permits may be issued for use of a right-of-way, ~~for a period not in excess of one hundred eighty (180) days~~, for activities for extended periods of time but which will not physically disturb the right-of-way.

2. The use of a right-of-way for structures, facilities, and uses that involve capital expenditures and long-term commitments of use require this type of permit.

3. Uses in the right-of-way which will remain for periods longer than one-hundred eighty (180) days will require a Revocable Use Agreement.

4.3. Class D permits include but are not limited to:

a. Air rights and aerial facilities;

~~b. Bus shelters and stops;~~

~~c. Access to construction sites and haul roads;~~

~~b. d.~~ Loading zones;

~~c. e.~~ Newspaper sale, distribution, and storage facilities;

~~d. f.~~ Recycling facilities;

~~e. g.~~ Sales structures;

~~f. h.~~ Sidewalk cafes;

~~g. i.~~ Special and unique structures, such as: awnings, benches, clocks, decorations, flagpoles, fountains, kiosks, marquees, private banners, public mailboxes, and street furniture;

~~h. j.~~ Underground rights;

~~k. Utility facilities;~~

~~l. Waste facilities.~~

D. Class E – Potential Disturbance of City Right-of-Way.

1. Class E permits may be issued for use of a right-of-way, for a period not in excess of one hundred eighty (180) days or as specified on the permit by the Director or designee, for those activities that have the potential of altering the appearance of or disturbing the surface or subsurface of the right-of-way on a temporary or permanent basis.

2. Class E permits include but are not limited to:

a. Frequent use hauling involving an average of six (6) vehicles per hour during any eight (8) hour period in one (1) day, for two (2) or more consecutive days;

b. Any hazardous waste hauling.

3. Class E permits may be issued to a general contractor to authorize construction, excavation and fill hauling activities by the said general contractor and by subcontractors.

4. Access Routes and Hours. All hauls in excess of fifty thousand (50,000) CY or hauling more than one hundred (100) working days will be required to use the following routes. The following roadways are limited for use as haul routes and the maximum number of one-way trips per hour is identified by time of day.

Roadway Segments and Hours	Maximum One-Way Trips
a. South 188th Street, West of Tunnel	
6:00 a.m. – 8:00 a.m.	45
8:00 a.m. – 3:30 p.m.	45
3:30 p.m. – 5:30 p.m.	45 westbound
	18 eastbound with no lane closure allowed
5:30 p.m. – 6:00 a.m.	45
b. South 188th Street, between SR99 and Tunnel	
6:00 a.m. – 8:00 a.m.	18
8:00 a.m. – 3:30 p.m.	30
3:30 p.m. – 5:30 p.m.	18 with no lane closure allowed
5:30 p.m. – 6:00 a.m.	30
c. South 188th Street, East of SR99	
6:00 a.m. – 8:00 a.m.	6
8:00 a.m. – 3:30 p.m.	12
3:30 p.m. – 5:30 p.m.	6 with no lane closure allowed
5:30 p.m. – 6:00 a.m.	6
d. International Blvd. (SR99), South of South 188th Street	
6:00 a.m. – 8:00 a.m.	6
8:00 a.m. – 3:30 p.m.	12
3:30 p.m. – 5:30 p.m.	6 with no lane closure allowed
5:30 p.m. – 6:00 a.m.	12
e. International Blvd. (SR99), North of South 188th Street	
6:00 a.m. – 8:00 a.m.	6

Roadway Segments and Hours

8:00 a.m. – 3:30 p.m.
 3:30 p.m. – 5:30 p.m.
 5:30 p.m. – 6:00 a.m.

Maximum One-Way Trips

6
 6 with no lane closure allowed
 12

5. Work Hour Limitations. Any hauling operation within the following hours will require a noise variance application submittal and approval from the Department prior to implementation:

10:00 p.m. to 7:00 a.m.	Monday to Friday
10:00 p.m. to 9:00 a.m.	Saturday and Sunday

11.10.090 Application and processing of permits.

A. ~~To obtain a right-of-way use permit the applicant shall file an application with the Department. Right-of-way permits shall be processed as a Type 0 permit pursuant to SMC Title 16A.~~

B. Every application shall include the location of the proposed right-of-way use, a description of the use, the planned duration of the use, applicant contact information, and all other information which may be required as specified in the procedures adopted under this chapter, and shall be accompanied by payment of the required fees.

C. All Class E applications shall also include numbers and sizes of hauling trucks (single or double beds).

D. The Director or designee shall examine each application submitted for review and approval to determine if it complies with the applicable provisions of this chapter and procedures adopted under this chapter. Other departments that have authority over the proposed use or activity may be requested to review and approve or disapprove the application. The Director or designee may inspect the right-of-way proposed for use to determine any facts which may aid in determining whether a permit should be granted. If the Director or designee finds that the application conforms to the requirements of this chapter and procedures adopted under this chapter that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by a department with authority, the Director or designee shall approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare, and safety and to mitigate any impacts resulting from the use.

E. All applications for permits will be submitted at least fifteen (15) days before the planned need for the permit, or such greater period as may be reasonably required by the Director or designee. If unforeseen conditions require expedited processing the City will attempt to cooperate, but additional fees to cover additional costs to the City may be charged.

F. Notwithstanding subsection (E) of this section, an application for a permit to conduct an expressive activity shall be submitted at least seventy-two (72) business hours in advance of the proposed event, unless good cause exists for a shorter time period. Additionally, if a permit request is due to a spontaneous event occasioned by news or affairs coming into public knowledge within forty-eight (48) hours, the applicant shall make application to the City at least twenty-four (24) hours in advance, or as soon as practicable prior to such event.

~~G. Upon submittal of a completed application, the Department shall collect from the applicant an application fee as provided in SMC 11.10.100(A).~~

11.10.105 Permits for expressive activities.

A. When a Class A ~~or Class B~~ permit is sought for an expressive activity the following provisions shall apply:

1. Where the expressive activity will not require street closures, cost recovery shall be limited solely to a nonrefundable application fee pursuant to SMC 11.10.100(A).
2. The deposit, security device, and insurance requirement of SMC 11.10.150 shall be waived, provided that the applicant has filed with the application a verified statement that he or she intends the purpose of the activity to be an expressive activity.

3. Where the expressive activity will require temporary street closures requiring the City to provide services in the interests of public health, safety, and welfare, the Director or designee may condition the issuance of the permit upon an agreement to pay actual direct costs incurred by the City to a maximum of five hundred dollars (\$500.00), which will be waived if the applicant provides evidence of an inability to pay.
4. Where a permit is requested for an expressive activity, the permit shall presumptively issue except that the City may deny a Class A ~~or Class B~~ permit for an expressive activity if the Director or designee makes written findings explaining how any of the following conditions will exist and cannot be reasonably accommodated:
 - a. The expressive activity will substantially interrupt public transportation or other vehicular and pedestrian traffic in the area of its route; or
 - b. The expressive activity will cause an irresolvable conflict with construction or development in the public right-of-way or at a public facility; or
 - c. The expressive activity will block traffic lanes or close streets during peak commute hours on weekdays between 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 7:00 p.m. on streets classified as principal arterials or minor arterials by the City's Public Works Department; or
 - d. The expressive activity will result in the concentration of persons, animals, or vehicles that will unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets; or
 - e. The expressive activity will substantially interfere with another activity or event for which a permit has already been granted or with the provision of City services in support of other scheduled activities or events; or
 - f. The expressive activity will have significant safety impact upon residential or business access and traffic circulation.
5. With regard to the permitting of expressive activities where the provisions in this section conflict with the provisions in any other section of this chapter, the provisions of this section shall prevail.

Chapter 11.15 TRANSPORTATION IMPACT FEES

Sections:

- 11.15.010 Transportation impact fees established.
- 11.15.020 Definitions. – CHANGES PROPOSED**
- 11.15.030 Establishment of service area.
- 11.15.040 Imposition of impact fee on development activity. – CHANGES PROPOSED**
- 11.15.050 Disposition of impact fee revenues.
- 11.15.060 Refunds.
- 11.15.070 Appeals.
- 11.15.080 Severability.
- 11.15.090 Termination date of authority to collect and expend impact fees.

11.15.020 Definitions.

Unless the context otherwise requires, the terms defined in this section shall, for all purposes of this chapter, have the meanings specified in this section, with words importing the singular number including the plural number and visa versa:

* * *

“Development activity” means any construction or expansion of a building or structure that creates additional demand on and/or the need for public facilities, but not interior remodeling that does not change the PM Peak trips as categorized in the interim transportation plan element to the City’s Comprehensive Plan or of the applicable code or regulation of the City. “Development activity” does not include:

- i. Buildings or structures constructed by a regional transit authority; or
- i-ii. Buildings or structures constructed as shelters that provide emergency housing for people experiencing homelessness, or emergency shelters for victims of domestic violence, as defined in RCW 70.123.020.

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11.15.040 Imposition of impact fee on development activity.

A. The City hereby authorizes the assessment and collection of impact fees on development activity within the City, at the rate of three thousand five hundred dollars (\$3,500) per peak p.m. trip, effective January 1, 2017, as computed in accordance with the most current edition of the Institute of Transportation Engineers Trip Generation Manual, as applied to the City’s adopted Comprehensive Plan and the Transportation Management Plan. It is hereby declared that such impact fees shall:

1. Only be imposed for system improvements that are reasonably related to new development; and
2. Not exceed a proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, reasonably related to new development; and
3. Be used for system improvements that will reasonably benefit new development; and
4. Not be imposed to make up for deficiencies in any previously constructed system improvements; and
5. Reflect the proportionate impact of new housing units, including multifamily and condominium units, based on the square footage, number of bedrooms, or trips generated in the housing unit, in order to produce a proportionally lower impact fee for smaller housing units; and
6. Not impose impact fees on the construction of accessory dwelling units greater than 50% of the impact fees imposed on the principal unit.

Such impact fee schedule is based upon the formula for calculating the proportionate share of the cost of the system improvements, including the costs of previously constructed system improvements, necessitated by new development to be borne by impact fees, which formulas are described in the interim transportation plan element of the City's Comprehensive Plan and incorporated herein by this reference.

B. Impact fee rates shall be updated annually using the following procedures:

1. A three (3) year moving average of the Washington State Department of Transportation Construction Cost Index will be used to determine the increase in fees for each year to reflect increased project costs.
2. The indexed impact fee rates shall be effective January 1st. A copy of the indexed impact fee rates shall be provided to the City Council but the indexed rates shall become effective without further Council review.

The transportation impact fee rates shall be reviewed bi-annually to determine when a new transportation impact fee rate study should be prepared and presented to Council.

C. Unless the use of an independent fee calculation has been approved, or unless a development agreement entered into pursuant to RCW 36.70B.170 provides otherwise, the impact fees shall be calculated and paid per the following:

1. For platted and unplatted single-family residential lots and commercial and multi-family developments, fees shall be calculated based on the impact fee schedule in effect at the time a completed building permit application is filed and paid prior to permit issuance. For a change in use for which no building permit is required, the fee shall be calculated and paid based on the impact fee schedule in effect on the date of an approved change of use.
2. For residential land divisions and unplatted single-family residential lots, the impact fees may be deferred, but shall be paid at the time of final inspection for each building permit. Covenants prepared by the City to enforce payment of the deferred fees shall be recorded at the applicant's expense prior to building permit issuance for platted and unplatted single-family residential lots. The fee shall be calculated based on the impact fee schedule in effect on the date of payment of the impact fee.

3. Upon the applicant's request, impact fees for new, single-family detached and attached residential construction can be deferred until the following times, pursuant to RCW 82.02.050(3):

a. Final inspection; and/or

b. Issuance of the certificate of occupancy or equivalent certification.

i. The City may withhold certification of final inspection, certificate of occupancy, or equivalent certification until the impact fees have been paid in full.

ii. The amount of impact fees that may be deferred under this subsection must be determined by the fees in effect at the time the applicant applies for a deferral.

4.3. The term of deferral is eighteen (18) months from issuance of the building permit.

D. Failure to pay the impact fees for a given development activity at the time of assessment shall result in denial of the building permit for which the owner has applied.

E. In computing the fee applicable to a given development activity, credit shall be given for the fair market value, measured at the time of dedication of land or upon completion of dedicated improvements or construction, of any dedicated land for, improvements to, or construction of, any system improvements in the same category of public facilities as that of the applicable fee provided by the owner and required by the City as a condition of approving the development activity over and above the minimum development standards set out in the City's subdivision and street ordinances.

F. The City Manager or designee may adjust the amount of the impact fee otherwise imposed hereby with respect to specific projects requiring a building permit upon determining that:

1. Unusual circumstances require such adjustment to ensure that such impact fees are imposed fairly; and
2. Studies and data submitted by the owner regarding the impacts of such owner's proposed development activity requires such adjustment to ensure that such impact fees are imposed fairly. Impact fees shall not be deemed unfair unless such unusual circumstances and studies and data support a finding that the impact fees otherwise imposed hereby allocate to the specific project in question a share of the cost of the systems improvements reasonably related to new development that is greater than or substantially less than such project's allocable proportionate share of such costs.

Chapter 11.50 TRANSPORTATION CONCURRENCY MANAGEMENT

Sections:

11.50.010 Authority.

11.50.020 Purpose. – CHANGES PROPOSED

11.50.030 Definitions.

11.50.040 Applicability. – CHANGES PROPOSED

11.50.050 Level of service standards.

11.50.060 Application for concurrency review.

11.50.070 Concurrency evaluation and determination.

11.50.080 Concurrency approval and temporary certificates of concurrency.

11.50.090 Final certificate of concurrency.

11.50.100 Denial of concurrency and mitigation.

11.50.110 Concurrency management program administration – Purpose and procedure.

11.50.120 Relationship to street standards.

11.50.130 Relationship to SEPA.

11.50.140 Relationship to transportation impact fees.

11.50.150 Reconsiderations and appeals.

11.50.160 Fees.

11.50.020 Purpose.

The purpose of this chapter is to establish procedures for ensuring that adequate transportation facilities are available to serve proposed development activity and Traffic demand management (TDM) requirements are consistent with the comprehensive plan.

A. The Director shall be responsible for implementing and enforcing this chapter, including conducting concurrency evaluations, making concurrency determinations, issuing temporary and final certificates of concurrency, and monitoring and updating the program.

B. The Director's determination of concurrency and the issuance or non-issuance of temporary or final certificates of concurrency shall be integrated, insofar as possible, with any applicable decision making processes on permits, applications, and proposals submitted to the City for review and decision. For each application subject to concurrency review and evaluation and the requirement for a certificate of concurrency, the Director shall determine how the review can be best integrated with the decision making process.

11.50.040 Applicability.

A. All construction or change in use initiated pursuant to a development permit for which a development permit, concurrency approval, or a certificate of concurrency was issued prior to the effective date of the ordinance codified in this chapter shall be continued. However, if the City determines that a previously issued development permit for which the concurrency approval was granted has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this chapter.

B. All development activities that generate an increase in PM peak hour trips are required to apply for concurrency review as part of applying for the associated land use permit. Upon approval of the land use permit, the City will issue a temporary certificate of concurrency that is valid as long as the land use permit is valid as provided in this chapter.

C. No concurrency evaluation shall be required if the Director determines that a change of use does not generate an increase of PM peak hour trips compared to the previous use. For the purpose of this subsection, "previous use" shall mean:

1. The use existing on the site when a concurrency evaluation is applied for; or
2. The most recent use on the site, within the one (1) year period prior to the date of application for development activity that had previously been approved for concurrency.

D. For the purposes of this chapter, application for a development permit shall include consideration of the cumulative impacts of all development permit applications for contiguous properties that are owned or under the control of the same person, firm or corporation, when one (1) or more development permits would be issued, or in the judgment of the Director may be issued, within two (2) years of the date of issuance of a development permit for such contiguous property.

E. The Director shall have sole authority to define development permits and activities that are exempt from concurrency management review on a case-by-case basis. The following types of development permits are typically exempt from the concurrency management ordinance and the requirements of this chapter because they do not generate additional PM peak hour trips. This type of development includes, but is not limited to, the following:

1. Access permit;
2. Demolition permit;
3. Right-of-way permit;
4. Clearing and grading (STE) permit;
5. Fire permit;
6. Interior alterations with no change of use;
7. Mechanical permit;
8. Plumbing permit;
9. Sign permit;
10. Single-family remodeling with no change of use;
11. Building permit for fences or retaining walls;
12. Single-family homes built on lots created by a final plat or final short plan that received a final certificate of concurrency within the last five (5) years.

F. No concurrency evaluation shall be required for highways of statewide significance (HSS), pursuant to RCW 36.70A.070(6)(a)(iii)(C).