

**TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. _____**

**AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON
ADOPTING REGULATIONS FOR THE USES AND DEVELOPMENT OF NON-PAVED
PORTIONS OF THE TOWN RIGHTS OF WAY**

WHEREAS, the Town of Beaux Arts Village (“the Town”) owns and maintains the Town’s rights of way for vehicular and pedestrian traffic, as well as for utility placement and operations; and

WHEREAS, the Town wishes to preserve and enhance the non-paved portions of the rights of way for continued use as utility corridors and landscaped areas; and

WHEREAS, property owners adjacent to said rights of way are often interested in using the rights of way for parking or enhanced landscaping; and

WHEREAS, the Planning Commission conducted a Public Hearing on January 15, 2009 to solicit public opinions regarding allowed uses of the rights of way; and

WHEREAS, the Town Council has reviewed the proposed Ordinance and the recommendations of the Planning Commission at a public hearing; **NOW THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, AS FOLLOWS:

Section 1. Title, Purpose and Interpretation.

1.1. Title. This Ordinance shall be known as the Right of Way Code of the Town of Beaux Arts Village, Washington.

1.2 Purpose and Intent. The general purpose and intent of the ordinance is to protect the rights of way for use by all Town residents and to provide rules and regulations for the installation of plant materials and parking surface materials within the non-paved portions of the rights of way.

1.3 Interpretation. In the interpretation and application of this ordinance, its provisions shall be construed to be the minimum requirements.

Section 2. Definitions

Developed Right of Way. A Developed Right of Way is any right of way that contains a paved or gravel street for vehicular access.

Path Right of Way. A Path Right of Way is any right of way that has not been developed for vehicular access and is used solely for pedestrian access or greenbelt within the Town.

Right of Way Use Permit. A Right of Way Use Permit authorizes a property owner to use the Right of Way adjacent to his/her property for a use approved under the provisions of this Ordinance..

ROW Encroachment Agreement. A ROW Encroachment Agreement is a document executed by a property owner that specifies that the property owner who receives Town permission to install any allowed improvement in a Right of Way is fully responsible for its maintenance and shall be responsible for its removal at the request of the Town. It further stipulates that the property owner is fully responsible for any subsequent damage or harm that improvement may cause.

Visibility Standard. In addition to the visibility requirements of the Model Traffic Ordinance and any other standard specified by the Town Engineer, the visibility standard specific to this Right of Way Ordinance requires thirteen vertical feet of clearance above all portions of the pavement within a Right of Way.

Pervious Material. A surfacing material that allows water to penetrate it and flow through to the soil below. *(This definition will be improved to be more specific.)*

Section 3. Existing Uses Within a Right of Way.

- 3.1. All existing uses previously approved by the Town Council that are within any Right of Way shall be allowed to be continued and maintained, and shall be considered legal Right of Way Uses.
- 3.2. All existing uses not previously approved by the Town Council that are within any Right of Way and that exist as of the date of this Ordinance shall be considered Nonconforming Right of Way Uses. Such uses shall only be replaced through a Right of Way Use Permit. Ordinary repair and maintenance shall be permitted without a Right of Way permit.

Section 4. Permitted Uses Within a Developed Right of Way.

- 4.1. The following uses shall be permitted outright between the paved portion of the right of way and the property line marking private property:
 - 4.1.1. Installation of a driveway up to twenty (20) feet in width to permit vehicular ingress and egress to the property.
 - 4.1.2. Installation of a footpath from the paved portion of the Right of Way to permit pedestrian entry to a front door, constructed of a pervious material and not to exceed five (5) feet in width.

- 4.1.3. Placement of the mailboxes within mailbox stands.
 - 4.1.4. Installation, maintenance, and removal of grass, groundcover and other plant material less than three feet in height at its maturity, of any species other than those prohibited in Section 6 of this Ordinance.
 - 4.1.5. Maintenance and removal of plant material, except for any tree, greater than 3 feet in height at its maturity, not including protected tree species. Protected tree species may be maintained as necessary to maintain visibility standards.
 - 4.1.6. Installation of landscaping rocks located a minimum of five (5) feet from the pavement edge and not to exceed a size that can be moved by two persons.
 - 4.1.7. Installation of one pervious parking spot per residential building lot, with dimensions not to exceed nine feet by nineteen feet.
 - 4.1.8. Installation of underground utilities, provided the area is fully restored to the pre-installation condition, with the exception of plant materials prohibited in Section 6 of this Code.
 - 4.1.9. Installation of address identification signs.
 - 4.1.10. Above-ground irrigation systems and landscape lighting.
- 4.2. The following uses are considered Conditional Uses and shall only be installed following the approval of the Town Council and upon the execution of a “ROW Encroachment Agreement” by the proponent:
- 4.2.1. Trees, provided visibility standards are maintained.
 - 4.2.2. Plant material greater than three feet in height, provided visibility standards are maintained.
 - 4.2.3. Any parking spot greater than the dimension specified in Section 4.1 or constructed of a non-pervious material.
 - 4.2.4. Grading.
 - 4.2.5. Structures.
 - 4.2.6. Below-ground irrigation systems.

Section 5. Permitted Uses Within a Path Right of Way.

- 5.1. All property within a Path Right of Way shall remain and be maintained in its natural state. Removal of noxious weeds and invasive plant species is permitted.

- 5.2. Installation of any utility by any party other than the Town within a Path Right of Way shall be allowed only in conjunction with an associated building permit or street use permit. Restoration of the Right of Way with native plant materials, other than those prohibited in Section 6 of this Code, is required.

Section 6. Uses Prohibited Within Any Right of Way. The following uses are prohibited within any Right of Way: fences; arbors; single mailboxes; retaining walls; water features; landscaping rocks larger than the size allowed in Section 4 of this Code; planting of holly, ivy, laurel, or any noxious weed or invasive plant species; or any other use not expressly permitted either outright or conditionally in this Ordinance.

Section 7. Right of Way Use Permit. A Right of Way Use Permit shall be required under the following conditions:

- 7.1. Building Permit Application. Upon application for a Building Permit related to the encroachment, the Applicant shall also file a permit for a Right of Way Use Permit if any Nonconforming Right of Way uses within the Right of Way adjacent to the property exist, whether the Applicant intends to modify such structure or not. Should the Applicant wish to remove said use, a Right of Way Use permit is not required.
- 7.2. Installation of any “Conditional Use” not associated with a Building Permit application.

Section 8. Right of Way Use Permit – Fees. A permit fee shall be assessed for every Right of Way Use Permit application submitted to the Town Clerk. Permit fees shall be set by resolution of the Council and shall be paid at the time the permit is submitted. In addition, applicants shall be billed by the Town for the time spent by Town consultants in review and administration of any Right of Way Use Permit.

Section 9. Removal or Intentional Destruction of Trees. Removal or intentional destruction of any tree in the Right of Way without the prior approval of the Council is strictly prohibited.

Section 10. Validity. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases subsequently may be found by competent authority to be unconstitutional or invalid.

Section 11. Effective Date. This ordinance shall take effect five (5) days after its passage and publication.

PASSED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE on this 8th day of September, 2009 and signed in authentication of its passage.

Richard Leider, Mayor

ATTEST:

APPROVED AS TO FORM:

Sue Ann Spens, Clerk-Treasurer

Wayne Stewart, Town Attorney

I certify that copies of the above ordinance were posted as required by law in the Town of Beaux Arts Village, Washington, on the _____ day of _____, 2009.

Sue Ann Spens, Clerk-Treasurer