

**TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. 387**

**AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON
ADOPTING REGULATIONS FOR COMMERCIAL USES OF PAVED AND
UNPAVED 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, adjacent property owners are allowed limited use of the unpaved portions of adjacent rights of way as set forth in the Town’s Right-of-Way Code ordinance; and

WHEREAS, the Town wishes to regulate commercial activity on both the paved and unpaved portions of the Town rights of way; and

WHEREAS, the Town wishes to replace the Street Opening Permit, which has been used to regulate construction in the rights of way, with a Commercial Right of Way Use Permit;
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 Commercial Right-of-Way Use 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 paved and non-paved portions of the rights of way from damage by commercial vehicles and to provide rules and regulations for special uses 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.

Commercial Right-of-Way (ROW) Use Permit. A permit obtained from the Town's building department authorizing use of the Town Rights-of-Way for the commercial purposes approved under the provisions of this Ordinance.

Franchised Utility. A utility that has Town approval to use Town Rights of Way within the Town by written franchise agreement.

Oversize Vehicle. Any truck, truck/tractor, semi-trailer or any combination thereof greater than eight (8) feet in width or thirty (30) feet in total length from front to rear.

Overweight Vehicle. Any truck, truck/tractor, semi-trailer or any combination thereof weighing more than 32,000 pounds licensed gross weight.

Right-of-Way. Property owned by the Town and intended primarily for uses relating to vehicular and pedestrian traffic, utility placement and operations, green space and other purposes as determined by the Town, including the air rights, subsurface rights and easements related thereto. Rights of way may be paved or unpaved.

Section 3. Commercial ROW Use Permit Required.

- 3.1. Any person, firm, corporation, owner, or authorized agent intending to use or park an oversize vehicle or an overweight vehicle on any paved or unpaved portions of the right-of-way shall first obtain a commercial ROW use permit.
- 3.2. Any person, firm, corporation, owner, or authorized agent intending to operate any vehicle having wheels, tracks or tires constructed, formed or equipped with spikes, cleats, lugs or other attachments or projections that have the potential to damage or destroy the paved or unpaved portions of the right-of-way shall first obtain a commercial ROW use permit.
- 3.3. Any person, firm, corporation, owner, or authorized agent intending to place earth, gravel or other excavated material in such a manner as to obstruct or interfere with the free use of the paved right-of-way shall first obtain a commercial ROW use permit.
- 3.4. Any person, firm, corporation, owner, or authorized agent intending to move any building over, along or across a town right-of-way or private property shall first obtain a commercial ROW use permit as well as a building permit and any other permits as may be required by the building official.
- 3.5. Any person, firm, corporation, owner, or authorized agent intending to construct, install, operate or maintain facilities related to providing utility services, including removing and replacing a manhole cover, without having executed a franchise agreement with the Town shall first obtain a commercial ROW use permit as well as a building permit and any other permits as may be required by the building official.

Section 4. Applications for Commercial ROW Use Permits.

- 4.1. Every application for a commercial ROW use permit 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 that may be required by the Town to complete a review of the proposed work. The permit shall be issued for a period not to exceed 30 days.

- 4.2 Certain applicants, such as franchised utilities, may need ongoing access to the right-of-way for a short period of time to construct, install, operate or maintain their facilities over a short period of time. To limit the need to issue a new permit for each use, the Town may issue a 180-day commercial ROW use permit for multiple uses.
- 4.3 The Town may revoke or suspend any commercial ROW use permit whenever:
- 4.3.1. The work or activity does not proceed according to the plans as approved, conditions of approval, or the requirements of this ordinance.
- 4.3.2. The permit holder has made a misrepresentation of a material fact in applying for the permit.
- 4.3.3. The progress or condition of the approved work or activity indicates that it is or will be inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers or will endanger the public, the adjoining property or street, or utilities in the street.
- 4.4 The duration of each commercial ROW use permit shall be specified on the permit and may not be renewed or extended. If the permit holder needs continued use of the right-of-way after the permit has expired, the permit holder must apply for a new permit.

Section 5. Commercial Right-of-Way Use Permit – Fees. A permit fee shall be assessed for every commercial ROW 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 application is submitted. In addition, applicants shall be billed by the Town for the time spent by Town consultants in review and administration of any Commercial Right-of-Way Use Permit.

Section 6. 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 7. Enforcement and Penalties. Violation of any of the provisions of this ordinance shall be a civil infraction with a penalty of \$500 for each and every day that the violation continues.

Section 8. Liability for damage to or destruction of the right-of-way. Any person, firm, corporation, owner, or authorized agent operating any vehicle or moving any object or conveyance upon any public right-of-way of the Town in a negligent or illegal manner shall be liable for all damage to the right-of-way that results from said negligent or illegal actions. The party causing the damage shall either repair the right-of-way to the satisfaction of the Town or reimburse the Town for the cost to repair the damage. Any party failing to remedy the damage caused shall be subject to civil action to recover the cost of repairing the damage.

Section 9. Exceptions. The following uses are exempt from the requirements of this ordinance.

- 9.1. Use of the paved rights of way by municipal transit vehicles, school buses, emergency vehicles, recreational vehicles and recreational boat trailers (except as regulated by other Town ordinances), and similar transient vehicles.
- 9.2. Responses to emergencies that require work in the right-of-way, such as water or sewer main breaks, gas leaks, downed power lines or similar emergencies; provided, that the Town shall be notified by the responding utility or contractor verbally or writing as soon as practical following the onset of the emergency. Nothing herein shall relieve a responding utility of contractor from the requirement to apply for a commercial ROW use permit no more than 48 hours after beginning emergency work in the right-of-way.
- 9.3. All uses allowed by franchises, agreements or contracts currently in force between named parties and the Town of Beaux Arts Village.
- 9.4. All uses by property owners that are specifically allowed on the unpaved right-of-way under the Town’s Right-of-Way Code.
- 9.5. All uses related to construction on private property that are specifically regulated by the Town’s Building Code and required to pay a Heavy Truck fee.

Section 11. 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 12. 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 11th day of October, 2011 and signed in authentication of its passage.

Richard Leider, Mayor

ATTEST:

APPROVED AS TO FORM:

Sue Ann Spens, Clerk-Treasurer

Wayne Stewart, Town Attorney