

**CITY OF BINGEN
ORDINANCE 2021-02-713**

AN ORDINANCE ADOPTING BMC 12.02 RIGHT OF WAY USE

WHEREAS, the City Council of the City of Bingen desires to establish a permit procedure for right of way use in order to protect the public infrastructure; and

WHEREAS, application for a right of way permit would allow for review of proposed work to be completed in the public right of way;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BINGEN DO
ORDAIN AS FOLLOWS:**

SECTION 1 – ADOPTION: Bingen Municipal Code 12.02 as presented below is adopted.

CHAPTER 12.02

RIGHT – OF – WAY USE

12.02.01 Title – Purpose – Intent – Construction.

- A. This chapter shall be known as the Right – of –Way Use Code.
- B. It is the purpose of this code:
 - 1. To provide for the issuance of right-of-way use permits in order to regulate activities within the rights-of-way in the City of Bingen in the interest of public health, safety and welfare.
 - 2. To provide for the enforcement, fees, charges, warranties, and procedures required to administer the permit process and ensure the long-term viability of public improvements.
 - 3. To avoid creating or otherwise establishing or designating any particular class or group of persons who will or should be especially protected or benefitted by the terms of this code or any procedures adopted hereunder.
- C. It is the specific intent of this code and any procedures adopted hereunder to place the obligation of complying with the requirements of this code upon the permittee, and no provision is intended to impose any duty upon the City of Bingen, or any of its officers, employees or agents. Nothing contained in this code or any procedures adopted hereunder is intended to be or shall be construed to create or form the basis for liability on the part of The City of Bingen, or its officers, employees or agents, for any injury or

damage resulting from the failure of the permittee to comply with the provisions hereof, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code or any procedures adopted hereunder by the by The City of Bingen, its officers, employees or agents.

- D. The provisions of this code shall be liberally construed for the accomplishment of these purposes and intents.

12.02.02 Definitions.

The following words and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

- A. "Citation and notice" means a written document initiating a criminal proceeding after an arrest and issued by an authorized peace officer, in accordance with the Justice Court Criminal Rules.
- B. "City inspector" means the designated employee(s) of the department responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.
- C. "City" means The City of Bingen.
- D. "Complaint" means a written document certified by the prosecuting attorney initiating a criminal proceeding in accordance with the Justice Court Criminal Rules.
- E. "Department" means the public works department designated by the city administration.
- F. "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.
- G. "Director" means the public works director, superintendent, administrator, or his/her designated representative, or other person designated by the public works director, superintendent or city administrator.
- H. "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, but not limited to, damage to persons or property from natural or manmade consequences, such as storms, earthquakes, riots or wars.
- I. "Franchised utilities" means utilities that have city approval to use rights-of-way for the purpose of providing their services within the city, whether by written franchise granted by the city or otherwise.
- J. "Nonprofit" means not for monetary gain unless for charitable purposes, under the laws and regulations of the Internal Revenue Service.
- K. "Notice of violation" means a document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.
- L. "Oral directive" means a directive given orally by city personnel to correct or discontinue a specific condition.
- M. "Permit" means a document issued by the city granting permission to engage in an activity permitted under this chapter and not allowed without a permit.

- N. "Person" means and includes an individual, firm, corporations, companies, associations, joint stock companies or associations, public or private utility firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.
- O. "Private use" means use of the public right-of-way for the benefit of a person, partnership, group, organization, company, or corporation, other than as a thoroughfare for any type of vehicles, pedestrians or equestrians.
- P. "Procedure" means a procedure adopted by the director to implement this code, or to carry out other responsibilities as may be required by this code or by other codes, ordinances, or resolutions of the city or other agencies.
- Q. "Right-of-way" means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bike ways, horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.
- R. "Stop work notice" means a notice posted at the site of activity that requires all works to be stopped until the city approves continuation of work.
- S. "Superintendent" means the public works superintendent.
- T. "Telecommunications carrier" means every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the city, used or to be used for the purpose of offering and providing telecommunications services.
- U. "Telecommunications facilities" means the plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, antennas, electronics, poles and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.
- V. "Telecommunications provider" means every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities.
- W. "Telecommunications service(s)" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.
- X. "Underground location service" means the underground utilities location center that will locate all underground utilities prior to excavation.
- Y. "Unsafe condition" means any condition which the director determines is a hazard to health, or endangers the safe use of the right-of-way, or which may cause damage thereto.

12.02.03 Powers of the Director/Superintendent/Administrator.

The director/superintendent/administrator shall have the power to:

- A. Administer the provisions of this code including but not limited to interpreting the code and issuing rules necessary for its administration. Such duties shall include but not be

limited to the approval of plans and specifications for any construction, barricade, or excavation, issuance of permits and collection of permit fees, establishment and collection of engineering inspection, charges, repair of cuts and reconditioning of street changes, inspection of construction of curb, gutter, grading, paving, storm sewers, retaining walls, driveways or any other construction, barricade or excavations in any street, road, alley or right-of-way. The director may correct errors and omissions and is authorized to recommend adjustment of the amount of fees required by this code to be proportional to the scope of the work for which the permit is required.

- B. Administer and coordinate the enforcement of this code and all procedures adopted hereunder relating to the use of rights-of-way including the keeping of necessary records and the gathering of evidence for the assistance in apprehending and prosecuting violators.
- C. Advise the city council, city administrator and other city departments on matters relating to the use of the right-of-way.

12.02.004 Permits Required.

- A. It is unlawful for anyone to make use of any public right-of-way without first having obtained a right-of-way use permit issued by the city or to use any right-of-way without complying with all the provisions of such right-of-way permit issued by the city; provided that a right-of-way use permit shall not be required for any use or activity specifically exempted from the requirements of a right-of-way use permit.
- B. Any telecommunications carrier or provider who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, over or across any right-of-way of the city for the purpose of providing telecommunications services shall first obtain authorization in the form of a telecommunications right-of-way use agreement authorizing the use of such right-of-way consistent with the requirements and conditions of such agreement.
- C. General and specific permit requirements are defined in the procedures referenced in this code.
- D. All permit applicants shall, before commencing any construction in city rights-of-way, comply with all requirements of the one number locator service.
- E. Prior to actual issuance of the permit the public works director shall inspect and approve the location of the use.

12.04.005 Additional Permit.

Additional permits for any use may be required by other city codes. The city does not waive its right to use the right-of-way by issuance of any permit.

12.04.006 Right-of-way Use Permits.

The following types of right-of-way use permits are established:

A. Type A – Short Term Use.

1. Type A permits may be issued for uses of the right-of-way for more than fifteen minutes and not greater than twenty-four continuous hours which do not involve the significant physical disturbance of the right-of-way.
2. This type of use may involve significant disruption of pedestrian and vehicular traffic or access to private property and may require inspections, WSDOT permits, traffic plans, public notice, clean-up and police surveillance.
3. Type A permits include but are not limited to the following:
 - a. Assemblies;
 - b. Bike races;
 - c. Block parties;
 - d. Fairs;
 - e. House moves;
 - f. Non-motorized vehicle races;
 - g. Parades;
 - h. Parking;
 - i. Processions;
 - j. Street dances;
 - k. Street runs;
 - l. Temporary sale of goods;
 - m. Temporary street closures;
4. When issuing and enforcing Type A permits, the director shall take into account whether the requested use is a for-profit or a non-profit venture, with non-profit events given priority.

B. Type B – Disturbance of City Right-Of-Way.

1. Type B permits may be issued for uses of the right-of-way that will alter the appearance of or disturb the surface, sub-surface or super sub-surface of the right-of-way on a temporary or permanent basis.
2. All work shall conform to engineering standards as required by the director. Street restoration shall require the permittee to return the public right-of-way to its original or better condition immediately upon completion of the project. Where the activity involves an excavation of road surface, the permittee shall compensate the city for the value of the degradation of the road life at the rate set forth on the public works fee schedule. The permittee shall be responsible for defects or failure of the street or curb cut areas for a period of one year following finish inspection.
3. The permit shall require a construction schedule approved by the director and at least twenty-four hours' notice before the commencement of any work. The director shall have discretion to coordinate construction schedules to minimize trenching as provided in the shared use excavations section below.
4. Every permit issued by the public works department under this chapter shall expire one hundred eighty days after issuance of the permit unless the permit has

been extended. The permittee shall diligently make every effort to complete work in a timely manner.

5. In the event it becomes necessary for the permittee to make a cut through the entire width of a street, the director may require that no more than half of the street shall be closed to traffic at one time. The director may, with concurrence of the chief law enforcement officer and fire chief, permit a street to be blocked for a short period of time where suitable detours can be arranged and the public will not be unnecessarily inconvenienced.
6. Type B permits may be for either single uses or multiple uses. Type B use permits will be issued to approved applicants who are planning a single Type B activity at a single location in a short period of time.
7. Type B use permits will be issued to approved applicants who are planning many Type B routine maintenance activities at several different locations in a short period of time.
8. Type B permits include but are not limited to:
 - a. Boring;
 - b. Culverts;
 - c. Curb cuts/driveways;
 - d. Drainage facilities;
 - e. Fences;
 - f. Landscaping;
 - g. Painting;
 - h. Sidewalks;
 - i. Street trenching;
 - j. Utility installation;

C. Type C – Long Term Uses by Staff.

1. Type c permits may be issued for use of right-of-way for activities for extended periods of time. The public works director shall consult with the planning and building departments prior to the issuance of a Type C permit.
2. The use of right-of-way for structures, facilities, and uses that involve capital expenditure and long-term commitments of use require this type of permit.
3. Type C permits include but are not limited to:
 - a. Air rights;
 - b. Bus shelters/stops;
 - c. Construction site/haul roads;
 - d. Loading zones;
 - e. Mobile peddling;
 - f. Newspaper sale;
 - g. Recycle facilities;
 - h. Sales structures;
 - i. Sidewalk cafes;

- j. Special and unique structures; fountains, clocks, flagpoles, awnings, marques, benches, kiosks, signs, mailboxes, street furniture, decorations.
- k. Underground rights;
- l. Utility facilities;
- m. Waste facilities;

Type A uses that exceed twenty-four hours will be treated as Type C uses, except as otherwise allowed by the director, or Type D if they are pursuant to an agreement and council approval.

All Type C uses shall be revocable by the city at any time at its discretion, the city administrator shall report regularly to city council regarding all approved Type C uses.

D. Type D- Long Term and Permanent Uses by Agreement and Approval by Council.

- 1. Type D permits may be required for use of right-of-way for long term or permanent uses by signed agreement between the permittee and the city. All Type D proposals must first be presented to city council at a regular meeting for preliminary approval prior to submission for staff approval. Any Type D permit agreement shall also first require council approval and authority.
- 2. Type D permits include the following but not limited to:
 - a. Structures that may have a useful life exceeding five years;
 - b. Structures that may cost over one hundred dollars to remove;
 - c. Structures or uses for which the permittee requests a period irrevocability;
 - d. Any Type C use that the council deems by a vote of majority of the full body to be a significant impact to the city right-of-way and to convert to a Type D use requiring approval of the council and a written agreement;

E. Exemptions.

- 1. A right-of-way use permit shall not be required for:
 - a. The use of the right-of-way for a duration of fifteen minutes or less, provided that the use does not result in an alteration of the appearance or disturbance to the surface, super-surface, or sub-surface of the right-of-way;
 - b. The use of the right-of-way for a thoroughfare for any type of vehicles, pedestrians or equestrians;
 - c. The use of the right-of-way for portable signs (sandwich board signs) and street furniture as regulated by the zoning code.

12.02.007 Applications and Processing of Permits.

- A. To obtain a right-of-way use permit the applicant shall file an application with the City Clerk for permit Type, B and C, and for Type D permits with both the planning department and City Clerk.
- B. Every application shall include the location of the proposed right-of-way use with a plan drawing, 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 procedures adopted hereunder, and shall be accompanied by payment of the required fees.
- C. Applicants planning on disturbing the right-of-way shall identify the contractor and/or subcontractor who will actually perform the work and include the state contractor's number for such contractor or subcontractor.
- D. All applications for permits shall be submitted 30 days or more before the planned need for the permit. If unforeseen conditions require expedited processing time the city will attempt to cooperate, but additional fees to cover additional costs to the city may be charged.
- E. Certain applicants such as utilities or franchised utilities may be involved in frequent use of the right-of-way for repair, maintenance and construction in a short period of time. To avoid the issuance of a new permit for each use, the city will issue a ninety day permit for multiple uses, provided that degradation fees shall accrue regardless of the issuance of a permit for single or multiple uses.
- F. The director shall examine each application submitted for review and approval to determine if it complies with the applicable provisions of this code and procedures adopted hereunder. Other departments that have authority the proposed activity will be required to review and approve or disapprove the applicant. The director shall 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 finds that the application conforms to the requirements of this code and procedures adopted hereunder, 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, he/she may 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.
- G. No permit application shall be assigned and no person shall allow his/her name to be used to obtain a permit or permits for others.

12.02.008 Permits fees and charges.

- A. The fee for each permit shall be set forth in a fee schedule recommended by the Clerk and adopted by the City Council by a separate resolution. Fees and charges adopted pursuant to this section may be increased or decreased by the council on the Clerk's recommendation in accordance with changes in the costs incurred by the city. The City Council shall, upon recommendation of the Clerk, establish the amount, rates and formulas for the various types of permit applications including application fees, processing fees and review costs, pass through charges for engineering review and excess

inspection costs if needed, road cut fees and costs incurred by the city for repairs and replacement if required. Special accommodations will be made for multiple use permit holders to allow for the computation of the actual number of uses under the multiple use permit upon completion/expiration of the permit. House move permit charges will compensate the city for its time and expense, if required to assist in the move and include reimbursement for any damage incurred to city property. The fee schedule may also address the waiver of permit fees for franchised utilities needing to apply for a permit because of city initiated construction projects requiring utility work.

12.02.009 Specifications.

- A. All work to be performed under any permit issued under this code shall conform to all other city codes, the current standards for public works construction and all other standards used by the city in the administration of this code.

12.02.10 Permit exception.

- A. A right-of-way use permit shall not be required of utilities or franchised utilities when responding 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 department shall be notified by the responding utility or city contractor verbally or on the emergency call out if the emergency occurs during non-working hours, as soon as practicable following onset of emergency. Nothing herein shall relieve a responding utility or city contractor from the requirement to apply for a right-of-way use permit within forty-eight hours after beginning emergency work in the right-of-way.
- B. The director shall determine whether permits shall be required for routine maintenance and construction work performed by city utilities and city maintenance crews.

12.02.011 Revocation of permits.

- A. The director may revoke or suspend any permit issued under this chapter whenever:
 - 1. The work or activity does not proceed in accordance with the plans as approved, or conditions of approval, or is not in compliance with the requirements of this code or procedures, or other city ordinances or state laws.
 - 2. The city has been denied access to investigate and inspect how the right-of-way is being used.
 - 3. The permittee has made a misrepresentation of a material fact in applying for a permit.

4. 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 to the street or utilities in the street, or and excavation or fill endangers or will endanger the public, the adjoining property or street, or utilities in the street.
- B. Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized or directed by the director.

12.02.012 Renewal of permits.

- A. Each permit shall be of a duration as specified on the permit and may not be renewed. If continued use of right-of-way is desired by the permittee after expiration of a permit, he/she must apply for a new permit, unless extended as provided above.

12.02.013 Work completed by city.

In the event the permit applicant requests that the city do the work of repairing road cuts, opening or other disturbances and the director determines the city is in a position to do the repair works the cost for doing this work shall be computed by the city clerk based upon a schedule of charges set by resolution. Such schedule of charges is available for public inspection as a public record. The permit applicant shall:

- A. File a permit application with the city with all information including plans for the work being requested of the city.
- B. The applicant shall acquire an appropriate permit and shall deposit with the city a sum computed on the schedule of charges and work needing to be completed. If the actual work completed exceeds the initial deposit, the city clerk shall bill the permittee the balance of the amount due.

12.02.014 Assurance device/insurance.

- A. If the director determines that that there is a potential for injury, damage or expense to the city as a result of damage to persons or property arising from an applicant's proposed use of any right-of-way, the applicant may be required to make a cash deposit with the finance department or to provide an assurance device or insurance in a form acceptable to the city clerk for the activities described in the subject permit. The amount of the cash deposit, assurance or insurance shall be determined by the director.
- B. The requirements for performance deposits and insurance are based on considerations of the applicant's prior performance, nature of the proposed use, cost of the activity, length of use, public safety, potential damage to right-of-way and potential liability or expense to the city.
- C. In each case where the city requires or allows an applicant to provide an assurance device, the city clerk shall determine the type of assurance device that will be used. The assurance device may be a non-revocable letter of credit, set aside letter, assignment of funds, certificate of deposit, deposit account, bond or other readily accessible source of funds. A bond will be accepted only when circumstances make a bond the only

reasonable form of assurance as determined by the city clerk, and the bond adequately protects the interests of the city, or when a bond is required by state statute.

- D. Interest from any interest-bearing form of assurance device will accrue to the benefit of the depositor.
- E. If the date by which the required work or improvements are to be completed under a performance assurance device, the director determines that the work or improvements have not complied with the terms of this chapter, he/she shall notify the applicant. The notice must state:
 - 1. The work that must be done or improvement that must be made to comply with the requirements and the assurance device; and
 - 2. The amount of time the applicant has to commence and complete the required work or improvements; and
 - 3. That if the work or improvements are not commenced and completed within the time specified, the city will use the proceeds of the assurance device to have the required work or improvements completed.
- F. If the work or improvements covered by the assurance device are not completed within the time specified in the notice given under subsection (E) of this section, the city shall obtain the proceeds of the device and do the work or make the improvements covered by the device. The city may either have employees of the city do the work or make the improvements or, by using procurement procedures established by law, have a contractor do the work or make the improvements.
- G. If at any time the director determines that actions or inactions associated with any assurance device have created an emergency situation endangering the public health, safety, or welfare, creating a potential liability for the city, or endangering city streets, utilities, or property; and if the nature or timing of such an emergency precludes the notification of applicants as provided in subsection (E) of this section while still minimizing or avoiding the effects of the emergency, the city may use the assurance device to correct the emergency situation. The city may either have employees of the city do the work or make the improvements, or may have a contractor do the work or make the improvements. If the city uses the assurance device as provided by this section, the applicant shall be notified in writing within four days of the commencement of emergency work. The notice must state the work that was completed and the nature of timing of the emergency that necessitated the use of the assurance device without prior notification.
- H. The permit owner is responsible for all costs incurred by the city in doing the work and making the improvements covered by the assurance device. The city shall release or refund any proceeds of a performance device remaining after subtracting all costs for doing the work covered by the device. The owner of the permit shall reimburse the city for any amount expended by the city that exceeds the proceeds of the device. The city shall have claim against the owner for the amount of any excess.
- I. In each case where the city uses any of the proceeds of the device, it shall give the owner of the permit an itemized statement of all proceeds and funds used.

12.02.015 Hold harmless.

As a condition to the issuance of any permit under this chapter, the permittee shall agree to defend, indemnify and hold harmless the city, its offices, employees and agents, for any and all suits, claims or liabilities caused by, or arising out of any use authorized by any such permit. Any work done in or use of the city right-of-way, whether authorized or unauthorized, shall give rise to an implied indemnification of the city against all claims, injuries or damage that may result, including the city's defense of any such claims.

12.02.016 Guarantee.

When there is a need to ensure conformance with the city's development standards, city or state construction standards, or other requirements, the applicant may be required to provide a guarantee of workmanship and materials for a period of one year or more as determined by the director (Section 12.02.006 Permit Type B). Such guarantee may be the form of a cash deposit or a security device in a form and amount approved by the city clerk.

12.02.017 Inspections.

As a condition of issuance of any permit or authorization which requires approval of the department, each applicant shall be required to consent to inspections by the department or any other appropriate city department. Prior to final inspection in all Type D permits and other permits as required by the director, the permittee shall provide the city with complete as-builts to the project, including, if available, files in an electronic medium (CAD, GIS, etc.) tied to landmarks approved by the director. The director shall be responsible for determining the level of inspection required based on the nature of work being completed. If the director determines that engineering assistance is needed the director may require engineering on behalf of the city to be paid by the permittee. All work done under a permit issued pursuant to this chapter shall be subject to inspection and the work shall not be deemed completed until it has been accepted by the director as satisfactory.

12.02.018 Relocation.

Whenever the city undertakes or approves the construction of any sewer, water or storm drainage line (eight inches diameter or larger) or other street improvement project including, without limitation: installation of traffic signals, street lights, sidewalks, and pedestrian amenities, wherein the facility so constructed or approved is or shall become, by gift, transfer, dedication or otherwise, a facility owned, maintained or operated by the city, and such project necessitates the relocation of any utility company's then existing facilities, the city shall:

- A. Provide such utility company written notice requiring such relocation at least ninety days prior to the commencement of such improvement project; and

- B. Provide such utility company with copies of pertinent portions of the plans and specifications for such street improvement project so that such utility company may relocate its facilities to accommodate such street improvement project. No later than eighty days after receipt of such notice and plans and specifications, such utility company shall complete the relocation of its facilities so as to accommodate such improvement project, at no charge or expense to the city, at least ten days prior to commencement of construction of such improvements: provided, that such eighty day notice period shall be extended by mutual agreement if necessitated by occurrence of an "Act of God".
- C. As to any relocation of a utility company's facilities wherein the cost and expense thereof is to be borne by such utility company in whole or in part, in accordance with this section, such utility company may, after receipt of written notice requesting relocation, submit to the city written alternatives to such relocation. Upon receipt, the city shall evaluate such alternatives and shall timely advise such utility company in writing if one or more of the proposed alternatives is suitable to accommodate the work which would otherwise necessitate relocation of such facilities. If so requested by the utility company, the city shall give each alternative proposal full and fair consideration. In no case shall the city arbitrarily reject reasonable alternatives. In the event that the city is satisfied, after due consideration, that there is no reasonable alternative, the utility company shall relocate its facility as otherwise provided in this section. The city's determination that there is no reasonable alternative shall be conclusive and shall not be subject to any city administrative appeal process.

12.02.019 Correction and discontinuance of unsafe, nonconforming, or unauthorized conditions.

- A. The director or his/her designee is authorized and directed to enforce all provisions of this chapter. Whenever the director determines that any condition on any right-of way is in violation of, or any other applicable codes or standards, or without a right-of-way use permit, the director may order the correction or discontinuance of such condition or any activity causing such condition.
- B. The director is authorized to order correction or discontinuance of any such condition or activities following the methods specified in procedures adopted pursuant to this code.
- C. The director shall also have all powers and remedies which may be available under state law, this code, and procedures adopted hereunder for securing the correction or discontinuance of any condition specified in this section.
- D. The director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions or activities as the director determines appropriate.
 - 1. Serving of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition.
 - 2. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within ten days of notice, or such other reasonable period as the director may determine.

3. Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed by the city related to such permits.
4. Issuance of an order to immediately stop work until authorization is received from the city to proceed with such work.
5. Service of a notice of violation by a peace officer.
6. Service of summons and complaint certified by the prosecuting attorney or a citation and notice to appear by an arresting peace officer upon the permittee or other responsible person who is in violation of this or other city ordinances.
7. Any object or thing which shall occupy any right-of-way without a permit is declared a nuisance. The department may attach a notice to any such object or thing stating that if it is not removed from the right-of-way within twenty-four hours of the date and time stated on the notice, the object or thing may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the object or thing is a hazard to public safety, it may be removed summarily by the city. Notice of such removal shall be thereafter given to the owner, if known. This section does not apply to motor vehicles.
8. All expenses incurred by the city in abating the condition or any portion thereof shall constitute a civil debt owing to the city jointly and severability by such persons who have been given notice or who own the object or thing or placed it in the right-of-way, which debt shall be collectable in the same manner as any other civil debt.
9. The city shall also have all powers and remedies which may be available under law, this code and procedures adopted hereunder for securing the correction or discontinuance of any conditions specified by the city.

12.02.020 Shared use excavations.

If at any time, or from time to time, a utility company submits a permit request to excavate for installation of its facilities, the city may request in writing that such utility company provide an opportunity to install city facilities within the excavation; provided that:

- A. Such joint use shall not unreasonably delay the work of the utility company's excavation; and
- B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.
- C. To the extent reasonably possible, the utility company shall at the direction of the city, cooperate with the city and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the right-of-way as well as to minimize traffic related impacts. In the event the city directs a utility company to utilize joint or shared excavations with another utility company, then

such utility company shall install facilities supplied by the city in such joint or shared excavations at no cost to the city for such installation if such utility company agrees that there is a commensurate cost savings to them.

12.02.021 Warning and safety devices.

- A. Warning lights, safety devices, signs and barricades shall be provided on all rights-of-way when at any time there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on rights-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the right-of-way use permit has been granted is complete and the right-of-way restored to the conditions directed by the department.
- B. As a condition for the issuance of any right-of-way permit, the director may require an applicant to submit a traffic detour plan showing the proposed detour routing and location and type of warning lights, safety devices, signs and barricades intended to protect vehicular or pedestrian traffic at the site for which the right-of-way permit is requested. If a traffic plan is required, no right-of-way use permit will be issued until the traffic plan is approved.
- C. Unless otherwise specified in adopted right-of-way use procedures, the current editions of the following standard manuals shall apply to the selection, location, and installation of required warning and safety devices; provided, that the director or the city inspector may impose additional requirements if site conditions warrant such enhanced protection of pedestrian or vehicular traffic.
 - 1. Manual of Uniform Traffic Control Devices for Streets and Highways, as adopted by the Federal Highway Administration.
 - 2. Chapter 32 Encroachments into Public Right-Of-Way (ICBO as amended from time to time).
- D. Any right-of-way use permit that requires a partial lane or street closure will require a licensed flag person, properly attired.
- E. All decisions of the designated city inspector shall be final in all matters pertaining to the number, type, location, installation, and maintenance of warning and safety devices in the public right-of-way during any actual work or activity for which a duly authorized right-of-way use permit has been issued.
- F. Any failure of a permit holder to comply with the oral or written directives of the city inspector related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way, shall be handled as provided for in this chapter.

12.02.022 Debris and spilled loads in the right-of-way.

- A. Whenever it is necessary for the safety of the public, the city may remove any obstructions, hazards or nuisances from the right-of-way; and anyone causing the obstructions, hazards or nuisances shall be responsible for reimbursing the city for the expense of such removal.

- B. The owner or operator of any vehicle which has spilled, dropped, dumped or in any manner whatsoever deposited any matter upon the right-of-way shall cause the right-of-way to be cleaned to the satisfaction of the department. Upon failure to do so the department may cause to have cleaned the right-of-way and the costs thereof shall be charged to the person or persons so responsible. The department has the authority to designate haul routes and time of day for operations involving hauling over public rights-of-way.
- C. Earth hauling contractors, builders, or anyone else utilizing upon rights-of-way shall provide persons or equipment to keep the right-of-way clean at all times to the satisfaction of the department. Upon failure to do so, the department may issue an immediate stop work order, revoke city permits, and the responsible person or persons may be directed to immediately clean the right-of-way to the satisfaction of the department. Upon failure to do so the department may cause to have cleaned the right-of-way and charge the costs thereof to the person or persons so responsible.

12.02.023 Adoption of procedures.

The director may prepare and adopt procedures for the purpose of implementing this code or to carry out other responsibilities as may be required by this code or other codes, ordinances of the city or other agencies. Such procedures do not require approval by the city council.

12.02.024 Appeal of right-of-way use procedures, and related requirements.

Any applicant who questions the specific department procedures, requirements or directives related to the private use of the public right-of-way may request in writing that the director grant relief from the requirement or grant an alternative interpretation of the requirement. The director will decide upon such written requests within ten business days. Changes to requirements may be granted if in the director's judgement they will improve safety, reduce costs, reduce schedule or improve quality.

12.02.025 Liability.

The director and other employees charged with the enforcement and administration of this code, acting for the city in good faith and without malice in the discharge of their duties shall not thereby render themselves liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties.

12.02.026 Violation – Penalty.

- A. The violation of or failure to comply with the provision of this chapter is declared to be unlawful.
- B. In addition to or as an alternative to any other penalty provided by this chapter or by law, any violation of any provision of this chapter is a misdemeanor as provided for in

Chapter 1.16 BMC, for which a monetary penalty may be assessed and abatement may be required as provided therein.

SECTION 2 – SEVERABILITY: If any section, sentence, or phrase of this Chapter is 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 or phrase of this Chapter.

SECTION 3 – EFFECTIVE DATE. This ordinance shall take effect five days following the date of its publication by summary.

PASSED by the City Council of the City of Bingen at a regular meeting this 4th day of May 2021.



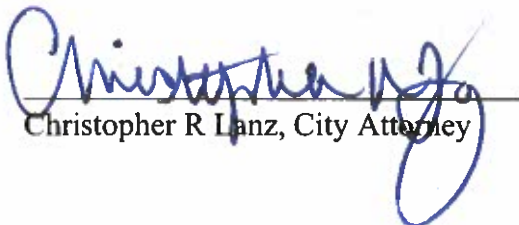
Betty J Barnes, Mayor

ATTEST:



Cheyenne Pantoja Wright, City Clerk

APPROVED AS TO FORM:



Christopher R Lanz, City Attorney