



**CITY OF KIRKLAND**  
Department of Public Works  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800  
www.kirklandwa.gov

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Rob Jammerman, Development Engineering Manager  
Kathy Brown, Public Works Director

**Date:** October 24, 2014

**Subject:** LONG-TERM STREET IMPROVEMENT CLOSURES DURING CONSTRUCTION

### **RECOMMENDATION:**

It is recommended that City Council:

- Reviews the background discussion regarding long-term closures of street improvements (sidewalks, bicycle lanes, and parking lanes) by private development projects, and
- Directs staff by motion to add the attached Street Improvement Closure Policy (see Attachment 1) into the Kirkland Public Works Pre-Approved Plans and Policies Book.

### **BACKGROUND DISCUSSION:**

During the first quarter of 2014, the Public Works, Parks, and Human Services Council Committee asked Public Works staff to address concerns related to long-term closures of street improvements by private development projects; with a primary focus on the closure of sidewalks.

The following outlines the issues and the recommended actions:

1. The primary issue raised by the Council Committee was concern over long-term pedestrian detours around construction projects that close the sidewalk during construction. The members of the Committee agreed that sidewalk closures with detour routes are sometimes necessary to allow developers to have adequate time and space to install the required street and utility improvements. They indicated that the Public Works Department should try to minimize the length of time a sidewalk is closed and that a sidewalk should never be closed solely for contractor convenience (e.g., a construction staging area).
2. The Council Committee members reviewed a staff recommendation to implement a fee for long-term street improvement closures. The primary focus of the fee schedule was to charge for pedestrian street improvement closures exceeding 8 weeks. The Council Committee agreed that staff should proceed with an Ordinance to adopt the fee schedule and present it at an upcoming Council meeting. The proposed fee schedule was also presented to the Planning, Housing, and Economic Development Council Committee, and they concurred that an Ordinance to adopt the fee schedule should be presented to the City Council.
3. On July 1, 2014, Ordinance O-4448 was presented to the Council. The Ordinance proposed the implementation of a fee schedule for long-term street improvement closures beginning January 1, 2015 (see Attachment 2). After discussing the proposed fee schedule, the Council concluded that, prior to adopting the Ordinance, staff should conduct outreach with developers and the community that would be impacted by the new fee schedule.

4. In July 2014, a notice was sent to over 1,500 subscribers of the Kirkland 2035 list-serve. The only substantial comment was from Glen Buhlmann, representing Kirkland Greenways, who raised concerns about bicycle lane and sidewalk closures. Mr. Buhlman asked that more stringent rules and a higher fee schedule be adopted than what was being considered. (see Attachment 3)
5. In addition to the notice, a Kirkland Developer Stakeholder Group was formed consisting of the following:
  - David Hoffman, Master Builders Association
  - Robert Pantley, Natural and Built Environments
  - Doug Waddell, Waddell Properties
  - Aaron Hollingberry, Toll Brothers Development
  - Holly Smith, Polygon Development
  - Dave Tomson, SRM Development

Staff met with the Developer Stakeholder Group to receive feedback on the proposed long-term street improvement closures fee schedule; the group had the following comments and recommendations:

- a. They agreed that street improvement closures should not be allowed just for convenience of the project, i.e., storage or staging in the right of way (ROW).
  - b. They expressed that the proposed Ordinance was too stringent because it didn't consider the unique construction challenges of developing in areas of the City with no building setback from the public right-of-way.
  - c. They pointed out that many street improvement closures are directly related to the installation of street and utility improvements required by the City.
  - d. They expressed that the fee could be extremely expensive for projects that had to exceed 8 week closures (due to construction challenges mentioned above) and could be a deterrent to development in Kirkland.
  - e. They pointed out that Kirkland had no existing policies or standards regarding long-term closures and this was a new issue to them that had not been raised on their previous projects.
  - f. They recommended that members from the Stakeholder Group be allowed to work with Public Works staff to draft a new policy which clearly outlines the circumstances when a street improvement can be closed and for how long.
  - g. They recommended that the new policy should be tested for a year and then re-reviewed by the Public Works, Parks, and Human Services Council Committee to receive feedback on how it was working.
6. At the August 3<sup>rd</sup> Public Works and Parks Council Committee meeting, staff discussed the outreach that had been done and the request by the Stakeholder Group to allow them to work on a policy as an alternative to an ordinance. The Council Committee agreed with this direction.
  7. In August 2014, David Hoffman, Master Builders Association (MBA) and Robert Pantley, Natural and Built Environments, met with Public Works staff to collaborate on a proposed policy that would address Stakeholder concerns. Staff also included language in the policy to address some issues raised by Kirkland Greenways. After the policy was completed, David Hoffman (on behalf of the Stakeholder Group) sent a letter to the City supporting the policy. (see Attachment 4).

8. At the Sept 3<sup>rd</sup> Public Works and Parks Council Committee, staff presented the proposed policy to the Committee along with the letter of support from Mr. Hoffman. After reviewing the proposed policy and the letter of support, the Committee agreed that adoption of the Long-term Street Improvement Closure Policy in the Public Works Pre-Approved Plans and Policies Book would achieve the results they were seeking, and that an ordinance would not be necessary at this time. The Committee recommended that the policy be presented at a future City Council meeting and that the staff report back in a year to the Committee to review the policy and how it was working. The Committee also recommended that staff continue to maintain an open dialogue with developers and Kirkland Greenways to minimize construction impacts on pedestrians and bicyclists, while allowing development projects the time needed to install new street and utility improvements.
9. The proposed policy strikes a balance between the concerns raised by the Stakeholder Group that the original Ordinance was too stringent, and the comments from Kirkland Greenways that it was not stringent enough. While the "per week fee after 8 weeks" is eliminated, the policy includes strong language that failure to comply with the policy will result in an immediate Stop Work Order on the project and/or fines as outlined in the title 19.04.010 of the Kirkland Municipal Code. Therefore staff believes that the current proposal will meet the goal of discouraging long-term sidewalk closures, while not unduly burdening developers to the point where economic development would be adversely impacted.

If the full Council concurs with the staff, Public Works and Parks Committee and Developer Stakeholder group, then staff is looking for Council to approve by motion to add the Street Improvement Closure Policy into the Kirkland Public Works Pre-Approved Plans and Policies Book.

Attachments:

1. Long-term Street Improvement Closure Policy
2. July 1, 2014 City Council Agenda Item
3. Comment Letter from Kirkland Greenways
4. Letter of support from Mr. David Hoffman, MBA

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**DEPARTMENT OF PUBLIC WORKS****PRE-APPROVED PLANS POLICY**

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**Policy R-\_\_ : Long-term Street Improvement Closure Policy**

The purpose of this policy is to outline when Street Improvements (sidewalks, bike lanes, and parking lanes) can be closed for construction or maintenance purposes.

1. Street Improvements serve the public and closure of any improvement should be minimized whenever possible. Street Improvement closures will be reviewed for new construction or required maintenance on new buildings.
2. Street Improvements shall not be closed or detoured for the convenience of a development project to have more room to work, i.e. temporary long-term use of the street improvement area to store or stage materials, equipment, job trailers, etc. shall not be allowed.
3. The Public Works Construction Inspector has the authority to require immediate field changes to Street Improvement detours or closures to address pedestrian, bicycle and vehicular safety, or functionality issues.
4. All Street Improvement closures and detour plans must be reviewed and approved by the Public Works Department.
5. A sidewalk detour plan is required for the temporary closure of any street improvement on a Collector or Arterial type street and along any City-adopted School Walk route or any other street with a high-use of pedestrians as determined by the Public Works Department.
6. All detour plans shall be designed per the standards in the Manual on Uniform Traffic Control Devices (MUTCD).
7. Pedestrian's detours should be maintained on the same side of the street whenever possible. As an example, temporary closure of parking and detouring pedestrians into an approved route along the parking lane is preferred to detouring the pedestrian to the opposite side of the street.
8. When it is necessary to detour pedestrians to the opposite side of the street, the detour shall provide the safest and shortest route possible for the pedestrian.
9. The Public Works Department may approve daily closures of Street Improvements (with an approved detour route plan) to facilitate construction work in the public right-of-way, but the street improvements shall be reopened at the end of each work day.

10. A long-term closure is any closure exceeding two weeks. The Public Works Department may approve long-term closures of street improvements (with approved detour routes) to facilitate construction or maintenance work in the public right-of-way under the following conditions:
  - a. The closure is limited to the shortest time frame possible. The Contractor shall submit a proposed Street Improvement closure schedule describing the time the type of work causing the closure and the proposed number of days for the closure.
  - b. A closure is limited to eight weeks unless approved by the Public Works Director. A request to exceed the 8-week limit will be reviewed on a case by case basis and must be due to extenuating circumstances such as weather delays, unknown construction changes (such as unknown utility relocations), etc. Each extension request will be reviewed and considered in two-week increments.
  - c. The Public Works Department will review and may approve multiple closures of up to eight (8) weeks in duration for large complex construction projects. Large complex construction projects with small-to-zero required setback from the public right-of-way (as adopted by the Kirkland Zoning Code) will typically require long-term Street Improvement closures in order to allow for parking structure excavation and construction, new street improvement and utility installation, and construction of the building. Many buildings with zero setbacks are required to provide covered pedestrian amenities such as awnings or other features which must be completed before the new sidewalk can be opened to pedestrians.
  - d. If a development project has multiple right-of-way frontages, the long-term closure of Street Improvements on each frontage will be reviewed separately.
11. Failure to adhere to these standard will result in an immediate Stop Work Order on the project and/or fines as outlined in the title 19.04.010 of the Kirkland Municipal Code.

### **19.04.010 Obstructions in right-of-way.**

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It is a simple crime for any person to drop, deposit, leave or permit to be deposited upon a street or sidewalk or within other portions of the public right-of-way any object, structure, construction material, equipment or other natural or artificial thing which obstructs or tends to obstruct vehicles or persons traveling thereon; except as provided in Section [19.04.050](#) or otherwise authorized by city ordinance or specific permission of the city.

Such a deposit is a public nuisance. As an alternative to, or in addition to, issuance of a criminal citation or notice of civil violation pursuant to Chapter [1.12](#) for violation of this section, the city may take such action as may be necessary to abate the nuisance. Whenever the nuisance poses a present danger, the city has the authority to cause its immediate removal.

Any person violating this section shall be liable to the city for the costs of the removal of the nuisance

### **1.12.010 Purpose.**

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The purpose of this chapter is to establish an efficient system to enforce the regulations of the city, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish monetary penalties for violations. (Ord. 4280 § 1 (part), 2011)

### **1.12.030 Voluntary correction.**

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(a) Applicability. This section applies whenever the applicable department director determines that a violation of a regulation has occurred or is occurring.

(b) General. The applicable department director shall make a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation, where possible, explaining the violation and requesting correction.

(c) Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.

(1) Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

(A) The name and address of the person responsible for the violation; and

(B) The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(C) A description of the violation and a reference to the provision(s) of the city ordinance or regulation which has been violated; and

- (D) The necessary corrective action to be taken, and a date or time by which correction must be completed; and
- (E) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses and assess a monetary penalty pursuant to this chapter from the person responsible for the violation if terms of the voluntary correction agreement are not met; and
- (F) An agreement that by entering into the voluntary correction agreement the person responsible for the violation waives the right to an administrative appeal of the violation and/or the required corrective action.
- (2) Right to a Hearing Waived. The person responsible for the violation waives the right to an administrative appeal of the violation and the required corrective action upon entering into a voluntary correction agreement.
- (3) Extension—Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.
- (4) Abatement by the City. The city may abate the violation in accordance with Section [1.12.060](#) if the terms of the voluntary correction agreement are not met.
- (5) Collection of Costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section [1.12.040](#), plus all costs and expenses of abatement, as set forth in Section [1.12.060](#). (Ord. 4280 § 1 (part), 2011)

#### **1.12.040 Notice of civil violation.**

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(a) Issuance.

- (1) When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section [1.12.030](#), the applicable department director may issue a notice of civil violation to the person responsible for the violation.
- (2) The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section [1.12.030](#) under the following circumstances:
- (A) When an emergency exists;
- (B) When a repeat violation occurs;
- (C) When the violation creates a situation or condition which cannot be corrected;
- (D) When the person knows or reasonably should have known that the action is in violation of a city regulation.

(b) Content. The notice of civil violation shall include the following:

(1) The name and address of the person responsible for that violation; and

(2) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

(3) A description of the violation and a reference to the provision(s) of the city regulation which has been violated; and

(4) The required corrective action and a date and time by which the correction must be completed, after which the city may abate the unlawful condition in accordance with Section [1.12.060](#) and the hearing examiner's order; and

(5) The date, time and location of a hearing before the hearing examiner, which will be at least ten days from the date the notice of civil violation is issued; and

(6) A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least forty-eight hours prior to the hearing, except that this statement need not be included where the violation constitutes a repeat violation or the violation creates a situation or condition which cannot be corrected; and

(7) A statement that the costs and expenses of abatement incurred by the city pursuant to Section [1.12.060](#) and a monetary penalty in an amount per day for each violation as specified in subsection (e) of this section may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

(c) Service of Notice. The applicable department director shall serve the notice of civil violation upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within King County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

(d) Extension. No extension of the time specified in the notice of civil violation for correction of the violation may be granted, except by order of the hearing examiner.

(e) Monetary Penalty. The amount of the monetary penalty per day or portion thereof for each violation is as follows:

(1) First violation: one hundred dollars;

(2) Second violation: two hundred dollars;

(3) Third violation: three hundred dollars;

(4) Additional violation in excess of three: five hundred dollars.

The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations, the hearing examiner shall consider the factors set forth in Section [1.12.050\(d\)\(4\)](#).

(f) Continued Duty to Correct. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

(g) Collection of Monetary Penalty.

(1) The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city within ten calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.

(2) The city attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty. The city may contract with a collection agency for this purpose. (Ord. 4280 § 1 (part), 2011)

### **1.12.050 Hearing before the hearing examiner.**

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

(d) Decision of the Hearing Examiner.

(1) The hearing examiner shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(2) The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

(A) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(B) The required corrective action;

(C) The date and time by which the correction must be completed;

(D) The monetary penalties assessed based on the criteria in subsection (d)(3) of this section;

(E) The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

(3) Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in Section [1.12.040](#). The hearing examiner shall have the following options in assessing monetary penalties:

(A) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

(B) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or

(C) Assess no monetary penalties.

(4) Determining Monetary Penalty. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

(A) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

(B) Whether the person failed to appear at the hearing;

(C) Whether the violation was a repeat violation;

(D) Whether the person showed due diligence and/or substantial progress in correcting the violation;

(E) Whether a genuine code interpretation issue exists; and

(F) Any other relevant factors.

(5) Effect of Repeat Violations. The hearing examiner shall assess a monetary penalty for each repeat violation as set forth in Section [1.12.040](#).

(6) Notice of Decision. The hearing examiner shall mail a copy of the decision to the person responsible for the violation and to the applicable department director within ten working days of the hearing.

(e) Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order finding that the violation occurred and assess the appropriate monetary penalty. The city will carry out the hearing examiner's order and recover all related expenses plus the cost of the hearing and any monetary penalty from that person.

(f) Appeal to Superior Court. An appeal of the decision of the hearing examiner must be filed with superior court within twenty-one calendar days from the date the hearing examiner's decision was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred. (Ord. 4409 § 1, 2013; Ord. 4372 § 2 (Att. B) (part), 2012; Ord. 4280 § 1 (part), 2011)

### **1.12.060 Abatement by the city.**

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(a) The city may abate a condition which was caused by or continues to be a civil violation when:

(1) The terms of a voluntary correction agreement pursuant to Section [1.12.030](#) have not been met; or

(2) A notice of civil violation has been issued pursuant to Section [1.12.040](#) and a hearing has been held pursuant to Section [1.12.050](#) and the required correction has not been completed by the date specified in the hearing examiner's order; or

(3) The condition is subject to summary abatement as provided for in subsection (b) of this section.

(b) Summary Abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(c) Authorized Action by the City. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

(d) Recovery of Costs and Expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the city at the permit center within ten calendar days. The term "incidental expenses" includes but shall not be limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.

(e) Interference. No person shall obstruct, impede, or interfere with the city or its agents, or with any person who owns or holds any interest or estate in any property, in performing any tasks necessary to correct the violation. (Ord. 4280 § 1 (part), 2011)

### **1.12.070 Stop work orders and orders to cease and desist.**

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(a) Issuance of Order. Whenever the applicable department director finds any activity is being conducted or work being performed without a permit or in a manner contrary either to the provisions of the Kirkland Zoning Code or Kirkland Municipal Code, including any of the technical codes adopted by reference in Title [21](#), the applicable department director is authorized to issue a stop work order or order to cease and desist. The order shall be in writing and shall be given to the owner or occupant of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order or order to cease and desist, the cited work or activity shall immediately cease. The order shall state the reason for the order, and the conditions under which the cited work or activity will be permitted to resume.

(b) Fees and Penalties. The applicable department director is authorized to assess a special investigation fee for the issuance of a stop work order or order to cease and desist based on the costs to the city of investigation and enforcement of the order. Any person who shall continue any work or activity on the property after having been served with a stop work order or order to cease and desist (except such work as that person is directed to perform to remove a violation or unsafe condition) shall be subject to penalties as provided under this chapter and as otherwise prescribed by law. A stop work order or order to cease activity may be appealed in the same manner and pursuant to the same provisions as a notice of civil violation under this chapter. (Ord. 4280 § 1 (part), 2011)



**CITY OF KIRKLAND**  
 Department of Public Works  
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Council Meeting: 07/01/2014  
 Agenda: New Business  
 Item #: 11. a.

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Rob Jammerman, Development Engineering Manager  
 Marilynne Beard, Interim Public Works Director

**Date:** June 18, 2014

**Subject:** LONG-TERM USE FEE OF THE PUBLIC RIGHT-OF-WAY FOR PRIVATE DEVELOPMENT PROJECTS

### RECOMMENDATION:

It is recommended that the City Council reviews the background and proposed fee schedule for long-term use of the public right-of-way (ROW) by private development projects and adopts the attached Ordinance authorizing the ROW fee schedule.

### BACKGROUND DISCUSSION:

During the first quarter of 2014, the Public Works, Parks, and Human Services Council Committee and the Planning, Housing, and Economic Development Council Committee each reviewed the proposed the long-term right-of-way use fee for private development projects. The Committees reviewed the following background and recommended the adoption of the following fee structure.

#### *Typical Types of Uses in the Public ROW*

The Public Works Department reviews and issues permits and provides inspection for all construction work occurring in the public ROW. In most cases construction in the ROW is short-term and the ROW is restored to public use at the end of the work day (or sooner). However, in some cases, the construction project may require or cause long-term closures of certain portions of the ROW. The tables below describe some typical short-term and long-term ROW restrictions.

#### **Short-Term Examples**

Type of Project	Notes
Installation of a utility line in the ROW	Project may span over a longer duration due to installation and restoration requirements. In most cases, the street or sidewalk is reopened for use at the end of the work day.
Installation of street improvements (curbs and sidewalks)	Project may span over a longer duration due to installation and restoration requirements. In most cases, the sidewalk must remain closed for a short-term while concrete is poured and cured. A pedestrian detour route is required.
Temporary pedestrian detour due to safety reasons (example: multiple trucks entering and exiting the site)	A temporary pedestrian detour route is installed during working hours, and the sidewalk is reopened at the end of the work day.
Building Maintenance or installation of appurtenance on the front of the building (example: new sign installation)	The contractor is required to obtain a ROW permit to close the sidewalk while they are working on the building. A pedestrian detour route is required. The sidewalk must be reopened at the end of the day.

**Long-term Example**

Type of Project	Notes
Contractor proposes long-term pedestrian detour due to site constraints (i.e. deep excavations or pedestrian safety concerns due to overhead construction adjacent to the sidewalk).	This situation is more prevalent in areas where there are no building setbacks from the public right-of-way such as business districts. During construction it is often necessary to detour the pedestrian traffic around the site because of safety concerns or if it is not possible to keep the sidewalk open due to site constraints.

***Negative Impacts of Long-term ROW Use***

When an existing ROW improvement, such as a sidewalk, bike lane or parking lane, is impacted by a construction project, safe and efficient travel by pedestrians, bicyclists, and motorists is often disrupted when they must be detoured to an alternate route. The private use temporarily compromises a public facility. This impact to safe and convenient public use should be minimized whenever possible, but no financial incentives for the contractor to complete the ROW work in a timely manner have been adopted by the City.

***Neighboring Cities' Policies***

City	Long-term Use Fee	Notes
Kirkland	No	Development Engineer and Inspector work with the contractor to develop a plan that minimizes the impact on the pedestrian and provides a safe detour route when long-term use cannot be avoided.
Redmond	No	Same approach as Kirkland
Bothell	No	Same approach as Kirkland
Bellevue	Yes	Nominal fee for use exceeding two weeks on non-residential streets. Minor fee is based on appraised value of adjacent property and square feet of ROW used.
Seattle	Yes	Nominal fee (\$0.10 psf/month) for the initial long-term use and the fee doubles every month that the long-term closure continues.

***Long-term ROW Use Fee Recommendation***

Both City Council committees recommended that a fee schedule should be developed that recognizes the challenges of working in the ROW, but also provides a financial incentive to open the ROW as soon as possible. Staff is recommending the following fee schedule to incentivize reopening of the ROW (see Figure 1 below). The fee will apply to the closure of sidewalks, bicycle lanes or parking stalls along Collector, Minor Arterial, or Principal Arterial type streets and for sidewalks along adopted safe school walk routes along any type of street. It is hoped that this fee schedule will encourage developers and contractors to complete projects as expeditiously as possible to avoid additional project costs. Since City projects are already managed to minimize impacts on the public, the City would not be subject to the fees.

**Figure 1 – Proposed Fee Schedule**

<b>Duration of closure</b>	<b>Type of work causing closure</b>	<b>Fee</b>	<b>Conditions</b>	
0-2-weeks	Any type of work	No Fee	An approved pedestrian /bike detour must be provided.	
0-8 weeks	Utilities or street improvements in the ROW	No Fee		
2-8 weeks*	Closure associated with a project but not related to utility or street improvements	\$2.50/LF per week; \$250 min/wk.		
9 weeks or longer*	For any type of work	\$10/LF per week \$500 min/wk.	Fee increases \$2.50/LF per week (\$250 minimum) for each additional week of closure.	An approved pedestrian/bike detour must be provided.

\*The ordinance as currently drafted authorizes the Public Works Director to modify or waive these fees if the long-term closure is found to be beneficial to the City and there are no other alternatives.

***Effective Date of the New Fee and Public Outreach***

Staff recommends that the effective date of the new fee occur on January 1, 2015 to align with other permitting fee changes that normally occur at the beginning of each year. This delayed effective date will allow staff to educate our customers about the new fee and they will have time to prepare for the fee and plan their project schedules accordingly. Our planned outreach and education will include the following:

1. Discussion with developers and builders about the new fee at all pre-submittal meetings.
2. At least two bulletins sent out the Kirkland Developers Partnership Forum notifying them of the new fee.
3. Notices will be placed on the City website and at each of the Development Services counters in City Hall.

Attachment - Ordinance

ORDINANCE O-4448

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LONG TERM RIGHT-OF-WAY USE AND AMENDING CHAPTER 19.04 AND SECTION 5.74.070 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Chapter 19.04 is amended by the addition of a new section to read as follows:

**19.04.090 Long Term Right-of-Way Use– Permit Required.**

1. Purpose – During private development or other events, it may become necessary to close off public access in the right-of-way long-term. This section authorizes the city to issue permits and enforce such a closure.

2. Permit Required - A long term right-of-way use permit is required, allowing closure of a sidewalk, bicycle lane, or parking stall closures along collector, minor arterial, or principal arterial-type streets and sidewalks along city-adopted safe school walk routes along any type of street. The director of public works has the authority to issue the permit.

3. Duration of Closure and Fees – Definition and duration of long-term closure and fees are established by Section 5.74.070 of this Code. The public works director may modify or waive these fees if the long-term closure is found to be beneficial to the city and there are no other alternatives.

4. Application Requirements – The owner of the abutting property (or their agent) shall apply for a long term right-of-way use permit on a form to be provided by the department of public works. The application shall contain all information requested by the city, including a diagram showing the area to be closed, a pedestrian/bike detour plan, and the anticipated duration of the closure.

5. Permit Conditions – The public works director may attach reasonable conditions to a long term right-of-way use permit.

6. Enforcement – Enforcement authority rests with the director of public works or his/her designee, which may include personnel of the building or construction and project management departments.

Section 2. Kirkland Municipal Code Section 5.74.070 is amended to read as follows:

**5.74.040 Fees charged by the public works department.**

(a) The schedule below establishes permit and administrative fees charged by the public works department.

Fee Type	Fee Amount
Water—Meter installation (Each fee includes a \$50.00 administration charge)  3/4" meter  1" meter  1-1/2" meter  2" meter  Greater than 2"	   \$129.00  \$159.00  \$225.00  \$294.00  Time and materials
Water—Billing  Customer-requested service shutoff during business hours  Customer-requested service shutoff during nonbusiness hours  Water service shutoff or turn-on for unpaid user bill before 3:00 p.m. on business days  Water service shutoff or turn-on for unpaid user bill after 3:00 p.m. on business days  Service calls if broken water line was caused by owner/occupant  Special water meter reading  Alternate billing  Cut lock fee  Shutoff tag  Water restrictions penalty	  \$30.00  \$80.00  \$40.00  \$90.00  \$20.00  \$40.00  \$10.00  \$60.00  \$20.00  Up to \$50.00/day
Sewer—Permits  New or replacement side sewer inspection  Side sewer repair (< 10 feet) inspection  Side sewer cap inspection  Septic system abandonment inspection  Side sewer stub fee (for city-installed stub)	  \$425.00  \$58.00  \$58.00  \$58.00  \$1,062.00 min. or as documented
Sewer—Discharge regulation  Penalty for late discharge report (late after 30 days)  Penalty—Discharge compliance, incomplete actions  Penalty—Nonmaintenance of FOG systems  Penalty—Inaccurate or incomplete report	  \$25.00/day for first 20 days, then \$100.00/day, for a maximum of \$1,000.00 total.  \$100.00/day for 60 days max.  \$500.00 + city maintenance costs. Second year: \$1,000.00 + city maintenance costs  \$100.00 for first offense
Sewer—Billing  Sewer service call (customer problem)	  \$20.00

Fee Type	Fee Amount
Right-of-Way Permit to work in ROW—Standard Permit to work in ROW—Basic Street cut fee 1—50 sq. ft. Street cut fee 51—100 sq. ft. Street cut fee 101 sq. ft. or larger Street cut administration fee	 \$372.00 \$106.00 \$200.00 \$400.00 \$400.00 + \$400.00 for each additional 100 sq. ft. \$25.00 per street cut
<p><u>Long Term Right-of-Way (ROW) Use. Regardless of duration, an approved pedestrian/bike detour must be provided</u></p> <p><u>2-8 weeks: Closure associated with a project but not related to utility or street improvements.</u></p> <p><u>9 weeks or longer : Any type of work</u></p>	 <u>\$2.50/LF per week; \$250 minimum/week</u>  <u>\$10/LF per week, \$500 minimum/week</u> <u>Fee increases \$2.50/LF (\$250 minimum) for each additional week of closure</u>
Storm Drainage (Surface Water) Surface water drainage plan check fees (see PW pre-approved plans and policies for description of review types): (a) Small—Type I review (b) Small—Type II review (c) Targeted review (d) Full review (e) Roof/driveway drain connection inspection (f) Surface water adjustment process (see PW pre-approved plans and policies for full description)	   \$375.00 \$905.00 \$1,580.00 \$3,160.00 \$637.00 \$150.00 for up to 2 hours of process, and then \$75.00/hour thereafter
Miscellaneous Review and Inspection Fees When the public works department provides engineering review or inspections services, and a fee for such service is not published, the applicant shall pay the following rate for such services Impact fee—Independent fee review Right-of-way nonuser relinquishment review fee	 \$75.00 per hour \$200.00, plus \$75.00 per hour of review \$375.00 for up to 5 hours' process, and \$75.00/hour thereafter
City trees Civil penalties for violations, per day	 1st violation—\$200.00 2nd violation—\$400.00 3rd violation—\$600.00

(b) Whenever any construction work, public improvement or other activity is required or permitted to be performed upon any public right-of-way, or within or upon any property which, upon completion of said work or activity, is to be conveyed or dedicated as public right-of-way or public easement, the city shall not accept for maintenance or otherwise such work, improvement, facility or activity until there has been paid to the city by the person required or permitted to perform such work or activity an amount equal to ten percent of the estimated cost of construction of such work, improvement, facility or activity as and for reimbursement to the city for its cost of review and inspection of such work, improvement, facility or activity. In addition, prior to the release of any permit for construction of storm drainage collection and conveyance on private property, the permit applicant shall pay a fee equal to ten percent of the estimated cost of construction of such work, improvement, facility or activity as and for reimbursement to the city for its cost of review and inspection of such work, improvement, facility or activity. Estimated cost of construction shall be determined by the director of the department of public works. Whenever such a review and inspection fee is required, the public works department is authorized to collect up to one-half of the fee at permit application with the remainder being due at permit issuance.

(c) This section shall not apply to:

(1) Work performed under public works construction contracts let by the city pursuant to Chapter 3.85; or

(2) So much of such work performed under a developer's extension agreement (Chapter 35.91 RCW facilities agreement) as is determined by the director of public works to be for the benefit of the Kirkland water or Kirkland sewer system rather than for the benefit of the property being concurrently subdivided, developed or improved by the signors to the developer extension agreement.

(d) The director is authorized to interpret the provisions of this chapter and may issue rules for its administration. This includes, but is not limited to, correcting errors and omissions and adjusting fees to match the scope of the project. The fees established here will be reviewed annually, and, effective January 1st of each year, may be administratively increased or decreased by an adjustment, rounded to the nearest dollar, to reflect the current published annual change in the Seattle Consumer Price Index for Wage Earners and Clerical Workers as needed in order to maintain the cost recovery objectives established by the city council.

(e) MyBuildingPermit.com Surcharge. In addition to the fees listed in this section there shall be a one and three-tenths percent surcharge collected to pay for the city's MyBuildingPermit.com membership fees.

Exception: the MyBuildingPermit.com surcharge does not apply to the following:

- (1) Water meter installation.
- (2) Water billing.

- (3) Sewer discharge and penalties.
- (4) Sewer billing.
- (5) Street cut fees.
- (6) City trees or civil penalties.

Section 3. This ordinance shall be in force and effect on January 1, 2015, after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE O-4448

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LONG TERM RIGHT-OF-WAY USE AND AMENDING CHAPTER 19.04 AND SECTION 5.74.070 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Amends Kirkland Municipal Code Chapter 19.04 by the addition of a new section 19.04.090 relating to requirements of a Long Term Right-of-Way Use Permit.

SECTION 2. Amends Kirkland Municipal Code Section 5.74.040 relating to permit and administrative fees charged by the public works department.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as January 1, 2015, after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

I certify that the foregoing is a summary of Ordinance \_\_\_\_\_ approved by the Kirkland City Council for summary publication.

\_\_\_\_\_  
City Clerk



Kirkland Greenways  
12813 NE 83<sup>rd</sup> St.  
Kirkland, WA 98033  
<http://www.kirklandgreenways.org>

R. Jammerman, K. Triplett, Mayor Walen, Deputy Mayor Sweet, City Councilmembers:

Kirkland Greenways is committed to seeing Kirkland become a walkable, bikeable city for people of All Ages and Abilities. We are very encouraged to read that the City Council is considering a proposed ordinance on sidewalk closures that would support the City's commitment to walkability.

In truly walkable cities, when the sidewalk is closed, the developer carves a protected space out of the street on the same side of the right of way for people to walk on. If that space prevents automobile traffic from flowing in two ways (or one way for a one-way street) then the developer provides flaggers to get the cars through or just completely closes the street. The same is true for a bicycle lane since cities only put bicycle lanes on streets where it is not safe for bikes to mix with automobile traffic. It is not clear from Kirkland's ordinances if this is currently required or not since we can't seem to find any definition of what a "detour" is, nor can we find any mention of bicycle lanes.

Closing a sidewalk or bike lane creates hazards for vulnerable road users in wheelchairs, walking or bicycling. These road users rely on the shortest available route and are inconvenienced much more than cars when they need to detour out of their way. Backtracking to the crosswalk and going to the other side of the street and then back again can make a walk unacceptably long, especially for those in wheelchairs, those walking with children or groceries or both, or for those with limited mobility.

In order to achieve City Council's goal for Kirkland to be a walkable, bikeable city for all residents, Kirkland Greenways proposes completely rewriting the city's sidewalk closure ordinance to include:

- Detour, for both sidewalk and bicycle lane as appropriate must be same side of the right of way
- Covered sidewalk should be used where necessary to prevent sidewalk closures
- ADA accessible for sidewalks, bicycle accessible for bicycle lanes
- Close a lane of traffic if needed to provide same-side-of-right-of-way passage
- Provide flaggers 24 x 7 if needed to allow cars through when a lane of traffic is closed or require sidewalk/bikelane to be reopened at the end of every work day
- If a sidewalk or bike lane is actually closed (i.e. without providing a same-side-of-right-of-way-detour) then **City Council must have a public vote to allow this** and it should be limited to a reasonable length of time such as a maximum of 2 or 3 days. Anything longer than that is when stiff financial penalties should come into play, increasing daily, not weekly and costing the developer at least an order of magnitude more than the current proposals. The developer should not be able to look at the cost of paying the fines and decide that it is an acceptable cost of doing business. The order of \$50 per foot of frontage per day as a starting level seems reasonable, raising by 20% per day compounded until hitting some maximum such as \$200 per foot of frontage.

Giving priority to pedestrians and cyclists over builder preference/storage or over automobile traffic is the only way to a walkable, vibrant, bicycle-friendly community. Nothing proposed here would be an undue burden on developers. Developers have been building skyscrapers while keeping sidewalks open for many many decades. It is not unreasonable to ask them to do this in Kirkland where our height limits are two orders of magnitude below skyscraper height.



Kirkland Greenways  
12813 NE 83<sup>rd</sup> St.  
Kirkland, WA 98033  
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Kirkland greenways is not experienced in writing up verbiage of ordinances like this but you can use Feet First's recommendations for sidewalk closures as a template and simply add in "as well as bicycle lanes" where appropriate:

<http://www.feetfirst.org/wp-content/uploads/2013/02/Walking-Sidewalks-Construction.pdf>

Issuing minimal fines after 8 weeks of sidewalk closure with nothing specifying what type of detour the developer needs to provide is not an acceptable policy for a city like Kirkland.

We request the city get both Feet First and Cascade Bicycle Club to review any proposed changes to sidewalk closure ordinances. Of course Kirkland Greenways requests the ability to review the final proposed ordinance text as well.

Thank-You,

A handwritten signature in dark ink, appearing to read "Glen Buhlmann", with a long horizontal flourish extending to the right.

Glen Buhlmann,  
Co-Director, Kirkland Greenways

Cc: Elizabeth Kiker, Executive Director, Cascade Bicycle Club  
Lisa Quinn, Executive Director, Feet First  
Jeff Aken, Principal Planner, Cascade Bicycle Club



MBA of King and Snohomish Counties  
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September 2, 2014

Kirkland City Council  
123 Fifth Ave  
Kirkland, WA 98033

Councilmembers,

We're writing today on behalf of the 3,000 member companies of the Master Builders Association of King and Snohomish Counties regarding the Public Works Department's proposed "Sidewalk, Bike Lane, and Parking Lane Closure Policy" (draft policy). We appreciate the opportunity to provide feedback on the draft policy.

As the communities in the city of Kirkland continue to urbanize, new development projects will necessitate the intermittent closure of sidewalks, bike lanes and parking lanes. We applaud the city council and staff in Kirkland for moving to address this issue to create policies and guidelines that are effective, reasonable to promote both economic development and to keep access to the public benefit with the priority to pedestrians and bicyclists with some temporary parking loss being a secondary concern.

There are three fundamental questions that should be asked prior to the adoption of any new policy:

1. What is the best way to implement an effective policy?
2. Is the policy clearly written so both applicants and enforcement officials can effectively interpret the rules?
3. Have we thoughtfully balanced the needs to build our urban cores in an effective cost conscious way while keeping pedestrian and bicycle access open as much as possible without creating penalties for encouraging economic development in the new policy?

Public Works staff, who administers these closures, has listened carefully to the City Council's concerns, as well as listened to the public and industry stakeholders to create a set of policies and guidelines that we believe will be effective when implemented, solving the instances in the recent past where sidewalks were closed for prolonged periods of time. Due to the short time involved in developing this policy and summer vacations there should be some expanded work performed on definitions in the draft policy but we believe the foundation of the concepts are secure, ensuring that the public will gain the benefits of

new communities while keeping a focus on pedestrian and bicycle access. We believe that the staff proposed guidelines are headed in the right direction and ask that the Council Public Works committee support staff's efforts to continue refining these guidelines

We strongly agree in theory with the draft policy. Although, as with any draft document, there are clarifications to be made, it is our belief that the draft policy proposed by the Public Works Department provides clarity to our industry. The draft uses previously adopted code enforcement procedures to grant city staff the tools they need to address what can be a challenging situation. There is room for clarity in the draft and we would appreciate the time to work with staff on those changes prior to council adoption. We believe that final language could be completed during the first half of September and then sent on to the full Council for adoption.

Thank you for the opportunity to comment on the draft policy related to closures of sidewalks, bike lanes and parking lanes. If you have any questions please contact David Hoffman at (425) 460-8224.

Best regards,

A handwritten signature in black ink, appearing to read 'D. Hoffman', is written over the printed name.

David Hoffman

Master Builders Association