

Title 12
STREETS, SIDEWALKS AND PUBLIC PLACES
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Chapter 12.01
EXCAVATIONS IN STREETS, SIDEWALKS AND PUBLIC WAYS

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12.01.010 Permits required.

It is unlawful for any person, firm or corporation to make any excavation in a public right-of-way without first having obtained a permit from the city. All parties shall apply for a permit from the city clerk to work within the public right-of-way at least seven working days prior to commencement of work, unless otherwise approved by the superintendent.
(Ord. 957 (part), 1992)

12.01.020 Permit application requirements--Fee.

- A. When applying for a street excavation permit, the applicant shall provide the following:

1. A detailed sketch showing proposed work in relation to the public right-of-way, other existing utilities and street improvements;
2. A certificate of liability insurance naming city as an additional insured with minimum limits of liability stated in the most recent edition of Standard Specifications for Municipal Public Works Construction, published by the Washington chapter of the American Public Works Association (APWA); provided, however, that a self-insured public utility may submit a letter of responsibility in lieu of a certificate of liability insurance. Such letter of responsibility shall be approved as to form by the city attorney prior to acceptance by the city;
3. A statement regarding coordination with other utilities as to location of work so as not to interfere with those utilities.

B. No opening shall be made until all necessary fittings and materials are available and on hand to complete all work.

C. Franchised utilities shall utilize the standard locations for their facilities where practicable.

D. An administrative fee of twenty (\$20.00) dollars shall be charged for the review and issuance of each permit.
(Ord. 957 (part), 1992)

12.01.030 Length of permit validity.

Such permit shall be valid for a time period not to exceed one hundred twenty days from date of issuance; provided, however, that a public utility may request one extension of time not to exceed sixty days in duration. Such request shall be written and received by the city at least seven days prior to the expiration date of the original permit.
(Ord. 957 (part), 1992)

12.01.040 Notification of utility superintendent.

The applicant shall notify the utility superintendent and city clerk at least forty-eight hours prior to starting work.
(Ord. 957 (part), 1992)

12.01.050 Standard utility locations.

- A. Standard minimum depth requirements for underground utility service:
1. Electricity, thirty-six inches;
 2. Telephone, thirty inches;
 3. Natural gas, thirty inches.

B. Any deviation from these standards must have written approval from the city engineer.
(Ord. 957 (part), 1992)

12.01.060 Safety standards.

The applicant is responsible for complying with all applicable local, state and federal health and safety codes, standards, regulations and/or accepted industry standards. It is the responsibility of the applicant to insure that his work force and the public are guarded against any hazards arising from activities of the applicant or its agents.
(Ord. 957 (part), 1992)

12.01.070 Traffic control.

A. The applicant shall furnish, place and maintain all required traffic-control devices (both vehicular and pedestrian) as per the most recent edition of the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration (FHWA).

B. Any traffic restriction shall be approved by city officials.
(Ord. 957 (part), 1992)

12.01.080 Construction methods and restrictions.

A. The applicant shall not interfere with or obstruct the drainage of the city's underground fixtures for the conveyance of water or sewage, or the city's streets, lanes, alleys and highways, or other public places.

B. No facilities shall be installed within five feet to any water main or other pipe or conduit or other utility without prior approval of the city engineer. This separation distance is for parallel facilities and not facility crossings.

C. The applicant, to the extent practicable, shall backfill all open trenches at the conclusion of each day's work.

D. Whenever practical, applicant shall jack, bore or auger lines under streets when a street crossing is required. Otherwise streets must be cut.
(Ord. 957 (part), 1992)

12.01.090 Standards for restoration of surfaces.

A. The applicant shall, with reasonable promptness and no later than twenty days after the work is finished, restore the surface of such streets, avenues, lanes, highways and public places.

B. The applicant shall satisfactorily restore all areas disturbed by construction activities to an equal or better condition than existed prior to construction. The following shall be considered the minimum acceptable depths of surfacing materials to be replaced dependent upon existing surfacing type:

1. Asphalt concrete pavement and/or bituminous surface treatment surfacing:

- a. Three inches compacted depth asphalt concrete pavement, Class G, placed in two lifts;
 - b. Three inches compacted depth crushed surfacing top course (5/8'-0);
 - c. Eight inches compacted depth ballast (2 1/2'-0).
2. Cement concrete sidewalk:
- a. Four inches thickness in pedestrian areas, three thousand psi twenty-eight-day minimum compressive strength cement concrete;
 - b. Six inches thickness in vehicle areas, three thousand psi twenty-eight-day minimum compressive strength cement concrete;
 - c. Two inches compacted depth crushed surfacing top course (5/8'-0) under all cement concrete areas;
 - d. Refer to city sidewalk specifications.
3. Gravel Street:
- a. Three inches compacted depth crushed surfacing top course (5/8'-0);
 - b. Nine inches compacted depth ballast (2 1/2'-0);
 - c. Replace all ballast if mud or clay.
4. Gravel street shoulder:
- a. Four inches compacted depth crushed surfacing top course (5/8'-0).

C. Cement concrete curb and gutter shall be replaced where disturbed with new cement concrete curb and gutter as shown on the city's Standard Driveway Detail and the referenced APWA Specifications and Standard Plans.

D. Temporary crushed-rock trench restoration will be permitted for a maximum of two weeks following installation of facilities.

E. If adverse weather conditions exist, temporary asphalt concrete cold-mix patch will be permitted until weather conditions permit the required permanent restoration specified above.

F. All restoration materials and workmanship shall be in accordance with the most recent edition of the referenced APWA Specifications.

G. All trench backfill and restoration materials must be compacted to ninety-five percent of maximum density at a maximum of six-inch lifts.

- H. All restoration work must be approved by the city.

I. A cash deposit or bond in an amount to be determined by the city engineer may be required prior to commencing work in order to guarantee materials and workmanship; provided, however, that self-insured public utilities shall be excluded from this requirement provided they have complied with Section 12.01.020(B) of this chapter.

J. All restoration materials and workmanship must be guaranteed for a one-year period following formal acceptance of same by the city. Any remedial work required during this guarantee period must be provided and performed by the applicant upon demand by the city.
(Ord. 957 (part), 1992)

12.01.100 Clean-up.

The applicant is to restore all areas worked to equal or better condition than found within twenty days of completing the installation, weather permitting. Any extension of time shall be approved in writing by the city.
(Ord. 957 (part), 1992)

12.01.110 Nonperformance by applicant--City to perform work when--Costs.

The city may, upon twenty days' written notice to the applicant, at any time do, or order to have done, any and all work that it considers necessary to restore any area left in an unsatisfactory condition or in a condition, in the opinion of the city, dangerous to life or property; and the applicant, upon demand, shall pay to the city all costs of such work plus ten percent.
(Ord. 957 (part), 1992)

12.01.120 Inspection.

The applicant shall pay, upon completion of the project and inspection by the appropriate city official, an inspection fee covering the actual cost of said inspection. A statement of costs shall be rendered to the applicant at the completion of the project (minimum of one hour).
(Ord. 957 (part), 1992)

12.01.130 Violations--Penalties.

Any person, firm, or corporation violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed five thousand dollars.
(Ord. 957 (part), 1992)

12.01.140 Indemnification.

The applicant shall fully indemnify and hold the city harmless from any and all liability which might arise as a result of the actions of the applicant, its agents, servants or employees. The city shall notify the applicant promptly of any action filed against the city.
(Ord. 957 (part), 1992)

Chapter 12.02

TELECOMMUNICATIONS--CABLE, RIGHT-OF-WAY PERMITS

Sections:

- 12.02.010 Definitions.
- 12.02.020 Objectives.
- 12.02.030 Permission required--General permit, use permit.
- 12.02.040 Master permit application--Contents.
- 12.02.050 Permit procedures.
- 12.02.060 Use permit--Expedited consideration.
- 12.02.070 Use permit--Advance notice, restrictions on denials.
- 12.02.080 Conditions of occupancy or use of the right-of-way.
- 12.02.090 Exemption, preemption.
- 12.02.100 State law provisions.
- 12.02.110 Restriction on moratoria.
- 12.02.120 Relocation.
- 12.02.130 Facilities for city use.
- 12.02.140 Fees and charges.
- 12.02.150 Authority of administering officer.
- 12.02.160 Appeals.
- 12.02.170 Users, occupants other than service providers.

12.02.010 Definitions.

The definitions in this section apply throughout this chapter unless otherwise stated or the context clearly requires otherwise.

"City" means the city of Cle Elum and its legal successors.

"Administering officer" means the mayor or mayor's designee. (Cross reference Section 12.02.170.)

"Cable television service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"Facilities" of a service provider means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

"Municipal infrastructure" means any municipal physical plant or facilities located in or near the right-of-way or areas reserved for public travel, municipal utilities, or other municipal needs, including, without limitation: public paving, streets, sidewalks and curbing, roadwork and road bed, and any other public construction in the vicinity, whether originally put in by the city or accepted for municipal management after initial construction by another; municipal street lighting facilities, municipal communications facilities, municipal water and sewer facilities, and skywalks; and street trees, plants, shrubs, lawn, and ornamental or beautification installations, where owned by the city.

"Permit" refers to a grant of municipal permission or authority to an applicant for use of the right-of-way to locate facilities and perform related activities therein. This chapter identifies two levels of permits: a master permit and a use permit.

1. A "master permit" confers general permission to enter, use, and occupy the right-of-way to locate facilities. A master permit may be granted in the form of a negotiated franchise and may include additional terms and conditions. A master permit does not include a cable franchise, which is issued pursuant to applicable local, state and federal law.
2. A "use permit" conveys more limited permission to enter and use a specified area or location in the right-of-way for a specific purpose such as installing, maintaining, repairing, or removing identified facilities.

"Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

"Right-of-way" means land acquired by or dedicated to the city for public roads and streets, and such areas as may be otherwise permitted by the city or subject to municipal jurisdiction or control in the traditional sense of the public right-of-way or related utility easement areas, but does not include

1. State highways;
2. Structures, including poles and conduits, located within the right-of-way;
3. Federally granted trust lands or forest board trust lands;
4. Federally granted railroad rights of way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use;
5. Municipal assets, property, premises, or buildings the city holds in a proprietary capacity. Use of or access to such assets must be addressed by separate arrangement.

"Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing telecommunications service or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town.

"Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes the over-the-air transmission of broadcast television or broadcast radio signals.

(Ord. 1133 § 1 (part), 2001)

12.02.020 Objectives.

- A. The objectives of this chapter are:
 1. To protect the general public health and safety;

2. To preserve and maintain the primary purpose of the right-of-way as a means of public travel and emergency vehicle access;
3. To respond to requirements established by federal or state laws, particularly as relating to service providers and reflected in chapter 83, Laws of 2000 State legislature;
4. To preserve the value of the public investment in the right-of-way and useful life of street, curbing, and sidewalk paving, and maintain the integrity and quality of the paving;
5. To preserve the value of the right-of-way to support municipal infrastructure needs as a priority use, and the value of municipal infrastructure investment; and
6. To promote the public convenience and aesthetics.

B. The first two objectives are of primary importance. The objectives govern questions of interpretation and enforcement. Notwithstanding any other provision, nothing done relating to this chapter is intended to create or expand any specific municipal duty or liability to any particular person or group or otherwise create or expand municipal tort liability for any purpose. This section shall control all others in the event of conflict or ambiguity.
(Ord. 1133 § 1 (part), 2001)

12.02.030 Permission required--General permit, use permit.

A. A service provider must obtain a master permit to enter, use and occupy the right-of-way to locate facilities therein. If this requirement is preempted by state law because of a preexisting state-wide grant, it applies as a request, but no municipal action or inaction may be regarded as waiver of any provisions of this chapter.

B. Parties installing secondary facilities in or on existing facilities must accept all city conditions on the existing as well as secondary facilities. Providers of cable television services for hire need not obtain a master permit to provide such service where a cable franchise has been granted under federal or other law.

C. The approving authority for a master permit is the city council by ordinance, except master permits five years or less in duration or for limited areas may be granted by council resolution on recommendation of the administering officer. In addition, the administering officer may grant a temporary master permit, up to ninety days, renewable once for up to an additional ninety days. The administering officer may grant revocable permission for incidental or temporary uses of the right-of-way not involving permanent installations or for other minor purposes, but the provisions in Section 12.02.080, apply, except insurance requirements may be adjusted on recommendation of the city's risk management advisor.

D. In addition to a master permit, a service provider must obtain permission to enter and use a specified right-of-way area to install, maintain, repair or remove identified facilities by means of a use permit. Utilities or agencies of the city are exempt from master permit or use permit requirements, but the administering officer may specify conditions of right-of-way use or occupancy, including the condition that city departments coordinate work in the right-of-way by giving appropriate notice to the municipal office issuing use permits.
(Ord. 1133 § 1 (part), 2001)

12.02.040 Master permit application--Contents.

A. To obtain a master permit, a written application is filed with the administering officer, in such form as may be required by such official. General information requested may include, but is not limited to:

1. Applicant's true name, address, telephone, fax, and email, together with an identification of the true ownership of the applicant, including the names and addresses of all persons with ten percent or more ownership interest therein. For a corporation or other business organization, the state of incorporation or organization, the name and address of the corporation or organization's registered agent, and a certificate of incorporation or other proof of legal status should be included;
2. A statement of whether the applicant, or any entity controlling the applicant, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States Title 11 of the United States Code, had an involuntary petition against it pursuant to the Bankruptcy Code, or been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors;
3. A statement of whether the applicant or any entity controlling the applicant has had a master permit, franchise, or similar right-of-way use or occupancy permission ever suspended or revoked in any other jurisdiction;
4. A statement of whether the applicant or any entity controlling the applicant has been found guilty, by any federal, state or municipal court or administrative agency in the United States of:
 - a. A violation of a security, antitrust or tax laws, or
 - b. A felony or any other crime involving fraud or theft. If so, the application shall identify any such person and fully explain the circumstances;
5. A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed telecommunications services facility;
6. A description of the physical facility proposed, including capacity, the area to be served, a description of technical characteristics, and a map of the proposed system service area and distribution scheme;
7. A description of how any construction will be implemented, identification of areas having aboveground or belowground facilities, the proposed construction schedule, and a description (if applicable) of how service will be converted from any existing facility to a new facility. The construction plan shall be coordinated with the city water, sewer, street, and other improvement plans and municipal infrastructure needs;
8. A description of the services to be provided over the system;
9. The proposed rates to be charged, including rates for each service offered to the public, as appropriate, and charges for installation, equipment, and other services, and whether such rates are subject to regulatory tariff or other rate regulation requirements from any other

jurisdictional agency;

10. A demonstration and assurance that the proposal is designed to be consistent with all federal and state requirements;
11. In the case of an application by an existing service provider for a renewal, a demonstration and assurance that such service provider has complied with all terms of the existing master permit or franchise and with applicable law;
12. Other information that the administering officer may reasonably request of the applicant;
13. The signature, under penalty of perjury, by the applicant or duly authorized agent thereof, certifying, in a form acceptable to the city, the truth and accuracy of the information contained in the application and acknowledging the enforceability of this chapter; and
14. Payment of a two thousand dollar application fee.

B. Requests for confidentiality will be narrowly construed within the confines of state law.
(Ord. 1133 § 1 (part), 2001)

12.02.050 Permit procedures.

A. Master Permits.

1. Upon receipt of an application and application fee, the administering officer shall notify the applicant of any additional administrative costs, fees or expenses reasonably expected to be incurred as a result of processing the application, including costs of publication as may be required by state or local law. An applicant must deposit such estimated costs within ten days of notification as a condition of further consideration of an application. Any unexpended monies after the application process shall be refunded within thirty days of completion of the application process. Additional costs billed by the administering officer shall be paid within thirty days of billing. If an applicant fails to file a completed application, furnish other requested information, or pay required amounts, the administering officer shall cancel the application process, and no refund of the application fee will be made.
2. Within ninety days of the filing of a complete application, the administering officer shall negotiate a master permit with the applicant or make the determination that it should be denied. If the parties cannot agree on the terms of the master permit or the administering officer determines it should otherwise be denied, such official shall create a written record, supported by substantial evidence, to explain the reasons why the master permit is recommended for denial. If the administering officer approves the application, the master permit shall be forwarded for final approval by the city council. The city council shall take final action on the recommendation of the administering officer within one hundred twenty days of the date the applicant filed a complete application.
3. The administering officer may require the service provider to attend and participate in any hearing or other fact finding process to determine whether to grant the permit, provided, that extensions of time for the hearing and final action by the city beyond one

hundred twenty days of the date the applicant filed a complete application may require the applicant's consent unless legislative approval of the city council cannot reasonably be obtained within such period. In such event, the administering officer shall notify the applicant of the time needed to obtain final action.

4. In the event time otherwise expires, the administering officer may also act by granting a temporary master permit, upon conditions as may be specified by such official, pending further proceedings.
5. A service provider adversely affected by a final action denying a master permit, or by an unreasonable failure to act on a master permit application in accordance with this section, may commence an action within thirty days to seek relief in a court of competent jurisdiction, which shall be limited to injunctive relief. Venue of such a proceeding shall be in Kittitas County. Upon timely appeal, the administering officer shall certify the record and delivers the same to the court where filed. Such official may require a deposit of funds by the appealing party in an amount estimated necessary to prepare the record as a condition of certifying the record.

B. Use Permits.

1. The city must act upon a request for a use permit made within the scope of this chapter within thirty days of receipt of a completed application and a one hundred dollar application fee by the official designated to issue such permits, unless a service provider consents to a different time period or the service provider has not obtained a master permit or franchise from the city. A use permit may not be denied to a service provider with an existing state-wide grant to occupy the right-of-way for wireline facilities on the basis of failure to obtain a master permit.
2. When applying for a use permit, the applicant shall provide, in its application, the following:
 - a. A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed telecommunications services facility;
 - b. A description of the physical facility proposed, including capacity, the area to be served, a description of technical characteristics, and a map of the proposed system service area and distribution scheme;
 - c. A description of how any construction will be implemented, identification of areas having aboveground or belowground facilities, the proposed construction schedule, and a description (if applicable) of how service will be converted from any existing facility to a new facility. The construction plan shall be coordinated with the city water, sewer, street, and other improvement plans and municipal infrastructure needs.
3. For purposes of this section, "act" means that the city makes the decision to grant, condition, or deny the use permit, or notifies the applicant in writing of the amount of time that will be required to make the decision and the reasons for the required time period.

4. A service provider adversely affected by a final action denying a use permit may commence an action within thirty days in a court of competent jurisdiction to seek relief, which shall be limited to injunctive relief. In any appeal of the final action denying a use permit, the standard for review and burden of proof shall be as set forth in RCW 36.70C.130.

C. In addition to any other applicable reasons, a master or use permit for placement of facilities of personal wireless services may further be denied consistent with the provisions of RCW 35.21.860(1)(e).
(Ord. 1133 § 1 (part), 2001)

12.02.060 Use permit--Expedited consideration.

Where a service provider does not have a master permit containing procedures to expedite use permit approvals and the service provider requires action in fewer than thirty days, the service provider shall advise the administering official in writing of the reasons why a shortened time period is necessary and the time period within which action by the city is requested. The city shall reasonably cooperate to meet the request where practicable.

(Ord. 1133 § 1 (part), 2001)

12.02.070 Use permit--Advance notice, restrictions on denials.

A. In order to facilitate the scheduling and coordination of work in the right-of-way, the administering officer shall provide as much advance notice, as is reasonable, of plans to open the right-of-way to those service providers who are current users of the right-of-way or who have filed notice with the city clerk within the past twelve months of their intent to place facilities in the city. This obligation may be satisfied by listing such projects in the upper Kittitas County Tribune, which is the newspaper of general circulation in Upper Kittitas County, or any other reasonable means as ordered by the administering officer, including posting notice at City Hall.

B. Service providers are responsible for subscribing to the Upper Kittitas County Tribune at their expense and are further responsible for contacting City Hall for notices relating to this chapter. Service providers are further responsible to maintain on file with the administering officer, the name of a current contact person and that individual's address, telephone number, fax number and email address.

C. The city is not liable for damages for failure to provide notice under this section. Where the city has failed to provide notice of plans to open the right-of-way to a service provider consistent with this section, a use permit to such service provider may not be denied on the basis that the service provider failed to coordinate with another project.

(Ord. 1133 § 1 (part), 2001)

12.02.080 Conditions of occupancy or use of the right-of-way.

The following requirements apply as minimum conditions of installing, locating, using, maintaining, abandoning or removing facilities in the right-of-way or other permitted areas. They are also a basis of negotiation of any franchise or master permit. Service providers or others must accept the following requirements, so long as any use or occupancy continues and regardless of whether a master or use permit or franchise has been issued, revoked or expired:

- A. Service providers must comply with all applicable federal, state, and local laws and ordinances relating to operations in the city, including safety laws and standards, as well as policies and standards of the city, construction codes, regulations, and orders of the administering officer, compliance therewith being subject to audit or verification by the city at the parties' expense;
- B. Service providers must obtain all permits required by the city for the installation, maintenance, repair, or removal of facilities in the right-of-way and pay all permit and filing fees, costs, charges and penalties within thirty days of billing or as otherwise specified by the administering officer;
- C. Compliance with the policies of this chapter;
- D. Service providers must cooperate with the city in ensuring that facilities are installed, maintained, repaired, and removed within the right-of-way in such a manner and at such points so as not to inconvenience the public use of the right-of-way or to adversely affect the public health, safety, and welfare;
- E. Service providers must provide information and plans as reasonably necessary to enable the city to comply with and enforce this chapter, including, when notified by the city directly, through the Upper Kittitas County Tribune or any other means, the provision of advance planning information pursuant to the procedures established by the administering officer, and keep the administering officer fully informed of any changes to information required to be supplied with any master permit or franchise or any use permit;
- F. Service providers must provide advance notice of long- and short-range needs for access to the right-of-way as may be ordered by the administering officer, and otherwise, as much advance notice as reasonable in order to facilitate the scheduling and coordination of work in the right-of-way;
- G. Service providers must obtain the written approval of the facility or structure owner, if the service provider does not own it, prior to attaching to or otherwise using a facility or structure in the right-of-way, and construct, install, operate, and maintain their facilities at their sole expense and liability except as otherwise provided by law or agreement;
- H. Execution of an indemnification agreement providing that the city must not be exposed to risks, claims, or costs because of a service provider, its successor, assignee or other's use or occupancy of the right-of-way or related areas for the location or use of facilities. Such agreement must provide that the service providers fully indemnify and hold the city, its officers, agents and employees, harmless from all loss or liability in connection with their use or occupancy of such areas. Operations in or near the right-of-way should be conducted to minimize or avoid hazard to the public or to prevent interference with the priority of municipal infrastructure needs. Such parties must further pay for loss or damage to municipal assets or injury to municipal personnel, and waive any second party claims from the user or occupant. If the city nonetheless is exposed to risk or loss, the service provider, successor, assigned or other will protect and defend the city to the maximum extent permitted by law. Minimum insurance requirements are five hundred thousand dollars per occurrence and one million dollars aggregate, with the city as an additional named insured, or as ordered by the administering officer.

- I. The city is not responsible for construction or operation of service provider's facilities and has no duty to modify the right-of-way to accommodate such facilities. Permitted areas are accepted for use "as is", and must be accepted along with any risks now or hereafter arising because of lack of municipal resources to maintain the right-of-way in its current or better condition; loss or liability arising from acts or omissions of other users, occupants or the public, unstable earth or roadbed, natural or artificial conditions rendering the right-of-way unsuitable for use for facilities placed; or any other problem. There are no express or implied assurances of suitability of any area for placement of the service provider's facilities.
- J. There is no warranty of any municipal title or interest to confer permission to use or access any area. Permission is in the nature of a quitclaim authorization, subject to any other underlying interests as may be established. The city further reserves the right to vacate or abandon as allowed by law any permitted area at no cost or liability to the city. Except and unless shown to be otherwise required by a preemptive right, municipal infrastructure needs have first priority in all cases.
- K. There is no duty or liability of the city to any third-party user of a permittee's facilities in the right. of way, or to any direct or indirect customers or third-party beneficiaries of a permitted user, and the city expressly disclaims any such duty or responsibility. Parties using or occupying the right-of-way must accept sole responsibly for claims of their direct or indirect third-party users, customers or third-party beneficiaries.
- L. Nothing in this chapter limits or restricts any requirement, duty or obligation heretofore arising to the benefit of the city as a result of any municipal contract, permit, or franchise, but such provisions are supplemental and in addition to this chapter. The provisions of this chapter are supplemental and in addition to other applicable municipal ordinances, standards, and requirements. Nothing in this chapter impairs any obligation of contract in violation of the constitution of the state of Washington or the United States.
- M. Any damage or disturbance to the right-of-way or surrounding areas caused by the activities of a service provider must be promptly restored thereby, and any patch must be thereafter maintained by the responsible party until the area is repaved. The administering officer may require the responsible party to repave an entire lane within a cut or disturbed location if deemed affected as a result of the service provider's activity, provided, however, that this does not create any right of the city to receive recompense for degradation of the useful life of such right-of-way. Common trenching and coordination of access needs by the user is required to avoid unnecessary cuts or damage to the right-of-way.
- N. Access may be limited by the administering officer at a specific location, considering the policies of this chapter, where there is inadequate space or other special limitations in an area. Minimum underground vertical separation is two feet and minimum underground horizontal separation is five feet from city water and sewer facilities and ten feet horizontal and vertical separation from above ground city water and sewer facilities.
- O. Any assignment of use or occupancy privileges requires consent of the city in the same manner as right of use or occupancy originally granted, excepting minor stock transfers.

(Ord. 1133 § 1 (part), 2001)

12.02.090 Exemption, preemption.

Any service provider or other party asserting a claim for preemption or exemption from a requirement of this chapter, permit, franchise, or order shall first present the same to the administering officer, with any supporting factual and/or legal arguments. The administering officer shall render a decision thereon within thirty days of receipt of written assertion of preemption or exemption. Such decision shall be made in consultation with the city's legal staff, and appealable to the full council for review de novo. The intent of this provision is to provide a quick and efficient means of understanding and resolving problems arising with respect to any permit or use or occupancy of the right-of-way, consistent with the objectives of this chapter and other applicable laws.
(Ord. 1133 § 1 (part), 2001)

12.02.100 State law provisions.

A. This section recites certain restrictions on municipal authority from Chapter 35.99 Revised Code of Washington, as amended from time to time. For complete text, the reader is referred to Chapter 35.99 RCW, which provides, inter alia, restrictions (which do not apply to preexisting franchises or permits) that the city may not adopt or enforce regulations specifically relating to the use of the right-of-way which:

1. Impose requirements that regulate the services or business operations of the service provider, except where otherwise authorized in state or federal law;
2. Conflict with federal or state laws, rules, or regulations that specifically apply to the design, construction, and operation of facilities or with federal or state worker safety or public safety laws, rules, or regulations;
3. Regulate the services provided based upon the content or kind of signals that are carried or are capable of being carried over the facilities, except where otherwise authorized in state or federal law; or
4. Unreasonably deny the use of the of right-of-way by a service provider for installing maintaining, repairing, or removing facilities for telecommunications services or cable television services.

B. In addition, RCW 35.99.040(2), as amended from time to time, preserves certain areas of municipal authority. Consistent therewith, nothing in this chapter limits the authority of the city or its officials to regulate the placement of facilities through its local zoning or police power, if the regulations do not otherwise:

1. Prohibit the placement of all wireless or of all wireline facilities within the city;
2. Prohibit the placement of all wireless or of all wireline facilities within city rights of way; or
3. Violate Section 253 of the Telecommunications Act of 1996, P.L. 104-104 (110 Stat. 56).

C. This section does not amend, limit, repeal, or otherwise modify the authority of the city to

regulate cable television services pursuant to federal law.
(Ord. 1133 § 1 (part), 2001)

12.02.110 Restriction on moratoria.

A. To the extent required by state law, the city shall not place or extend a moratorium on the acceptance and processing of applications, permitting, construction, maintenance, repair, replacement, extension, operation, or use of any facilities for personal wireless services, except as consistent with the guidelines for facilities siting implementation, as agreed to on August 5, 1998, by the Federal Communications Commission's local and state Government Advisory Committee, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the American Mobile Telecommunications Association.

B. Should such a moratorium be implemented, the administering officer shall, on receipt of a written request of a service provider impacted by the moratorium, participate with the service provider in the informal dispute resolution process included with the guidelines for facilities siting implementation. Any costs of municipal participation shall be payable to the city in advance by the service provider.

(Ord. 1133 § 1 (part), 2001)

12.02.120 Relocation.

A. The administering officer may require service providers to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of public welfare, health, or safety.

B. The administering officer shall coordinate with city planning and development personnel to ensure that relocation costs of authorized facilities within the right-of-way made necessary exclusively for private benefit, including but not limited to private development activities, are reimbursed exclusively by the proponent of the private activity necessitating the relocation.

C. The administering officer shall notify service providers as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Notice may be given by posting the same at city Hall, publication in the Upper Kittitas County Tribune, or any other means reasonably calculated to impart notice. In calculating the date that relocation must be completed, the administering officer shall consult with affected service providers and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation.

D. Service providers shall complete the relocation by the date specified, unless the administering officer, or a reviewing court, establishes a later date for completion, after a showing by the service provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

E. Service providers may not seek reimbursement for their relocation expenses from the city requesting relocation under subsection A of this section except:

1. Where the service provider had paid for the relocation cost of the same facilities at the request of the city within the past five years, the service provider's share of the cost of

relocation will be paid by the city when it is requesting the relocation;

2. Where aerial to underground relocation of authorized facilities is required by the city under subsection A of this section, for service providers with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city requiring relocation; and
3. Where the city requests relocation under subsection A of this section solely for aesthetic purposes, unless otherwise agreed to by the parties.

F. Where a project in subsection A of this section is determined by the administering officer to be primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Service providers will not be precluded from recovering their costs associated with relocation required under subsection A of this section, provided that the recovery is consistent with subsection C of this section and other applicable laws.

G. The administering officer may require the relocation of facilities at the service provider's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare.

(Ord. 1133 § 1 (part), 2001)

12.02.130 Facilities for city use.

The administering officer may require that a service provider that is constructing, relocating, or placing ducts or conduits in public rights-of-way provide the city with additional duct or conduit and related structures necessary to access the conduit, provided that:

- A. The city enters into a contract with the service provider consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the service provider. If the city makes the additional duct or conduit and related access structures available to any other entity for the purposes of providing telecommunications or cable television service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the entity that constructed the conduit or duct, shall recover at least the fully allocated costs of the service provider. The service provider shall state both contract rates in the contract. The administering officer shall inform the service provider of the use, and any change in use, of the requested duct or conduit and related access structures to determine the applicable rate to be paid by the city.
- B. Except as otherwise agreed by the service provider and the city, the city agrees that the requested additional duct or conduit space and related access structures will not be used by the city to provide telecommunications or cable television service for hire, sale, or resale to the general public.
- C. The city shall not require that the additional duct or conduit space be connected to the access structures and vaults of the service provider.
- D. The value of the additional duct or conduit requested by the city shall not be considered a

public works construction contract.

- E. This section shall not affect the provision of an institutional network by a cable television provider under federal law.

(Ord. 1133 § 1 (part), 2001)

12.02.140 Fees and charges.

RCW 35.21.860 addresses limitations on the city's power to impose franchise or other fees on some service providers and other entities specified, including site-specific charges pursuant to agreements with a service provider of personal wireless services as provided therein, which state law is expressly incorporated in this chapter.

(Ord. 1133 § 1 (part), 2001)

12.02.150 Authority of administering officer.

A. The administering officer interprets and enforces this chapter, and has authority to issue specific orders in specific cases or circumstances as may be deemed necessary. In such event, reasonable effort shall be made to notify affected parties. Specific orders may be issued on application of an affected service provider or providers.

B. Orders and decisions of the administering officer are guided by the intent of this chapter. Prior to issuance of an order, the administering officer may give such advance notice and opportunity for hearing as deemed proper, or may provide for a hearing upon request to review an order or specific application of a party arising after issuance. The officer may establish a filing fee not to exceed fifty dollars for consideration of any petition for action or determination by a regulated party or other person.

C. An administrative order may include provision for penalty of not more than five hundred dollars per violation. In case of a continuing violation, each day may be specified to be an additional and separate violation. No penalty for failure to comply with any administrative order may be assessed except after notice and opportunity for hearing for the affected party. Failure to pay a penalty is a breach of permit conditions and grounds for permit revocation by the administering officer after notice and opportunity for hearing for the permittee.

(Ord. 1133 § 1 (part), 2001)

12.02.160 Appeals.

A. Any party aggrieved by an order or decision of the administering officer relating to this chapter may appeal the same by filing notice of appeal with the city council within thirty days of the date of mailing or transmittal to such party of such order or decision appealed from. Included with the notice of appeal must be a statement of reasons for the appeal and copies of any pertinent documents or information and proof of delivery in such time limit of such submittal to the administrative officer and city attorney. A filing fee of one hundred dollars must also be paid to the city clerk at the time of filing.

B. Upon receipt of a notice of appeal, where any penalty or charge is concerned, the administrative officer shall determine the amount of any accrued penalty or charge and notify the appealing party of such determination. The appealing party must post with the city clerk a bond, cash deposit or other suitable form of security as ordered by the administrative officer within ten days of notification as a condition of further prosecuting any appeal. If the appeal is sustained, the security shall

be returned. If the appeal is denied, the security shall be applied to any accrued penalty or charge. No appeal shall stay the accrual of any continuing penalty except upon a showing the appeal has substantial merit and was taken in good faith, and not for purposes of delay.

C. The city council shall conduct a hearing on the appeal within thirty days of filing of the notice of appeal, and enter written findings, conclusions and decision thereafter within thirty days of the hearing. The city council's decision is final, subject to appeal in a court of competent jurisdiction by either party with a notice of appeal filed and served within thirty days. If a city official is the responding party, a copy shall also be served on the city attorney within such time limit.

D. An order or decision of the administering officer shall be sustained by the city council or a reviewing court unless found to be arbitrary and capricious. Upon timely appeal to a reviewing court, the city clerk shall certify the record and deliver the same to the court where filed. The city clerk may require a deposit of funds by the appealing party in an amount estimated necessary to prepare the record as a condition of certifying the record.
(Ord. 1133 § 1 (part), 2001)

12.02.170 Users, occupants other than service providers.

Ch. 35.99 Revised Code of Washington does not apply to parties other than service providers. Except where stated, the provisions of this chapter do not apply to parties other than service providers. Such other parties must, however, obtain a franchise or similar permission to enter and use the right-of-way to place facilities as may be negotiated by the administering officer, consistent with sections 12.02.020 and 12.02.080 of this code.
(Ord. 1133 § 1 (part), 2001)

Chapter 12.04 SIDEWALK CONSTRUCTION, REPAIR AND MAINTENANCE

Sections:

12.04.010 Statutes adopted.

12.04.020 Copies on file.

12.04.030 Amendments.

12.04.010 Statutes adopted.

Chapter 177 of the Laws of 1949 of the state, together with amendments thereof or additions thereto, is adopted by this reference as RCW Chapter 35.68 of the city.
(Ord. 448 § 1, 1953)

12.04.020 Copies on file.

Not less than three copies of the law adopted by reference have been filed in the office of the city treasurer for use and examination by the public, prior to the adoption thereof.
(Ord. 488 § 2, 1953)

12.04.030 Amendments.

Amendments and additions to the adopted law, when printed or typed and filed with the city treasurer, shall be considered and accepted as amendments and additions to such law as adopted without the necessity of further adoption of such amendments or additions by this city.
(Ord. 488 § 3, 1953)

Chapter 12.08

OBSTRUCTIONS OR DEFECTS IN SIDEWALKS, PARKING STRIPS AND CURBS

Sections:

12.08.010 Nuisance.

12.08.020 Removal of nuisance by owner.

12.08.030 Violation--Penalty.

12.08.010 Nuisance.

Any snow, ice, slippery substance, hole, obstruction or defect in or upon any sidewalk, parking strip or curb open to the public in the city is declared to be a nuisance. It is unlawful hereafter for any owner, occupant or person, firm or corporation having charge of any premises or portion thereof abutting upon any portion of any sidewalk, parking strip and/or curb to allow such nuisance to remain in or upon such abutting portion of sidewalk, parking strip and/or curb for more than twenty-four hours continuously. It is the obligation and responsibility hereafter of any and all owners, occupants, and/or persons, firms or corporations having charge of any such abutting premises or portions thereof to keep all abutting portions of sidewalks, parking strips and curbs clear of such nuisances at all times. Any portion of sidewalks, parking strips and curbs lying between such premises and any public avenue, street or alley adjoining such premises shall for purposes of this chapter be included in the term "abutting portion."

(Ord. 489 § 1, 1953)

12.08.020 Removal of nuisance by owner.

The removal of any such nuisance or nuisances by the city or any of its agents or employees at any time or times shall not excuse the failure of any owner, occupant or person, firm or corporation, hereinabove declared responsible, to remove any such nuisance or nuisances from such places at such time or times and at any subsequent time or times.

(Ord. 489 § 2, 1953)

12.08.030 Violation--Penalty.

Any person, firm or corporation who violates or fails to comply with any of the provisions of this chapter for more than twenty-four consecutive hours shall upon conviction thereof be fined in any sum not to exceed one hundred dollars or imprisoned for a period of not more than thirty days or both fined and imprisoned as provided in this section. Each twenty-four-hour period during which any such nuisance is allowed or maintained in any of the places mentioned in Section 12.08.010 shall be considered a separate offense.

(Ord. 489 § 3, 1953)

Chapter 12.12

OBSTRUCTION OF STREET CROSSINGS

Sections:

12.12.010 Obstruction by trains.

12.12.020 Violation--Penalty.

12.12.010 Obstruction by trains.

It is unlawful for any railway company running trains, cars or engines within the limits of the

city to obstruct any public street crossing within the limit of the city for more than ten minutes at any one time.

(Ord. 91 § 1, 1907)

12.12.020 Violation--Penalty.

Any violation of the foregoing provision of this chapter shall be deemed a misdemeanor and the person or persons operating or in charge of any train, car or engine which obstructs any public street crossing within the limits of the city for more than ten minutes at any time shall upon conviction of such violation be fined in any sum not less than twenty-five dollars nor more than one hundred dollars; provided, that in no case shall more than one fine be imposed for each offense.

(Ord. 91 § 2, 1907)

**Chapter 12.14
SNOW AND ICE**

Sections:

12.14.010 Depositing snow and ice from parking lots, sidewalks, or any other private property.

12.14.020 Violation--Penalty.

12.14.030 Temporary restrictions and limitations.

12.14.040 Notice.

12.14.050 Penalties.

12.14.010 Depositing snow and ice from parking lots, sidewalks, or any other private property.

No person, firm, company or corporation, nor the agent, representative or employee of any person, firm, company or corporation, shall plow or otherwise clear a parking lot, sidewalk, or any other private property of snow or ice and thereafter place, throw or deposit that snow or ice on any street, alley or sidewalk. Snow may be piled in paved parking right of way of a firm, company or corporation during snowfalls as long as it is removed within forty-eight hours of deposit. Snow and ice may also be piled by a firm, company or corporation on gravel parking right of ways only abutting its property as long as the snow or ice does not encroach on paved driving surfaces or create a sight-distance safety problem as will be determined by the city superintendent and/or police chief. Any firm, company or corporation may be asked at any time to remove some or all snow on public rights-of-way within a forty-eight-hour period or the city will remove such and bill the firm, company or corporation for the city's cost plus fifteen percent.

(Ord. 1021 § 1 (part), 1995)

12.14.020 Violation--Penalty.

A violation of this section shall be a civil infraction pursuant to RCW Chapter 7.80.120(1) (a). The maximum penalty and the default amount for a Class 1 civil infraction is two hundred and fifty dollars, plus statutory assessments. A violator may also be required to pay restitution.

(Ord. 1021 § 1 (part), 1995)

12.14.030 Temporary restrictions and limitations.

The city public works director or his or her appointed designee may prohibit the operation of trucks or vehicles or may impose limits as to the weight thereof, or any other restriction as may be deemed necessary, whenever any public right of way by reason of rain, snow, climatic or other conditions will be seriously damaged or destroyed unless the operation thereon is prohibited or restricted

or the permissible weights thereof reduced; provided, that the public works director shall prohibit the use of any street in the city if the street is designated by the State Highway Commission as forming a part of any restrictions or reductions in permissible weights as designated in writing by the State Highway Commission.

Nothing contained in this chapter shall be construed to limit or reduce the authority of the city public works director or his or her appointed designee from closing any public right of way within the city's corporate boundaries due to emergencies.

(Ord. 1146 § 1, 2001)

12.14.040 Notice.

The city public works director or his or her appointed designee shall have erected signs designating the provisions of § 12.14.030 CEMC, including local access restrictions, at each end of any city public right of way subject to the weight limits and restrictions established pursuant to this chapter, as amended from time to time. The city public works director shall also have published in one issue of a newspaper of general circulation within the city and to be posted at each end of any public right of way, the notice required by RCW 47.48.020 at least three days before such weight limits take effect.

(Ord. 1146 § 2, 2001)

12.14.050 Penalties.

The general penalties for in RCW 46.44.105 as applicable and as hereafter amended are hereby incorporated by this reference, but not less than a \$150.00 fine shall apply to any violation of this chapter, and any person, firm, or corporation or association failing to comply with any of the provisions of CEMC 12.14.030 shall be guilty of a misdemeanor.

(Ord. 1146 § 3, 2001)

Chapter 12.16 REMOVAL OF TREES AND VEGETATION

Sections:

12.16.010 Removal required.

12.16.020 Removal.

12.16.030 Notice.

12.16.040 Removal by city.

12.16.050 Notice of lien.

12.16.060 Provisions supplemental.

12.16.010 Removal required.

The owner of any property in the city is required to remove or destroy all trees, plants, shrubs or vegetation, or parts thereof, which overhang any sidewalk or street or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public; and is further required to remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown and died upon property owned or occupied by him and which constitute a fire hazard or a menace to public health, safety or welfare.

(Ord. 476 § 1, 1951)

12.16.020 Removal.

Proceedings for such removal or destruction shall be initiated by a resolution of the city council, adopted after not less than five days' notice to the owner of the property, which shall describe the property involved and the hazardous condition, and require the owner to make such removal or destruction within ten days after notice is given to the owner of the adoption of the resolution. (Ord. 476 § 2, 1951)

12.16.030 Notice.

Any notice required by this chapter may be given to the owner by service upon him of the notice in writing in the manner provided by the laws of the state for service of summons and complaint in legal actions; and any person who has the care, custody, control or management of any premises or building or who has control of the renting thereof or the collection of rentals therefrom shall, for the purpose of this chapter, be deemed to be the agent of the owner of the premises, and the giving of all notices provided for to the agent shall be deemed due notice to the owner. If any such property or premises is vacant, then the notices may be given to the owner thereof by service as provided in this section, or by depositing in the United States post office the written notice in a sealed envelope with first class postage prepaid, addressed to the owner or his agent at the last known address of the owner or agent. (Ord. 476 § 3, 1951)

12.16.040 Removal by city.

If the removal or destruction is not made by the owner within the period of time provided therefor in the resolution after notice given as required by this chapter, the city shall forthwith cause the removal or destruction thereof, and in such event the cost to the city shall become a charge against the owner of the property, and shall become a lien against the property. (Ord. 476 § 4, 1951)

12.16.050 Notice of lien.

Notice of the lien authorized in this chapter shall as nearly as practicable be in substantially the same form, filed with the same officer within the same time and manner, and enforced and foreclosed as is provided by the law of the state for lien and labor and material. (Ord. 476 § 5, 1951)

12.16.060 Provisions supplemental.

The provisions of this chapter are supplemental and in addition to any other powers granted or held by the city on the same or a similar subject. (Ord. 476 § 6, 1951)

**Chapter 12.20
GATES OPENING ACROSS SIDEWALKS**

Sections:

12.20.010 Unlawful.

12.20.020 Violation--Penalty.

12.20.010 Unlawful.

It is unlawful for any person to build or maintain any gate which shall swing or open out upon or across any sidewalk in the city. (Ord. 84 § 1, 1907)

12.20.020 Violation--Penalty.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five dollars nor more than twenty-five dollars and the police chief shall have authority to destroy any gate found opening or swinging out upon or across any sidewalk in the city.

(Ord. 84 § 2, 1907)

Chapter 12.24 UTILITY POLES

Sections:

12.24.010 Attaching things to utility poles.

12.24.010 Attaching things to utility poles.

It is unlawful to attach to utility poles any of the following: advertising signs, posters, vending machines, or any similar object which presents a hazard to or endangers the lives of utility workers. Any attachment to utility poles shall only be made with the permission of the utility involved and shall be placed not less than twelve feet above the surface of the ground.

(Ord. 853 § 1, 1986)

Chapter 12.28 STREET TREES

Sections:

12.28.010 Purpose.

12.28.020 Title.

12.28.030 Enforcing authority.

12.28.040 Definitions.

12.28.050 Permission to plant trees.

12.28.060 Street tree plan.

12.28.070 Public utility and owners.

12.28.080 Dangerous trees a nuisance.

12.28.090 Protection of trees and shrubs.

12.28.100 Permits to public utilities.

12.28.110 Permits.

12.28.120 Appeals.

12.28.130 Penalties.

12.28.010 Purpose.

It is for the best interest of the city, and of the citizens and public thereof that a comprehensive master plan for planting and maintenance of trees in public places within said city is adopted; therefore, for the purpose of developing and providing such a plan and program, and for the purpose of establishing rules and regulations relating to the planting, care and maintenance of such trees, this chapter is adopted.

(Ord. 1023 § 1, 1995)

12.28.020 Title.

This chapter shall be hereafter referenced to and cited as the "Tree Ordinance of the City of Cle Elum, Washington."

(Ord. 1023 § 2, 1995)

12.28.030 Enforcing authority.

A. The mayor and the city council, through the city superintendent or his duly authorized representative, shall have full power, authority, jurisdiction and control of the planting, location and placement of all trees in the public streets and areas of the city and shall likewise have supervision, direction and control of the care, trimming, removal, relocation and placement thereof and shall be charged with the enforcement of this chapter.

B. The mayor and city council may annually appoint the committee of not more than seven citizens to sit as members of the "tree committee." The tree committee shall provide the mayor and the city superintendent with advice and information as to the supervision, direction and control of the care, trimming, removal and relocation and placement of vegetation in the public streets and areas of the city. It is understood that the committee shall act in an advisory capacity only.
(Ord. 1023 § 3, 1995)

12.28.040 Definitions.

"City superintendent" means the superintendent of utilities and streets of the city.

"Owner" means and includes the legal owner of real property fronting any highway, street of the city or park, and any leases of such owner.

"Park" means and includes all public parks having individual names.

"Persons" means and includes all firms, associations, corporations, and persons connected with such firms, association, and corporations.

"Public places" means and includes all other grounds owned by the city.

"Street" or "highway" means and includes all lands lying between the so-called property lines on either side of all public streets, roads, boulevards and alleys or parts thereof.

"Trees and shrubs" means and includes all woody vegetation now and hereafter growing on any public street or highway or public place.
(Ord. 1023 § 4, 1995)

12.28.050 Permission to plant trees.

No trees or shrubs shall hereafter be placed in or removed from any street, public parking strip or other public place in the city without written permission from the city superintendent.
(Ord. 1023 § 5, 1995)

12.28.060 Street tree plan.

All trees and shrubs hereafter planted in any public parking strip or other public place in the city shall conform as to species and location to the master street tree plan which is adopted, attached and made a part of this chapter.
(Ord. 1023 § 6, 1995)

12.28.070 Public utility and owners.

No person other than an owner or public utility may do any act for which a permit is required under Section 12.28.080 of this chapter except a person whose principal business is tree surgery, trimming or maintenance and who, in the opinion of the city superintendent, is qualified for such business or who has obtained a permit and paid required license fee to carry on such business in the city. (Ord. 1023 § 7, 1995)

12.28.080 Dangerous trees a nuisance.

Any tree growing on a public alley, street or highway, but so located as to extend its branches over a public alley, street or highway, shall be so trimmed by the owner of the property on which the tree stands, or by his agents, that there shall be a clear height of twelve feet above the surface of the street, alley or highway and eight feet above the surface of the sidewalks unobstructed by branches, and such owner or his agents shall remove all dead branches and stubs of such tree or trees which are or may become a menace to travelers on the public highways, streets, alleys or sidewalks of the city. Trees whose roots are causing upraised sidewalk slabs or are similarly causing trouble are declared a nuisance.

If a tree or its parts in any other way cause a hindrance to the general public or if it is considered "troublesome," or in any way may endanger the security and usefulness of any public street, highway, alley, sewer or sidewalk, as determined by the city superintendent, it is declared to be a public nuisance. If the owner of such private property does not correct or remove such nuisances within a reasonable time specified in writing by the city superintendent, he shall cause the nuisance to be corrected or removed and the cost shall be assessed to such owner. (Ord. 1023 § 8, 1995)

12.28.090 Protection of trees and shrubs.

Except to abate a nuisance as defined herein, it shall be a violation of this chapter to:

- A. Fasten any sign, card, poster, wire, rope or other material to or around or through any public tree or shrub, or its guard, in the city without a written permit of the city superintendent except in emergencies such as storms or accidents;
- B. Deposit, place, store or maintain upon any public area of the city, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree or shrub growing therein;
- C. Break, injure, mutilate, kill or destroy any tree or shrub, or permit any fire to burn where such fire will injure any portion of any tree or shrub in any public area; no person shall permit any toxic chemical to seep, drain or be emptied on or about any public tree or shrub; no person shall knowingly permit electric wires to come in contact with any public trees or shrubs unless protected by approved methods; and no person shall attach any electrical insulation to any public tree or shall excavate any ditches, tunnels or trenches, or lay any drive within a radius of ten feet from any public tree or shrub without first obtaining permission from the city superintendent. During building operations the builder shall erect suitable protective barriers around public trees or shrubs apt to be injured.

(Ord. 1023 § 9, 1995)

12.28.100 Permits to public utilities.

Upon application to the city superintendent by a telephone, telegraph, electric power or public service corporation or utility, to trim trees, or perform other operations affecting public trees or shrubs including the activities otherwise prescribed in Section 12.28.090 of this chapter, or upon application of qualified contractors who have entered into contracts with a telephone, telegraph, electric power or other public service corporation or utility to trim trees or perform other operations affecting public trees or shrubs, the city superintendent shall grant a blanket permit, good until revoked for cause, covering all tree trimming and other operations affecting public trees or shrubs in Cle Elum by such telephone, telegraph, electric power or other public service cooperation or utility or qualified contractor. The city superintendent shall be notified of when and where such operations shall take place. The amount of such trimming or extent of the other operations shall be done in a neat, workmanlike manner, and according to generally accepted practices. If necessary the city superintendent may assign an inspector to supervise the provisions of the permit and cost of such service shall be charged to the public service corporation or utility or contractor at cost.

(Ord. 1023 § 10, 1995)

12.28.110 Permits.

Every permit granted by the mayor, or his authorized agent, shall specifically describe the work to be done under it and shall expire at the end of not exceeding sixty days from the date of its issuance, except for those permits issued under Section 12.28.100 of this chapter. No charge shall be made for any permit.

(Ord. 1023 § 11, 1995)

12.28.120 Appeals.

Appeals from order made hereunder may be made by filing written notice thereof with the city clerk within ten days after such order is received, stating in substance that appeal is being made from such order to the city council.

The clerk thereupon shall call such appeal to the attention of the city council at the next regular succeeding meeting, at which meeting the appellant and the city superintendent may present evidence unless a future date is set for hearing the appeal. Action taken by the city council after such a public hearing shall be conclusive.

(Ord. 1023 § 12, 1995)

12.28.130 Penalties.

Any person, firm or corporation violating or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not to exceed one thousand dollars, or may be imprisoned for a term not to exceed ninety days, or both; provided, however, that in all events restitution shall be ordered commensurate with the value of the damaged or destroyed public trees or shrubs; and further provided that, any sentence requiring community service shall require not fewer than twenty-five hours of such service, to be supervised by the tree committee overseen by the city superintendent.

(Ord. 1090, 1999; Ord. 1023 § 13, 1995)