

**ORDINANCE 1096**

**AN ORDINANCE OF THE CITY COUNCIL OF GRAND COULEE, WASHINGTON,  
ADDING A NEW CHAPTER 12.12 TO THE GRAND COULEE MUNICIPAL CODE TO  
REGULATE USE OF AND ENROACHMENTS IN RIGHTS OF WAYS IN THE CITY;  
CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Grand Coulee ("City") has adopted Title 12 of the Grand Coulee Municipal Code regulating streets and sidewalks in the City; and

**WHEREAS**, although the City Council has previously adopted and enacted regulations related to use of the traveled portions of City streets, sidewalks, and/or rights of ways in Title 12 GCMC, the regulations do not address the use of unopened sections of streets and rights of ways by adjacent property owners; and

**WHEREAS**, the City staff have observed numerous encroachments in unopened City rights of ways, and receive questions regarding the use of the same; and

**WHEREAS**, the City Council desires to adopt regulations to clarify access and use of rights of way in the City by adjacent property owners; and

**WHEREAS**, adoption of this Ordinance is in the best interest of the health, safety, and welfare of the citizens of the City; now, therefore,

**THE CITY COUNCIL OF THE CITY OF GRAND COULEE, WASHINGTON, DO ORDAIN AS  
FOLLOWS:**

**Section 1.** A new Chapter 12.12 of the Grand Coulee Municipal Code is hereby added to read as follows:

**Chapter 12.12  
Use of City Rights-of-Ways**

**12.12.010 Purpose**

A city right-of-way is an easement for public travel. Although an abutting property owner may own the fee title to the property underlying the public right-of-way, the property may only be used, if at all, subject to the easement for public travel. The owner or occupant cannot obstruct such public travel over the right-of-way, including vehicular travel on the improved roadway or pedestrian travel on the sidewalk.

In cases where a city right-of-way has not been opened, and is not improved, obstruction of public travel may not be an immediate concern. Property owners can use the unopened, unimproved right-of-way as they can the rest of their property, but subject to the possibility of it

being opened and improved at some point in the future, and the requirements set forth in this code.

The purpose of this code is to outline the authorized use and encroachments in city rights-of ways.

**12.12.020 Authorized Use of Rights of Ways**

Property abutting or covering the unopened portion of a city right-of-way may be maintained with grass and gravel, and used for temporary parking, by the abutting property owner without obtaining a permit for use or encroachment issued by the city. However, the legal lot lines for the subject property shall be used for determination of all building setbacks on the property, and not the edge of the open portion of the street or right-of-way (if any). Any person or owner of property abutting a city right of way that seeks to use or encroach on the right of way with any permanent structure must obtain the applicable permit or agreement from the city as set forth in this chapter.

**12.12.030 Permit or Agreement Required.**

A. Except as otherwise provided herein, no person shall use or encroach upon any public place, including right of way or easement, without obtaining a permit from the city clerk-treasurer, or authorized designee.

B. Encroachment Permit. An encroachment permit is required to encroach upon any portion of city public space, right-of-way or easement area with permanent structures.

1. "To encroach" means to construct, erect or maintain in, over or under any public place, right-of-way, easement, roadway, parking strip and/or sidewalk, including the airspace above them, any structures permanent in nature, including but not limited to building extension, marquee, fence, retaining wall, artwork, fill material, rockeries, plants and trees either deliberately planted or growing from adjacent property, rocks, concrete, asphalt, impervious surfaces or structures, or any other building or structure.
2. For purposes of this definition, grass and gravel are not considered encroachments of the city rights-of-way.

C. Street Use Permit. A street use permit is required to use any portion of public space or city right-of-way for objects that are temporary in nature.

1. To "use" means to place or maintain in, over or under any public place, right-of-way, roadway, parking strip and/or sidewalk, including the air space above them, any temporary or movable object.
2. "Temporary in nature," in reference to street use permits, means not having or requiring permanent attachment to the ground, or involving structures which have no required permanent attachment to the ground.

3. "Temporary object," for the purposes of this chapter, refers to all objects placed in the right-of-way that are temporary in nature including but not limited to chairs, tables, planters, sandwich boards, benches, stanchions, platforms, rope, and fencing.

None of the above definitions shall be interpreted to prohibit the parking of a properly licensed vehicle within the parking strip adjacent to their property line of sight, and street plantings.

D. A landowner seeking an encroachment permit shall submit an application for a permit for encroachment into the public rights-of-way to the city and pay the applicable fee for such permit.

#### **12.12.040 Permit Applications**

A. A permit to use or encroach into the public rights-of-way will be granted to an applicant that executes an encroachment agreement (as applicable) and establishes that the proposed use or encroachment meets or exceeds the criteria hereinafter set forth.

B. Applications for right of way use or encroachment permits shall contain, in addition to the information required under any other applicable city code, the following information:

1. Right of Way Use Permit.

- a. Complete Application (form to be provided by city)
- b. Certificate of insurance.

2. Encroachment Permit.

- a. Complete Application (form to be provided by City)
- a. Partial site plan, capable of being recorded with Grant County, clearly showing proposed encroachment, private property lines, all existing structures and driveways, easements and/or public property (developed or undeveloped).
- b. Legal description, including copies of all recorded easements on the property.
- c. Elevation view or side view of the proposed encroachment.
- d. Ownership. Evidence showing the applicant to be the agent record owner of the property immediately adjoining the public place or right-of-way.
- e. Certificate of insurance.
- f. Complete encroachment agreement (which may be recorded with Grant County depending on the nature of the encroachment)

C. The City expressly reserves the right to require additional information it deems necessary to facilitate review of any permit application.

D. The criteria used by the city to either grant, deny or grant with modifications a permit to use or encroach into the public rights-of-way shall consist of:

1. Impact on operations and maintenance of existing and future public/franchise utilities.
2. Extent the use, improvements, or encroachments may interfere with existing or future street improvements.
3. Impact to sight distance of vehicles and pedestrians.
4. Impact to roadside shoulder parking.
5. Impact to health and safety.
6. How far the improvements will extend into the rights-of-way.
7. How permanent the improvements will be.
8. The extent the improvements give the general public the impression that they are excluded from using the rights-of-way.
9. The extent the improvements may interfere with future private development.
10. What impact the encroachments would have on views of neighbors and the general public.

F. Prior to issuance of an encroachment permit, an encroachment agreement shall be signed by the applicant and/or owner of the property adjacent to the city rights-of-way and may be recorded with the Grant County Auditor. An encroachment agreement shall:

1. Specify the type and location of materials, plants or structures allowed in the rights-of-way;
2. Specify the rights and responsibilities of the city and the adjacent landowner for maintenance and eventual removal of the encroachment;
3. Make provisions for reasonable public access, including view, to the rights-of-way and to any adjacent public property;
4. Make provisions for future access to the rights-of-way for utilities, drainage, vehicles, and pedestrians;
5. Protect the public health and safety;
6. State that the city shall be entitled to revoke an encroachment agreement at any time, with or without cause and without penalty or liability, and that the property owner shall return the property to the same or better condition than existed prior to the encroachment; and
7. Contain any other criteria deemed necessary by the city.

G. Each encroachment agreement shall require prompt removal of the encroachment by the applicant at his/her/its expense upon reasonable demand by the city and be legally adequate for recording in the land records of Grant County and the chain of title of the applicant's property.

H. No construction of encroachments shall be allowed until an encroachment permit is issued and an encroachment agreement has been signed by the owner and city.

I. An encroachment agreement does not constitute a surrender by the city of any property rights to the city rights-of-way.

**12.12.050 Existing encroachments.**

With the exception of buildings or “structures” (which could never have been permitted to locate in a city right-of-way), existing encroachments, including landscape, fences, and trees, at the time of the passage of the ordinance codified in this chapter shall be allowed to remain until such time as an application for construction activity (new construction or remodel construction) is filed with the city or when existing encroachments are modified or changed. Upon the filing of an application for construction activity or when existing encroachments are modified, all encroachments must be brought into compliance with GCMC 12.12.030 and an encroachment agreement must be properly executed. Failure to comply with this section will require all encroachments to be removed.

**12.12.060 Fees.**

Application fees for street use or encroachment permits are those established by the city council by resolution in its sole legislative discretion. Application fees shall be paid to the city prior to issuance of any permit. The city may assess annual permit fees for encroachments as established from time to time by resolution.

**12.12.070 Revocation.**

A. Except as provided herein, all permits approved under this chapter shall be temporary, shall vest no permanent right and shall be issued and may in any case be revoked at the sole discretion of the city upon 30 days’ notice, or without notice in the event any such use or occupation shall become dangerous; any structure, obstruction, or other use or encroachment so permitted shall become insecure or unsafe; shall become a public nuisance; or has not been constructed, maintained or used in accordance with the provisions of this chapter. The determination by the city that a structure, use, or encroachment is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter shall be conclusive.

B. Permits shall also be revoked if:

1. Following written notice of the lapse of an insurance policy required to be maintained by this chapter, the permittee fails to supply a valid certificate of insurance; or
2. Following written notice of the lapse of an applicable fee, including, renewal fee or fees for the exclusive use of the right-of-way as required by the permit, the permittee fails to bring fees/account current.

C. If any such structure, encroachment, obstruction, use or occupancy is not discontinued on notice to do so by the city and within the time period designated, the city may remove any structure, encroachment, or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the

permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

**12.12.080 Maintenance of trees in or overhanging streets and rights of ways**

Every owner of any tree within or overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any streetlamp or obstruct the view of any street intersection and so that there shall be a clear space of twelve feet above the surface of the street or alley and nine feet above the surface of a sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs, which constitute a menace to the safety of the public. The city shall have the right to prune any tree or shrub on private property which overhangs public right-of-way or interferes with the public health and/or safety of the public in accordance with GCMC 8.30.040.

**12.12.090 Penalties**

A. Any person violating any provision of this chapter shall be deemed to have committed a civil infraction and shall be punished by a fine in an amount not exceeding one thousand dollars. In the event a person is found in violation of this chapter, the city may deny approval of a request by the person for a street use or encroachment permit for any future proposed use or improvement to a right of way in the city.

B. A person is guilty of a separate offense for each separate and distinct violation of any provisions of this chapter, and a person is guilty of a separate offense for each day during which he/she commits or allows to continue any violation of the provisions of this chapter.

**Section 2.** If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3.** This Ordinance shall take effect and be in full force five (5) days following adoption and publication of a summary of this Ordinance consisting of the title.

APPROVED:

  
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MAYOR MIKE EYLAR

ATTEST:

  
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CITY CLERK, LORNA PEARCE

APPROVED AS TO FORM:

/s/ Julie Norton

JULIE K. NORTON  
CITY ATTORNEY

FILED WITH THE CITY CLERK: February 20, 2024

PASSED BY THE CITY COUNCIL: March 19, 2024

PUBLISHED: April 3, 2024

EFFECTIVE DATE: April 8, 2024

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