

Chapter 8.05
Regulation of the Public Rights-of-Way

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8.05.010 – Policy and Purpose of Right-of-Way Regulation.

A. The City of Mosier, in furtherance of the public health, safety and welfare, hereby declares it a matter of public concern and importance to maintain the safety, utility and structural integrity of all public rights-of-way within the city.

B. The city recognizes that public rights-of-way are obtained, dedicated, maintained and used for the movement of goods and people and the placement of public facilities and utilities. The city declares it a matter of public concern that the public rights-of-way within its borders be protected and use of the rights-of-way regulated so as to protect these important assets for these public purposes.

C. Toward this end, the city declares that the protection of the public health, safety and welfare requires certain regulations on the use of, and uses within, the public right-of-way so as to protect and maintain these public purposes.

8.05.020 – Right-of-Way Permit Required.

A. Any individual, corporation, organization, partnership or similar entity shall apply for and obtain a city-issued Right-of-way Permit before using any public right-of-way, including streets, roads, alleys, bridges, bike lanes and pedestrian paths, within the city limits for any of the following uses:

1. Transport of goods or passage of one or more vehicles longer than 40 feet singly or as a single unit in combination or 60 feet total for the combination of vehicles including length of load or otherwise oversize according to ORS 818.010.
2. Transport of goods or passage of one or more vehicles heavier than 34,000 pounds gross vehicle weight unless weight is mitigated by use of additional axles as prescribed by ORS 818.080 or a route is otherwise identified as weight limited.
3. Placement of underground or overhead wires, pipes, fiber optic lines, poles, transmitters, receivers, antennas, equipment cabinets or other equipment within, over or under the public right-of-way. These activities may also require a franchise with the City of Mosier for long-term use of the public rights-of-way.

4. Obstruction of the normal passage of goods and people over the public right-of-way for any period of time by occupying the right-of-way with a stationary object or passage of pedestrians or vehicle(s), whether motorized or non-motorized, moving slower than the posted speed. This includes parades, bicycle or foot races, fairs, festivals and the like, as well as survey work within the right-of-way that may obstruct or slow traffic. These activities may also require a land use or special use permit depending upon the specific proposal.
5. Any pavement or concrete cutting, excavation, digging, construction, building or physical disturbance of, or within, the right-of-way.

B. Any entity required by this ordinance to obtain a Right-of-way Permit shall apply using forms provided by the city and, as applicable, provide the following information:

1. The name, address, phone number and other contact information of the person or entity responsible for the permitted use and the same contact information for the person who will be on-site in the city when the requested use is occurring
2. Detailed description of the use or project proposed, including nature of the use, size, weight, number of vehicles, bicycles, people/pedestrians, the reason for the construction or excavation within the right-of-way, etc.
3. Specific dates, times, frequency and locations (specific portions of identified rights-of-way) for which the permit is sought and during which the right-of-way will be used, disturbed or affected.
4. Detailed description of the anticipated impact of the proposed use, including poles and other structures that will need to be moved, reconstructed, reinforced and/or repaired. This should also include a description of the traffic, pedestrian and bicycle safety impacts of the proposed use. For construction or excavation, this includes the exact location, size of excavation, depth, etc., and a detailed description of the utilities that may be affected.
5. A detailed description of the mitigation measures, including safety measures proposed to maintain public safety, and measures to protect and repair the structural integrity of the right-of-way.
6. Any other relevant information related to the unique nature of the proposed use or otherwise required by the city for a full evaluation of the proposed use and its impact of the public right-of-way. The City may rely on ORS 818.105 and 818.220 as a framework for identifying relevant information required for a complete application.

C. All applicants for a Right-of-way Permit may be required to reimburse the City for all costs it reasonably incurs in evaluating the applicant's proposal, impacts and permit/condition compliance, including review by the city engineer, city planner, city attorney and any other outside consultant.

D. Approval of a Right-of-way Permit, including conditions designed to protect the long-term function, safety and structural integrity of the right-of-way and all utility lines within the right-of-way, shall not be unreasonably withheld. However, where protection of the function, safety and structural integrity of the right-of-way or utility lines within the right-of-way cannot be assured through the imposition of conditions, the permit shall be denied.

E. All Right-of-way Permit applications shall be reviewed and decided in writing by the city engineer in consultation with the city planner, city attorney, and any affected state, county or federal agencies. The mayor or city engineer may refer any Right-of-way Permit application to the city council for review and decision.

F. Any decision on a Right-of-way Permit by the city engineer is final unless appealed to the city council. A Right-of-way Permit decision may be appealed to the city council by requesting council review within 14 days of when the city engineer's decision is reduced to writing and signed. Any decision by the city council on a Right-of-way Permit is final. The city's decision on a Right-of-way Permit is not a "land use decision" or "limited land use decision" under ORS chapter 197, nor is it a "permit" under ORS chapter 227.

8.05.030 – Authority to Condition Use of the Right-of-Way.

A. Any Right-of-way Permit approved by the city may include reasonable conditions designed to protect the long-term function, safety and structural integrity of the right-of-way, utilities within the right-of-way, and near-by affected land including, but not limited to the following:

1. Traffic safety measures, flaggers, warning signs, lights and any other measure deemed necessary to protect public safety including limits to time of day or season to limit impacts on pedestrians, vehicular access in the school zone, time-sensitive commerce during harvest, etc.
2. Reconstruction, rehabilitation, reinforcement and/or repair of any physical element or support structure of, in or near the public right-of-way that may be affected or need to be altered to accommodate the use.
3. Measures necessary to maintain property operation and integrity of utilities within the right-of-way before, during and after the applicant's use of the right-of-way.
4. The posting of a financial guarantee, in a form approved by the city attorney in an amount approved by the city engineer, sufficient to reconstruct, rehabilitate or repair any physical element or support structure in or near the public right-of-way following the use.
5. Indemnification of the City of Mosier for any claim arising from property damage, injury or death resulting from any activity by the permittee.
6. The temporary movement of poles, utility lines or other existing structures or facilities within or near the public right-of-way that may be affected by the proposed use.
7. Any other condition or requirement deemed reasonably necessary to protect the long-term function, safety and structural integrity of the right-of-way and utilities within the right-of-way.

B. As a condition of permit approval, the city may require an applicant to enter a legally binding and enforceable Road Use Agreement that imposes specific requirements and obligations on the permittee to ensure compliance with the permit and to achieve the objectives of this chapter.

C. Conditions may take the form of conditions required before the use of the public right-of-way can begin, conditions regulating the proposed use of the right-of-way, and/or conditions to be performed following the use. Conditions shall be performed to the satisfaction of the city engineer or other appropriate responsible city official and shall be completed at the expense of the permit holder. Failure to completely and properly fulfill all conditions of a Right-of-way Permit may result in cancellation of the permit, may be grounds for revocation of all other Right-of-way Permits or denial of future applications, and may be grounds for initiation of civil or criminal enforcement actions in state or municipal court.

D. The city may issue or amend from time to time seasonal weight restrictions on some city streets as deemed necessary by the city engineer. The city will consult and coordinate with Wasco County in these regulations.

E. In addition to any other available remedy, the city may enforce requirements of a Right-of-way Permit in municipal court or Wasco County Circuit Court.

8.05.040 – Obligations on the City.

A. In administering this ordinance and exercising regulatory control over the public rights-of-way within its boundaries, the city is not obligated to maintain or repair the public right-of-way or otherwise assume jurisdiction or other obligations that it has not otherwise elected to assume.

B. Nothing in this chapter authorizes the city to approve a proposed use on private property or land outside of the public right-of-way. A permit applicant is required to seek any additional approvals or permission from private property owners and other affected governmental entities. If excavation is proposed, the applicants shall contact the one-call utility line locate before beginning work. Permit applicants may also be required to obtain a franchise from the city for long-term use of the public right-of-way. Permit applicants may also be required to obtain land use approval, a construction permit, or a special events permit for the requested activity.

8.05.050 – Exemptions to the Right-of-Way Permit Requirement. In administering this ordinance and exercising regulatory control over the public right-of-way, the city may exempt the following uses from the permit requirements of this chapter:

A. The seasonal transportation of agricultural products.

B. Work done by or for the City of Mosier for a specific city project.

C. Work necessary to respond to an isolated emergency situation, affecting the public health, safety and welfare, that requires an expedited process.

D. Truck transportation for work done on a project within the city limits on private or public property that requires approval by the city using another review process, such as a **land use approval**.