

**TOWN OF BEAUX ARTS VILLAGE
ORDINANCE NO. 370**

AN ORDINANCE OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON
ADOPTING REGULATIONS FOR THE USES AND DEVELOPMENT OF NON-PAVED
PORTIONS OF THE TOWN RIGHTS OF WAY

WHEREAS, the Town of Beaux Arts Village (“the Town”) owns and maintains the Town’s rights of way for vehicular and pedestrian traffic, as well as for utility placement and operations; and

WHEREAS, the Town wishes to preserve and enhance the non-paved portions of the rights of way for continued use as utility corridors and landscaped areas; and

WHEREAS, the Town wishes to preserve and enhance the non-paved portions of the rights of way consistent with the Town's Comprehensive Plan; and

WHEREAS, property owners adjacent to said rights of way are often interested in using the rights of way for enhanced landscaping and temporary parking; and

WHEREAS, the Town is mindful of the need to manage stormwater; and

WHEREAS, the Planning Commission conducted a Public Hearing on January 15, 2009 to solicit public opinions regarding allowed uses of the rights of way; and

WHEREAS, the Town Council has reviewed the proposed Ordinance and the recommendations of the Planning Commission at a public hearing; **NOW THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE, WASHINGTON, AS FOLLOWS:

Section 1. Title, Purpose and Interpretation.

- 1.1. Title. This Ordinance shall be known as the Right of Way Code of the Town of Beaux Arts Village, Washington.
- 1.2. Purpose and Intent. The general purpose and intent of the ordinance is to protect the rights of way for use by all Town residents and to provide rules and regulations for the installation of plant materials, improvements and parking surface materials within the non-paved portions of the rights of way.
- 1.3. Interpretation. In the interpretation and application of this ordinance, its provisions shall be construed to be the minimum requirements.

Section 2. Definitions

Developed Right of Way. Any right of way that contains a paved or gravel street for vehicular access, also known as a travel lane.

Path Right of Way. Any right of way between two residences (including street ends) that has not been developed for vehicular access and is used solely for pedestrian access or greenbelt within the Town.

Planting Strip. That portion of the Town right of way lying between the edge of the travel lane or back of the sidewalk and private property.

Right of Way. Property owned by the Town and intended to be used primarily for purposes relating to vehicular and pedestrian traffic, utility placement and operations, green space and other purposes as determined by the Town.

Right of Way Use Permit. A permit authorizing a property owner to use the Right of Way adjacent to his/her property for a use approved under the provisions of this Ordinance.

ROW Encroachment Agreement. A recorded agreement for revocable use of the Planting Strip abutting private property. Each ROW Encroachment Agreement will include a provision requiring the property to owner carry homeowners insurance that covers liability for all items identified in the Agreement, and provide proof of such insurance upon request by the Town.

Visibility Standard. In addition to the visibility requirements of the Model Traffic Ordinance and any other standard specified by the Town Engineer, the visibility standard specific to this Right of Way Ordinance requires thirteen vertical feet of clearance above all portions of the pavement within the travel lane of a Right of Way.

Pervious Surface. A surface that allows water to penetrate it and flow through to the soil below.

Impervious Surface. A surface from which most water runs off, including, but not limited to, paved streets, pavers, graveled areas, packed earth material, oiled macadam or other treated surfaces.

Section 3. Existing Uses Within a Right of Way.

- 3.1. All existing uses previously approved by the Town Council that are within any Right of Way shall be allowed to be continued and maintained, and shall be considered legal Right of Way Uses.
- 3.2. All existing uses not previously approved by the Town Council that are within any Right of Way and that exist as of the date of this Ordinance shall be considered Nonconforming Right of Way Uses. Such uses shall only be replaced through a Right

of Way Use Permit. Ordinary repair and maintenance shall be permitted without a Right of Way Use permit.

Section 4. Permitted Uses Within a Planting Strip.

- 4.1. The following uses shall be allowed outright within the Planting Strip without the need for permits or Town review:
 - 4.1.1. Placement of mailboxes within mailbox stands.
 - 4.1.2. Installation, maintenance, and removal of plant material, of any species other than those prohibited in Sections 6 and 9 of this Ordinance, provided that visibility standards are maintained.
 - 4.1.3. Installation of landscaping rocks located a minimum of (1.5) feet from the pavement edge and not to exceed a size that can be moved by two persons.
 - 4.1.4. Installation of underground utilities, provided all appropriate utility and/or building permits have been issued, and the area is fully restored to the pre-installation condition, with the exception of plant materials prohibited in Section 6 of this Code.
 - 4.1.5. Installation of address identification signs.
 - 4.1.6. Above-ground irrigation systems and low-voltage landscape lighting.
- 4.2. The following uses are considered Permitted Uses and shall only be installed following the issuance of a Right of Way Use Permit and upon the execution of a "ROW Encroachment Agreement" by the proponent:
 - 4.2.1. Installation of a driveway approach, and a walkway, provided that 85% of the Planting Strip shall be green space. Notwithstanding the foregoing, each lot shall be allowed minimum approach for ingress/egress up to 20 feet in aggregate width.
 - 4.2.2. Below-ground irrigation systems.
 - 4.2.3. Line-voltage wiring.
- 4.3. The following uses are considered Conditional uses and shall only be installed following approval of the Town Council and upon the execution of a "ROW Encroachment Agreement" by the proponent:
 - 4.3.1. Installation of any Impervious Surface not included within 4.1.1 above.
 - 4.3.3. Grading.

4.3.4. Structures.

Section 5. Permitted Uses Within a Path Right of Way.

- 5.1. All property within a Path Right of Way shall remain and be maintained in its natural state. Removal of noxious weeds and invasive plant species is permitted.
- 5.2. Installation of any utility by any party other than the Town within a Path Right of Way shall be allowed only in conjunction with an associated building permit or street use permit. Restoration of the Right of Way with native plant materials, other than those prohibited in Section 6 of this Code, is required.

Section 6. Uses Prohibited Within Any Right of Way. The following uses are prohibited within any Right of Way: single mailboxes; landscape water features; landscaping rocks larger than the size allowed in Section 4 of this Code; planting of holly, ivy, laurel, or any noxious weed or invasive plant species; or any other use not expressly permitted either outright or conditionally in this Ordinance.

Section 7. Right of Way Use Permit. A Right of Way Use Permit shall be required under the following conditions:

- 7.1. Building Permit Application. Upon application for a Building Permit for reconstruction, the Applicant shall also file a permit for a Right of Way Use Permit if any Nonconforming Right of Way uses within the Right of Way adjacent to the property exist, whether the Applicant intends to modify such structure or not. Should the Applicant wish to remove said use, a Right of Way Use permit is not required.
- 7.2. Installation of any “Permitted Use” not associated with a Building Permit application.

Section 8. Right of Way Use Permit – Fees. A permit fee shall be assessed for every Right of Way Use Permit application submitted to the Town Clerk. Permit fees shall be set by resolution of the Council and shall be paid at the time the permit is submitted. In addition, applicants shall be billed by the Town for the time spent by Town consultants in review and administration of any Right of Way Use Permit.

Section 9. Removal or Intentional Destruction of Trees. Removal or intentional destruction of any tree in the Right of Way without the prior approval of the Council is strictly prohibited.

Section 10. Validity. If any section, paragraph, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses, or phrases subsequently may be found by competent authority to be unconstitutional or invalid.

Section 11. Effective Date. This ordinance shall take effect five (5) days after its passage and publication.

PASSED BY THE COUNCIL OF THE TOWN OF BEAUX ARTS VILLAGE on this 10^h day of November, 2009 and signed in authentication of its passage.

Richard Leider, Mayor

ATTEST:

APPROVED AS TO FORM:

Sue Ann Spens, Clerk-Treasurer

Wayne Stewart, Town Attorney

I certify that copies of the above ordinance were posted as required by law in the Town of Beaux Arts Village, Washington, on the _____ day of _____, 2009.

Sue Ann Spens, Clerk-Treasurer