



## Director's Rule

**Applicant:**

CITY OF SEATTLE

Seattle Department of Transportation (SDOT)

**Page**

1 of 9

**Supersedes:**

N/A

**Publication:****Effective:****Subject:**

Insurance and Indemnity Requirements for Street Use Permits

**Code and Section Reference:**

Seattle Municipal Code (SMC), Sections 15.04.017, 15.04.037, 15.04.045, and 15.04.060.

**Type of Rule:**

Code Interpretation

**Ordinance Authority:**

SMC 3.12.020

**Index:**

Approved

Date

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Greg Spotts, SDOT Director

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## 1. REFERENCES

- 1.1. Seattle Municipal Code (SMC) 15.04.017 Constitutional requirement
- 1.2. SMC 15.04.037 Overview of indemnity deposit, accounts, escrow, insurance, and surety bond
- 1.3. SMC 15.04.045 Liability insurance
- 1.4. SMC 15.04.060 Indemnity agreements and covenants

## 2. BACKGROUND AND PURPOSE

- 2.1. The Seattle Department of Transportation (“SDOT”) is authorized to manage Seattle’s transportation system and strives to operate and maintain this system to support public health and safety for the traveling public of all ages and abilities. We are also responsible for overseeing permit processes for public right-of-way, for establishing specific right-of-way use guidelines by Director’s Rules, and for enforcing compliance with adopted codes and rules, and with permit requirements.
- 2.2. As part of the permitting process, SDOT employs a variety of protections to ensure that permitted users of our public right-of-way assume the risks and responsibilities associated with their use. These include indemnity agreements, liability insurance, surety bonds, and applicant deposits into City Treasury or escrow accounts.
- 2.3. The purpose of this rule is to interpret and implement provisions of Seattle Municipal Code (“SMC”) Chapter 15.04 specifically related to indemnity agreements and covenants and to liability insurance. When the rule is citing existing sections of the SMC, the code language is referenced by the SMC citation.

## 3. DEFINITIONS

- 3.1. “Covenant running with the land” means an agreement recorded with King County that establishes rights or restrictions that apply to all current and future owners of the designated real property and that transfers with the property title to each successive property owner.
- 3.2. “Shared encroachment” means a long-term use of public right-of-way that serves more than one property owner such as a retaining wall supporting multiple townhomes or a staircase providing ingress/egress to multiple homes.
- 3.3. “Use type” means any use as defined in SMC 15.02.048, or a collection of like uses that share one or more common traits.

## 4. LIABILITY INSURANCE

### 4.1. Liability Insurance Requirements

- 4.1.1. Unless exempted per section 4.3 of this Director’s Rule, Street Use permittees shall, per Seattle Municipal Code section 15.04.045:
  - 4.1.1.1. Purchase and retain all required insurance coverage at their own expense;
  - 4.1.1.2. Obtain all required insurance coverage prior to the issuance of their permit; and
  - 4.1.1.3. Maintain all required insurance coverage for the duration of their permitted use. If the required insurance coverage lapses, SDOT may revoke the permit and require the permittee to remove the use from public right-of-way.

### 4.2. Determination of Required Minimum Coverage Amounts

- 4.2.1. The Director establishes the minimum required coverage amounts. This is based on several considerations, including but not limited to:
- 4.2.1.1. Guidance from City of Seattle City Finance Department's risk management group (Risk Management) on the potential claims and risks associated with permitted use types;
  - 4.2.1.2. Additional known or assumed aspects of uses within use type categories that may increase or decrease risk;
  - 4.2.1.3. Whether and to what extent the use may impact the public right-of-way;
  - 4.2.1.4. Whether and to what extent the use may benefit the public; and
  - 4.2.1.5. Costs to permittees.
- 4.2.2. The Director will review required minimum coverage amounts for all use types every five years and following any major internal changes to permitting policy or external changes to insurance coverage options.

#### **4.3. Exemptions from Insurance Requirements**

- 4.3.1. Seattle Municipal Code 15.04.045 grants authority to the Director to determine which if any specific right-of-way use types may be exempted from this permit requirement.
- 4.3.2. Unless otherwise determined by the Director, the following street and sidewalk use types are exempted from SDOT permit requirements for liability insurance coverage:
- 4.3.2.1. Beautification/Gardening in the ROW [Use Code 1A];
  - 4.3.2.2. Block Parties and Play Streets [Use Code 54B];
  - 4.3.2.3. Building Maintenance [Use Code 31 MNTC];
  - 4.3.2.4. Dumpster/Storage Container [Use Code 31B];
  - 4.3.2.5. Public Amenities [Use Code 52], except for play structures/equipment; exercise structures/equipment; parklets; docks/viewing platforms; or stairs, ramps, or handrails entirely or partially in the public right-of-way;
  - 4.3.2.6. Seasonal Lighting [Use Code 52CMNTC];
  - 4.3.2.7. Street or Sidewalk Barricading for Temporary Public Use (Street and Sidewalk Activities that are Open to the Public) [Use Code 3C], except when the event will include one or more of the following uses:
    - Alcohol sales or service;
    - Inflatables;
    - Pony rides, petting zoos, or other animal-related activities with non-standard household pets;
    - Play structures, exercise structures, or trampolines;
    - Competitive athletic events;
    - Motorized individual participant activities; or
    - Food vendors who do not have their own insurance.

#### **4.4. Additional Insured Endorsement**

- 4.4.1. All liability insurance required of permittees must name the City of Seattle as an additional insured party.
- 4.4.2. The permittee shall ensure that the endorsement has been attached to their required liability insurance and that it remains in effect for the duration of the permitted use.

### **5. INDEMNIFICATION REQUIREMENTS AND INDEMNITY AGREEMENTS**

### **5.1. Requirements for Written Indemnity Agreements by Type of Use**

- 5.1.1. Seattle Municipal Code 15.04.060 grants authority to the Director to determine which specific right-of-way use types may be exempted from the requirements for signed and filed indemnity agreements.
- 5.1.2. The Director will determine which use types require a signed, notarized agreement filed with the King County Recorder's Office to run with the land, which use types require a signed, notarized agreement filed solely with the City Clerk, and which use types are exempt from the requirement for a signed indemnity agreement, based on the following considerations:
  - 5.1.2.1. Guidance from Risk Management on the potential claims and risks associated with permitted use types;
  - 5.1.2.2. Additional known or assumed aspects of uses within use type categories that may increase or decrease risk;
  - 5.1.2.3. Whether and to what extent the use may impact the public right-of-way;
  - 5.1.2.4. Whether and to what extent the use may benefit the public; and
  - 5.1.2.5. Whether or not the adjacent property owner is the primary beneficiary of the use.
- 5.1.3. When a permit covers multiple uses and one use requires an indemnity agreement to be filed with the King County Recorder's Office while another use requires an agreement filed solely with the City Clerk, both uses will be included on the agreement filed with the county.
- 5.1.4. Under no circumstances shall this Rule supersede an indemnification requirement otherwise required by code or permit.

### **5.2. Notarized indemnity agreements filed with the King County Recorder's Office**

- 5.2.1. Unless exempted by the Director from this requirement by inclusion in section 5.3 or 5.4 of this Director's Rule, applications for the following use types shall require the property owner or other party approved as permittee by the Director to file a signed, notarized indemnity agreement with the King County Recorder's Office, a recorded copy of which will also be filed with the City Clerk:
  - 5.2.1.1. Active and inactive areaways;
  - 5.2.1.2. Fuel openings and underground storage tanks;
  - 5.2.1.3. Long-term material storage;
  - 5.2.1.4. Sidewalk elevators and doors;
  - 5.2.1.5. Retaining walls and rockeries;
  - 5.2.1.6. Fences;
  - 5.2.1.7. Stairs, ramps, and handrails;
  - 5.2.1.8. Fixed ground signs;
  - 5.2.1.9. Exercise and play equipment;
  - 5.2.1.10. Bulkheads;
  - 5.2.1.11. Docks and viewing platforms;
  - 5.2.1.12. Installations and overhangs in state waterways or underwater streets; and
  - 5.2.1.13. Other above-, below-, or at-grade structures whether free-standing or built as an extension of or appurtenance to another structure that are permitted to occupy public right-of-way for more than one year.

- 5.2.2. The agreement shall be drafted by SDOT staff to ensure adherence to legal requirements and inclusion of accurate legal description of the premises and the covered permitted uses.
- 5.2.3. The agreement shall be signed in the presence of a notary by the owner of the adjacent property or other party as approved by the Director, and that owner or other approved party shall then file the signed, notarized agreement with the King County Recorder's Office.
- 5.2.4. The owner or other approved party shall ensure that an official recorded copy of the filed agreement is returned to SDOT for filing with the City Clerk.
- 5.2.5. The agreement shall run with the land.

**5.3. Notarized indemnity agreements filed solely with City Clerk**

- 5.3.1. Unless exempted by the Director from this requirement by inclusion in section 5.4 of this Director's Rule, applications for the following use types shall require the property owner, or other party approved as permittee by the Director, to sign in the presence of a notary an SDOT indemnity agreement to be filed by SDOT with the City Clerk, but shall not require the property owner or other approved party to file a written indemnity agreement with the King County Recorder's Office:
  - 5.3.1.1. Long-term and seasonal outdoor cafes; and
  - 5.3.1.2. Parklets.
  - 5.3.1.3.

**5.4. Exemptions from the requirement for a notarized written indemnity agreement**

- 5.4.1. Applications for the following use types shall exempt the owner or other party approved as permittee by the Director from filing an SDOT indemnity agreement:
  - 5.4.1.1. Uses that qualify as Public Amenities and are not listed in sections 5.2 and 5.3 of this Director's Rule; and
  - 5.4.1.2. Merchandise displays that are required to be removed from the right-of-way each night.

**6. SHARED ENCROACHMENTS**

Property owners who benefit from a shared encroachment as defined in Section 3.3 of this Director's Rule, have three options for permitting the encroachment long-term.

- 6.1. Homeowners Association Option: A homeowner's association ("HOA") shall act as the permittee on behalf of the shared users.
  - 6.1.1. This option is available to properties with existing or proposed HOAs or properties that have already been sold by the developer to individual new owners.
  - 6.1.2. If no HOA currently exists, the shared users can form a new HOA.
  - 6.1.3. The HOA shall be the Owner on the permit record, with all associated responsibilities.
  - 6.1.4. The HOA shall be the legal entity signing and filing the written indemnity agreement.
- 6.2. Authorized Agent Option: The owner of one of the properties that benefits from the long-term encroachment shall act as the designated Authorized Agent for the shared encroachment permit

6.2.1. The property developer may choose a single property within the development to tie the encroachment for permitting to and designating the future owners of this property to act as the Authorized Agent.

6.2.2. If the property developer does not tie the permit to a single property, and the shared users of the encroachment do not have nor want to form an HOA, those shared users may jointly designate a single property to serve as Authorized Agent.

6.2.2.1. If not all the shared users wish to participate in designating a single Authorized Agent, those users who do wish to participate may do so, and each of those remaining users who do not want to designate an Authorized Agent, shall then obtain their own separate permit for use of the encroachment.

6.2.3. The Authorized Agent shall be the Owner on the permit record, with all associated responsibilities.

6.2.4. The Authorized Agent shall sign and file a Joint Maintenance and Indemnity Covenant ("Covenant") that identifies the permit holder and beneficiaries, and that describes joint liability.

6.2.4.1. The Covenant may also document the mechanism for cost sharing between the parties. Cost sharing arrangements, if any, are purely between the parties with no City involvement, review, or enforcement.

6.2.4.2. The Covenant is recorded to each beneficiary's property title, runs with the land, and will transfer with property ownership.

6.2.4.3. When a Covenant is recorded, the standard Indemnity Agreement is not required.

6.3. Standard Option: Each property owner benefitting from the shared encroachment shall obtain their own separate long-term encroachment permit with all associated responsibilities, including their individual filing of separate signed, notarized indemnity agreements with the King County Recorder's Office

## **7. WAIVER OF COMPLIANCE (CONSTITUTIONAL REQUIREMENT)**

In addition to the provisions of this Director's Rule, the City may also grant waivers based on SMC 15.04.017 authority, including waiving insurance and/or indemnity agreement requirements where required by federal or state constitution or statute.