



ORDINANCE NO. 28500

1 BY REQUEST OF COUNCIL MEMBER McCARTHY

2 AN ORDINANCE related to rights-of-way; amending Section 10.22.070 of the
3 Tacoma Municipal Code to update the policy and procedures for
4 performance bond requirements.

5 WHEREAS performance bonds secure the construction and completion
6 of required work in the City rights-of-way under site development work orders,
7 and

8 WHEREAS current protocol for performance bonding requirements fails to
9 reward good development work within the City, and does not discourage work that
10 is substandard, incomplete, or performed without a permit, and

11 WHEREAS the City's Public Works and Planning and Development
12 Services Departments have developed proposed amendments to Chapter 10.22 of
13 the Tacoma Municipal Code, "Provisions for Permit," to (1) allow performance bond
14 obligations to be reduced to 30 percent of the value of work; (2) specify what
15 circumstances should lead to default for failure to perform work, and (3) specify the
16 consequences of commencing work prior to issuance of a required permit, and
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18 WHEREAS staff is recommending that the proposed amendments be
19 enacted to update the policy and procedures for performance bond requirements
20 related to rights-of-way; Now, Therefore,
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BE IT ORDAINED BY THE CITY OF TACOMA:

That Section 10.22.070 of the Tacoma Municipal Code, entitled "Rights-of-Way" is hereby amended as set forth in the attached Exhibit "A."

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

**Chapter 10.22
Rights-of-Way**

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10.22.070 Provisions for Permit.

Every Permit shall require that the Person performing the work shall:

- A. Unless a City entity, be a state of Washington licensed and bonded contractor. Contractors working on behalf of the City shall also be a state of Washington licensed and bonded contractor;
- B. Give the Director 24 hours' notice prior to and upon completion of such Work. Should the schedule of Work to be performed under an Annual Permit be revised, the Permittee shall notify the Director as soon as practicable;
- C. Carry on such Work in conformance with the City's general Specifications in effect at the time of issuance of said Permit;
- D. Diligently prosecute the same to completion;
- E. Comply with such additional conditions and provisions as may be prescribed by the Director;
- F. Except for City departments or Contractors working for City departments, deliver to the City, prior to the issuance of a Billable Work Order permit, a bond in the sum equal to the value of the Work to be performed, but, in any event, not less than \$15,000, in a form to be approved by the City Attorney and with surety approved by the Director of Finance. Such bond shall be conditioned on the faithful conformance with the provisions of this chapter, and shall be further conditioned that the Permit applicant shall carry out and complete such Work within the specified time and according to the terms of such Permit furnished by the Director and according to the City's general Specifications. Such bond shall be continuously in effect from the date of issue and may be further conditioned to cover all Permits issued to the applicant; provided, that such bond by its terms provides that the same shall not be canceled unless and until the Director is given a written notice of such intention to cancel a minimum of ten days before the effective date of said cancellation. Such bond shall further provide that it shall remain in full force and effect until the completion of any and all Work which has been commenced, or is to be commenced, pursuant to any Permits issued prior to the effective date of cancellation. The bond shall remain in force and effect ~~for a minimum of one year after completion and until~~ acceptance ~~of any street cut or Excavation of all work by the City.~~

Except for Billable Work Order permits, deliver to the City prior to issuance of a Permit, a bond in the sum amount of \$15,000, in a form to be approved by the City Attorney and with surety approved by the Director of Finance. Such bond shall be conditioned on the faithful conformance with the provisions of this chapter and shall be further conditioned that the Permit applicant shall carry out and complete such Work within the specified time and according to the terms of such Permit furnished by the Director, and according to the City's general Specifications. Such bond shall be continuously in effect from the date of issue and may be further conditioned to cover all Permits issued to the applicant; provided, that such bond by its terms provides that the same shall not be canceled unless and until the Director is given a written notice of such intention to cancel a minimum of ten days before the effective date of said cancellation. Such bond shall further provide that it shall remain in full force and effect until the completion of any and all Work which has been commenced, or is to be commenced, pursuant to any Permits issued prior to the effective date of cancellation. The bond shall remain in force and effect for a minimum of one year after completion and acceptance of any street cut or Excavation.

Exceptions: (1) Persons or corporations with a valid City sign erector's license shall not be required to post a bond or other surety to be issued Permits to work in public Rights-of-Way; (2) the Director may waive or reduce the bond obligation for an applicant who requests a Permit to replace a sidewalk or other



1 project located in City Rights-of-Way and is immediately abutting the applicant's property and where the
2 value of the Work to be performed is less than \$15,000; (3) for entities that undertake regular, periodic
3 Work in the Rights-of-Way and receiving an Annual Permit, as described in subsection 10.22.050.I TMC,
4 the Director may accept a single bond in an amount to be determined in the Director's reasonable
5 discretion, in lieu of the requirement to obtain individual bonds on each occasion; and (4) the Director
6 shall have the discretion to reduce the bond obligation down to 30% of the value of work proposed as
7 determined by the City, for building developers where the amount of the reduced bond is deemed
8 sufficient to protect the City, but in no event to an amount less than \$15,000. To qualify for this reduced
9 obligation, the Principal must have a favorable previous construction history in the City of Tacoma. This
10 reduced obligation does not apply to Assignments of Funds. When an Assignment of Funds account (cash
11 deposit) is used, it must secure the full value of work proposed as determined by the City, the Director
12 shall have the discretion to reduce the bond obligation down to 30 percent of the original bond amount for
13 building developers undertaking substantial road construction where the amount of the reduced bond is
14 deemed sufficient to protect the City; and

15 1. Upon the City's determination of failure to perform as required by the bond and according to the terms
16 of the Permit, the Principal shall be considered to be in default. A Principal in default shall be subject to a
17 5 year period of an increased bond obligation. This period shall state that the individual and entity
18 obligated under the bond shall be subject to an increased (150% of the amount of the work being
19 guaranteed) minimum bond requirement for all projects going forward.

20 2. Where work for which a permit is required by City Code is commenced prior to obtaining required
21 permits, the fees specified in this Code, including plan review fees, shall be doubled, but the payment of
22 such double fee shall not relieve any persons from fully complying with applicable Codes in the
23 execution of the work, nor from any other penalties prescribed. In no case shall such double fee be less
24 than \$200.

25 In addition to the above, after the five-year period the Principal individual and entity performing the
26 unpermitted work shall not qualify for a reduced bond obligation but instead shall be imposed with an
increased minimum bond for all projects from that day forward. The increased minimum bond shall be an
amount equal to 100% of the value of work proposed as determined by the City.

G. Except in the case of a City department, or a Contractor working for a City department, deposit with the Director a sum, to be computed based upon the itemized estimated cost of the Work as determined by the Director, for repair of cuts and reconditioning by reason of sewer, water pipe, conduit, gas pipe, cable, or other Excavation to be done by the City at the expense of the Permittee. If the said Work by the City exceeds the initial deposit, the Director will, upon determining the actual size of the repair or cut, bill the Permittee the balance of the charge.