

Graves, Natalie (Consultant)

From: Sandra Gurkewitz [Sandra.Gurkewitz@Seattle.Gov]
Sent: Monday, July 23, 2007 4:11 PM
To: Fendt, Kathy (Consultant); Stagner, Karen (Consultant); Grace Hartley; John Baggs; Laurie Geissinger; McCullough, Gwen; Salter, Jim
Cc: Kling, Joyce; Sandra Gurkewitz; Shab Zand; Stenberg, Kathryn
Subject: City Jurisdiction over use/occupancy of public right-of-way

Hello all,

The question was asked what is the City's jurisdiction in managing contamination in public rights-of-way? Here's the quick answer. I can work with the Law Department for additional information.

The City has jurisdiction over activities in, on, above or below public right-of-way including management of contamination- in a number of ways. The first is through its regulatory authority under Seattle Municipal Code Title 15.

1. Under SMC 15.02.020, the City may exercise power to ensure public safety, health and welfare as it relates to public rights-of-way - including management of contamination in public rights-of-way.

2. Under SMC 15.04, the City has regulatory authority to issue or deny permits for the use and/or occupancy of the public right-of-way. SDOT regulates streets and public places not permitted by DPD or parks (SMC 15.04.015).

3. SMC 15.02.048 defines uses regulated under SMC 15. These include:

* The storage or placement of any material, equipment, inanimate object, or thing, provided that "use" shall not include the placement of an inanimate object in such a location and for such a limited duration of time that, under the circumstances, no reasonable person could conclude that the public's right to use or enjoy the public place, in whole or in part, has been or potentially could be interfered with;

** Opening, excavating, or in any manner disturbing or breaking the surface or foundation of any permanent pavement, or altering the established grade of any street, or disturbing the surface of, digging up, cutting, excavating, or filling in any public place;

* Constructing, reconstructing, repairing or removing any driveway, curb, or curb setback, sidewalk, or crosswalk, pavement, sewers, water mains, grading, street lighting, street utilities, or appurtenances thereto, except when permitted by ordinance, or doing any work in, or erecting any structure under, along, or over any public place;

4. The City's owner interest in public rights-of-way is established in the City charter. Seattle Municipal Code (SMC) 21.100.020 establishes a street utility, and places authority for street facilities with SDOT.

5. Under WAC 173-340-545, private parties conducting a cleanup must notify the City (the adjacent land 'owner') of proposed voluntary cleanup actions (WAC 173-340-545(3)(a)(iii)), if contamination from their site has migrated into the ROW especially if the party conducting the cleanup asserts that the City is a "potentially liable person" under the state cleanup law, MTCA (WAC 173-234-545(3)(a)(v)). The City has the right to request cleanup of public rights-of-way.

In addition, under RCW 70.105D.030(1)(f) and WAC 173-340-440(10), a person conducting an independent cleanup under Ecology's VCP is required to notify the City if they propose to establish a MTCA restrictive covenant on the property that is the subject of a cleanup. The City has to agree to allow the contamination to remain within the City rights-of-way.

Hope this is enough for now.

Sandy

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