

SDOT

SDOT Director's Rule 1-2012

Applicant: CITY OF SEATTLE Seattle Department of Transportation (SDOT)	Page 1 of 9	Supersedes: 93-5
	Publication: 12/12/11	Effective: 1/6/2012
Subject: Installation, Closure, or Removal of Underground Storage Tanks (UST) located in the Public Place	Code and Section Reference: SMC Section 15.04.035, Chapters 22.600 and 22.602 (Seattle Fire Code)	
	Type of Rule: Code Interpretation and Procedures	
	Ordinance Authority: SMC 3.12.020	
Index: Underground Storage Tanks (UST); Street and Sidewalk Use; Public Place Management	Approved (signature on file) Peter Hahn, Director of Transportation	Date 1/6/2012

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1.0 References

- 1.1 Seattle Municipal Code (SMC) Title 15 (Street and Sidewalk Use Code)
- 1.2 SMC Chapters 22.600 and 22.602 (Seattle Fire Code)
- 1.3 Washington Administrative Code (WAC) Chapters 173.340 (Model Toxics Control Act) and 173.360 (Underground Storage Tank Regulations)
- 1.4 Revised Code of Washington (RCW) Chapter 70.105 (Hazardous Waste Management) and Section 70.105.010

2.0 Purpose and Authority

- 2.1 The Seattle Department of Transportation (SDOT) manages Seattle's public transportation system. SDOT's Street Use Division is responsible for administering public place permit processes including permits issued for installing, decommissioning, maintaining, operating, closing, or removing underground storage tanks (USTs) in the public place as established in SMC Chapter 15.04.
- 2.2 As part of an UST-related Street Use permit review, SDOT Street Use Division requires the UST owner obtain the appropriate permits, notifications, and reviews by the SDOT, Seattle Fire Department (SFD) and the Washington State Department of Ecology (Ecology) in order to protect the health, safety, and welfare of the public and the environment.
- 2.3 This Rule is adopted under SMC Section 3.12.020. It interprets SMC Chapter 15.04, and specifically SMC Sections 15.04.025, 15.04.030, and 15.04.035 in regards to processing and reviewing permit applications for USTs in the public place. This Rule is useful for the conduct of SDOT's business.

3.0 Definitions

- 3.1 **"Abandoned"** means an UST that is left in place and is not active or closed in place. For USTs not regulated under WAC 173-360, an UST not used for more than one year will be considered abandoned.
- 3.2 **"Active"** means an UST in operation and use or an UST that has been temporarily closed in accordance with WAC 173-360.
- 3.3 **"Benefitted property"** means the property the UST currently or historically served in any manner.
- 3.4 **"Closure or close in place"** means the act of properly leaving an UST within the public place in accordance with WAC 173-360, where applicable; and with other requirements, including but not limited to applicable provisions of the City Code, and Directors' Rules and Regulations.

- 3.5 **“Contamination”** means the deposit, absorption, or adsorption of any hazardous substance that does not occur naturally or occurs at greater than natural background levels.
- 3.6 **“Environmental Law”** means any environmentally related local, state or federal law or regulation, ordinance or order, now or hereafter amended including, but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations promulgated thereunder from time to time.
- 3.7 **“Hazardous substance”** means any substance, or substance containing any component, now or hereafter designated as a hazardous, dangerous, toxic or harmful substance, material or waste, subject to regulation under any Environmental Law. The term hazardous substance does not include any of the following when contained in an UST from which there is not a release: crude oil or any fraction thereof or petroleum, provided that the UST is in compliance with all applicable federal, state, and local law.
- 3.8 **“Installation”** means to place in position or connect for service a new UST in the public place.
- 3.9 **“Owner”** means the individuals or entities; or their lessee, sublessee, tenant and subtenant, assignees, heirs, executors, administrators, or successors in interest; that have an ownership interest in the property benefitted by the UST or are responsible for an UST in the public place.
- 3.10 **“Permittee”** means a person or entity that has received a Street Use permit to use the public place.

- 3.11 **“Public place”** means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, and planting strips, squares, triangles, plazas, and right-of-way for public use and the space above or beneath its surface, whether or not opened or improved.
- 3.12 **“Removal or Removed”** means to remove the UST and any related contamination from the public place in accordance with WAC 173-360, if applicable, and with all other laws and requirements, including but not limited to applicable provisions of the City Code, Directors’ Rules and Regulations.
- 3.13 **“Street Use Permit”** means a permit issued as provided for in SMC Chapter 15.04 by the SDOT Street Use division for any work in or use of the public place; including but not limited to installing, removing, decommissioning, closing, maintaining, or operating an UST and for restoring the associated public place occupied by the UST.
- 3.14 **“Underground Storage Tank (UST)”** means a tank, including USTs exempt from Ecology or SFD regulations, and any piping, pumps, containment system, and other ancillary equipment connected to or associated with the tank, that may be used to contain regulated substances, such as petroleum or other hazardous substances. USTs do not include tanks associated with stormwater and wastewater systems or electrical vaults.

4.0 UST Requirements

- 4.1 An UST may not be abandoned in the public place and shall be either removed or closed in place according to the conditions of a Street Use permit and according to all applicable laws, including the requirements of the Seattle Fire Code and WAC 173-360. SDOT will determine whether an UST may be removed or allowed to be closed in place in the public place, and SDOT will, if applicable, determine the required extent of contamination clean-up and restoration.
- 4.2 Based on SDOT’s discretion to regulate the use of public places and the criteria of SMC subsection 15.04.035.B to consider environment and public health impacts when evaluating Street Use permit applications, SDOT will not ordinarily allow existing USTs to be replaced or new USTs in the public place. Exceptions may only be allowed based on unique circumstances and approval by the SDOT Director.
- 4.3 All Street Use permits are wholly of a temporary nature, vest no permanent rights, and may be revoked with 30-days notice from the SDOT Director according to SMC Section 15.04070. SDOT may revoke an UST Street Use permit and require the UST be removed and the public place restored, including but not limited to the following scenarios:

- 4.3.1 The UST is the source of a hazardous substance release and contamination including any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST to groundwater, surface water, sediments, or soils;
 - 4.3.2 The SDOT Director directs the Owner to remove the UST and restore the public place;
 - 4.3.3 An adjacent property development requiring a Street Improvement permit through the Master Use Permit process requires removing the UST ;
 - 4.3.4 UST does not comply with SMC Chapter 15.04 or Street Use permit conditions; or
 - 4.3.5 The UST is proposed to be replaced or upgraded.
- 4.4 All UST Owners or owners of Benefitted Property, at the discretion of the SDOT Director, shall be required to:
- (1) maintain an active UST in compliance with all applicable laws;
 - (2) close the UST in place in compliance with all applicable laws; or
 - (3) remove the UST and restore the public place in compliance with all applicable laws.
- 4.4.1 The owner of any Benefitted Property must produce an active UST permit or a recorded indemnity agreement recorded with King County upon request by SDOT. It shall not be presumed that an existing UST has been permitted or properly installed or maintained without the Owner producing permit and indemnification agreement documents.
 - 4.4.2 The owner of the Benefitted Property is presumed to have benefitted from the UST, unless the owner can prove by a preponderance of evidence that they purchased the property benefitted by the UST without actual or constructive knowledge of the UST existing.
- 4.5 All UST Owners shall apply for and obtain a Street Use permit from SDOT to perform any work in the public place, including but not limited to: filling the UST, conducting environmental testing; and excavating, backfilling, and restoring the public place when removing or closing in place the UST.
- 4.6 Soil or groundwater tests and other reports may be required to be submitted at the discretion of the SDOT Director as part of the review or

renewal of a Street Use permit, or if there is reason to believe that an UST is the source of contamination.

- 4.7 Existing permitted active USTs shall be subject to new best management practice conditions as part of their Street Use permit renewal.
- 4.8 Existing unpermitted active, abandoned, or closed-in-place USTs shall comply with this rule.

5.0 UST Street Use Permit Procedures

- 5.1 In order to maintain an active UST, the Permittee or successive Owner shall:

- 5.1.1 Obtain and comply with: the conditions of an Annual Street Use permit for an active UST (use code 21), including bond, insurance, and indemnity conditions; and with all applicable laws, including SMC Chapter 15.04. Any indemnity agreement required under SMC Section 15.04.060 shall remain and run with the land until: the UST has been completely removed according to WAC 173.340 and 173.360 requirements and the public place restored.

- 5.2 In order to close an UST in place the Permittee or Owner shall:

- 5.2.1 Apply to Street Use to close the UST in place. A Street Use permit application to close the UST in place shall include the following:

- A site plan identifying the location of the USTs;
- Ecology required proof of notification and reports;
- A SFD permit;
- Results of any soil or groundwater testing; and
- Other submittals that may be determined by SDOT.

- 5.2.2 If SDOT approves closing a UST in place, the Permittee or Owner shall:

- 5.2.2.1 Obtain and comply with: the conditions of an Annual Street Use permit for a closed UST (use code 21B), that may include bond and indemnity conditions; and all applicable laws, including SMC Chapter 15.04. Any indemnity agreement required under SMC Section 15.04.060 shall remain and run with the land until the UST has been completely removed according to WAC 173.340 and 173.360 requirements and the public place restored.

- 5.2.3 If SDOT does not approve the Street Use permit application to close the UST in place, the UST shall be removed according to the

requirements of Section 5.3 of this rule and the public place shall be restored.

5.3 In order to remove the UST the Permittee or Owner shall:

5.3.1 Apply for a Street Use permit application to remove an UST and restore the public place as conditioned in the permit. The application shall include the following:

- A site plan identifying the location of the USTs;
- Ecology required proof of notification and reports;
- A SFD permit;
- A public place restoration plan;
- Results of any soil or groundwater testing; and
- Other submittals that may be determined by SDOT.

5.3.2 The existing Annual Street Use permit shall not be closed and the bond and the indemnification agreement shall not be released until: all required permits have been obtained and verified according to WAC 173.340 and 173.360 requirements and the public place is restored after the UST has been removed.

5.4 Noncompliance with this rule may result in the SDOT Director requiring the UST be removed.

6.0 Owner and Permittee Responsibilities

6.1 The UST Owner and Permittee shall:

6.1.1 Obtain permits from SDOT Street Use, SFD, and Ecology to close-in-place or remove the UST prior to starting any work in the public place. Additional Department of Planning and Development permits may be required if any portion of the UST is located on private property;

6.1.2 Comply with all Federal, State, and local regulations and permit requirements;

6.1.3 Comply with the City's adopted rules, specifications, best management practices, and permit conditions;

6.1.4 Notify SDOT in writing within one week of finding any contamination in the public place;

6.1.5 Comply with any SDOT-required contamination remediation and obtain all required permits; and

6.1.6 Maintain the applicable Annual Street Use permit, surety bond, and indemnification covenant agreement for the life of the UST encroachment.

7.0 Requests for Review or Reconsideration

7.1 A request for review or reconsideration of a UST permit decision may be made to the SDOT Director by filing a written request within 10 calendar days of the date of the SDOT decision is made (SMC 15.04.112). The request must identify the decision for which review or reconsideration is requested, grounds for objecting to the decision based on City standards, and the specific remedy being proposed. The Director will designate a review officer who will make a recommendation to the Director. The Director may, at the Director's discretion, stay implementation of a decision pending review or reconsideration. The Director's decision on review or reconsideration is final.

7.2 The request for review or reconsideration is to be submitted to:
Director of Transportation
Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle WA 98124-4996

With a copy to:
Division Director
Street Use and Urban Forestry Division
700 Fifth Avenue, Suite 2300
PO Box 34996
Seattle WA 98124-4996