City of Burien
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Re: Use of Public Street Right-of-Way – SW 172nd Street, Burien, Washington

This letter addresses ongoing misinterpretations regarding the public street right-of-way commonly known as SW 172nd Street, specifically between house numbers 2848 through 3568.

Parcels abutting this stretch of SW 172nd Street are split into two sections: one landward portion and the other waterward. Each parcel is divided by the 15-foot roadway; this is a portion of an 80-foot public street right-of-way.

The waterward portion of the public street right-of-way has been encroached by numerous private property owners that have constructed or maintained unpermitted structures or obstructions for private use. Several owners have also unlawfully claimed private ownership of the public street right-of-way for parking, personal uses, and to exclude the public from the public street right-of-way. This is not permitted in any part of the City of Burien including the Three Tree Point area.

The City of Burien has not vacated SW 172nd and it thus remains a public street right-of-way— a right of way for the public's benefit. Burien Municipal Code ("BMC") § 12.17.050(16) defines a public street right-of-way as:

> all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, paths, trails, sidewalks, bikeways and horse trails, whether improved, unimproved, or unopened, including the air rights, subsurface rights and easements related thereto."[1]

The encroachments and obstructions installed and/or maintained by the identified property owners do not constitute "public use for street purposes. This comports with state law, holding that the public's right to make use of a right-of-way easement is paramount to the rights of an abutting property owner.

Under BMC § 12.18.010(1) it is "unlawful for anyone to make use of any public right-of-way without having first obtained a right-of-way permit issued by the city or to use any right-of-way without complying with all the provisions of such right-of-way use permit issued by the city." If right-of-way use permits were to

[1] BMC § 19.10.470 similarly defines the public street right-of-way as "Land dedicated primarily to the movement of vehicles and providing for primary access to adjacent lots. The land may also provide space for pedestrian movement, utility lines and appurtenances and other publicly owned devices."

be granted, they would likely be under a Type F permit application as described in BMC § 12.18.030(6). A Type F permit may allow an obstruction in the public street right-of-way until Burien requests its removal, and it would be conditioned upon the property owner's ongoing responsibility for any loss or injury that might occur due to the obstruction in the public street right-of-way.

Without such a permit, if someone maintains an obstruction in, over, or above the public street right-of-way, they are doing so without Burien's permission and thus unlawfully. As a result, please be advised that if an incident occurs in the public street right-of-way involving an unpermitted obstruction or encroachment, Burien's position is that the property owner will be responsible. A property owner wishing to limit or avoid such significant risk should immediately remove their obstruction or encroachment from the public street right-of-way.

Each property owner should understand that the City of Burien continues to have an interest in, and an intent to use, the full width of the public street right-of-way for its intended purpose.

Thank you for your attention to this matter.

Brian J. Wilson
City Manager

Cc: Burien City Council
Garmon Newsom II, Burien City Attorney
Maiya Andrews, Director of Public Works