

City of Port Townsend Rights of Way – Principles Overview

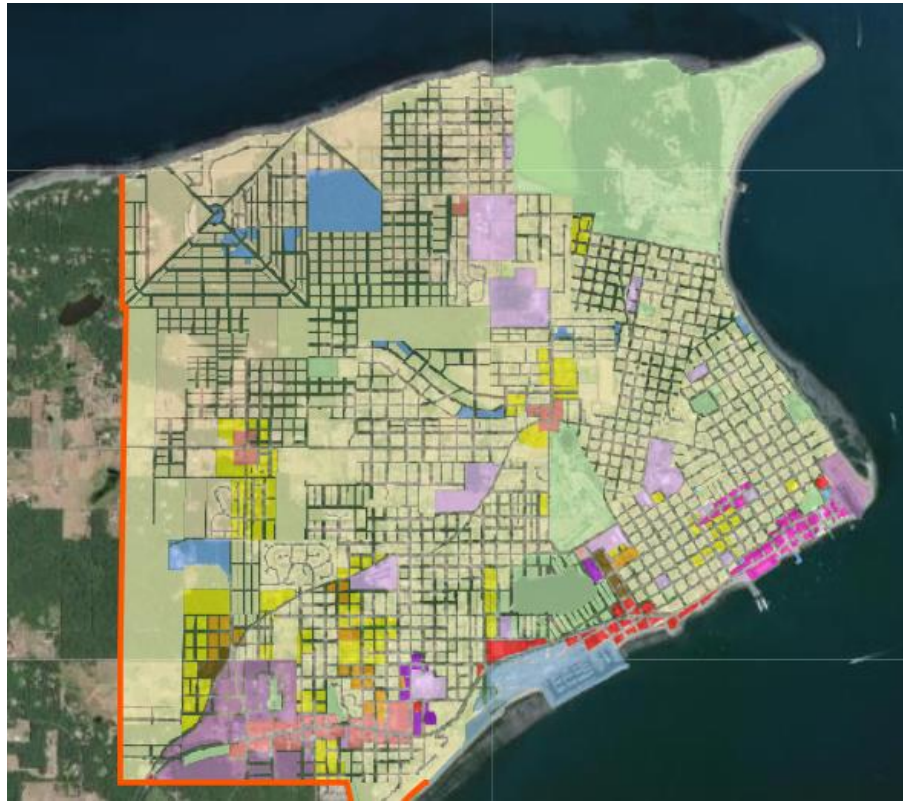
PARKS, RECREATION, TREE, TRAIL ADVISORY BOARD

FEBRUARY 22, 2022

Presentation Outline

1. Port Townsend Rights of Way Map – Unique Pre-platted City
2. Definitions of Rights of Way
3. Applicable Plans and Codes
4. Typical Rights of Way Status (Situations)
5. Principles to Consider for Rights of Way
6. Port Townsend Rights of Way Definitions and Examples
7. Rights of Way Management

Port Townsend Platted Rights of Way



City of Port Townsend, platted right of ways

Background

Port Townsend Streets

	Miles	Notes
Total Roads	93.37	Excludes Fort Worden nor the Port
Paved Roads	84.09	
Gravel Roads	9.28	
City Maintained Paved Roads	77.89	
City Maintained Gravel Roads	3.44	
State/Privatey Maintained Paved Roads	6.20	
Privatey Maintained Gravel Roads	0.25	
Non-maintained Gravel Roads	5.60	
Arterials & Collectors	26.80	As defined in the Design Standards
City Maintained Arterials & Collectors	23.95	

The City maintains 81 miles of streets and roads.

The City also has 33 miles of trails under the management of the City Parks Department.

Rights of Way Definition

The Municipal Research Services Center (MRSC) provides good general background information concerning rights of way.

The General Rule definition is as follows:

*As a general rule, a city or county right-of-way is an easement for public travel. (An easement is a privilege or a right, distinct from ownership, to use in some way the land of another.) So, **typically, a city or county does not own the fee title to the property underlying the public right-of-way**; the abutting property owners have that fee title, and that title usually extends to the centerline of the right-of-way. (Because this is a “general rule,” there are always exceptions.) The right-of-way easement generally extends beyond the improved roadway and includes sidewalks, if any, and parking strips (the area between the sidewalk and the paved street or road).*

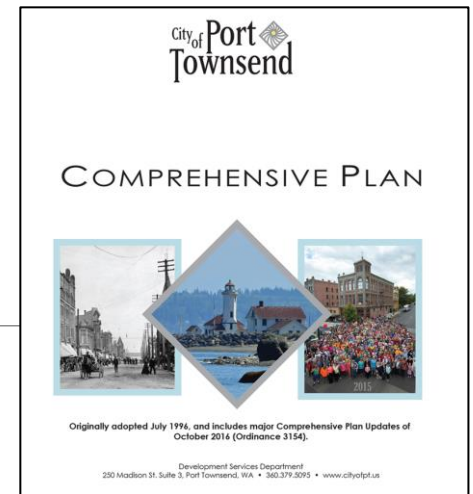
Links:

<https://mrsc.org/Home/Stay-Informed/MRSC-Insight/September-2017/Understanding-Municipal-Rights-of-Way.aspx>

<https://mrsc.org/Home/Stay-Informed/MRSC-Insight/January-2014/What-is-the-Nature-of-a-Public-Right-of-Way.aspx>

Applicable Plans

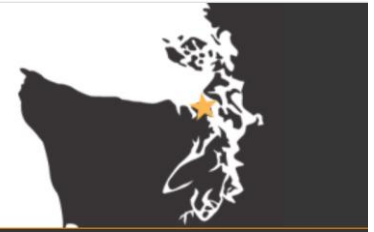
City's adopted plans and codes define the public purpose and use of rights of way. This is a critical distinction for Port Townsend concerning open space, urban forestry, and trails in a pre-platted City given it extends the public purpose of rights of way beyond travel and utilities.



Adopted Plans:

- Comprehensive Plan (Value of undeveloped rights of ways)
- Non-motorized Plan (Trails system)
- Parks Recreation and Open Space Plan (Recreation & Trail System)
- Transportation Functional Plan

These plans provide for the policy basis for code implementation



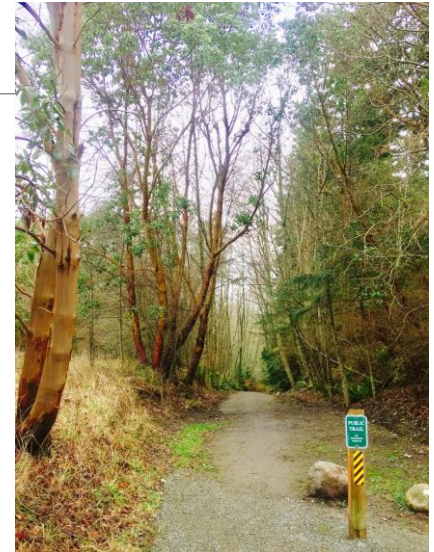
Applicable Codes

City codes (laws) originate from State Law and from local public policy. Public Policy is often legislated as a result of adopted plans. The following Codes are specifically applicable to public rights of way and provide further detail as to the purpose of rights of way.

- Code Enforcement (Title 9)
- Vehicles and Traffic (Title 10)
- Streets and Sidewalks (Title 12)
- Urban Forestry & Private Uses (Chapter 12.04.075)
- Utilities (Title 13)
- Development Codes (Titles 16, 17, & 18)
- Other city codes and governing documents such as the Shorelines Management Plan, Engineering Design Standards, Quimper Wildlife Corridor Management Plan, etc.

Typical Rights of Way Status (Situations)

1. Contains street
2. Contains street and sidewalk
3. Contains trail only
4. Contains utility but no trail and no street
5. Contains a privately maintained driveway
6. Does not contain any improvement (Undeveloped)
7. Contains a historical private development (fences, buildings, parking lots, gardens, etc.)
8. Contains improved park space (ie. Bell Tower)
9. Contains improved public space (ie. Tyler Plaza, Adams Plaza)



Principle #1 – Rights of Way Definition (Platted)

Are all rights of way the same? No.

- Most rights of way in Port Townsend are platted.
- Some rights of way are owned in fee simple.
- Some rights of way were platted in full by only one side of the street (ie Plat boundaries).
- Some rights of way are subject to statutory vacation.

What is a right of way in a typical platted condition?

- Easement in favor of the public.
- City has the right to prevent interference. Only the city has right to manage right of ways & not other property owners.

Principle #2 – Use of Rights of Way (Platted)

What can the City use platted rights of way? By adopted plans and codes, the following:

- Parks, utilities, transportation facilities, stormwater facilities, & recreational facilities (trails).
- The City can also keep rights of ways as undeveloped public open space.

What are the adjoining private property rights to rights of way?

- Access to property. The City cannot deny access to private property. The City can manage access to private property.
- Typically, adjoining property owns to the centerline of right of way. Therefore, adjoining property owners have the right to use rights of way fronting their property as long as they comply with City use codes. Examples of typical use include landscaping, trees, driveways, and parking.

Principle #3 – Non-interference

What does non-interference mean?

- The City can manage rights of way to prevent interference of the public use as described in Legal Principle #2. For example, the city manages right of way to ensure that rights of ways are available for utility installation.

Does the public have the right to access any undeveloped (unopened) right of ways? - YES

- City policy asserts value of open space and access through adopted plans and codes.

How does the City assert a right to access?

- Permits
- Code enforcement for any activities that interfere with the public use.

How do we allow private use?

- Street Development Permits, Minor Improvement Permits, Tree permits and minor landscaping code.
- Development applications for new units and larger residential/commercial projects.

Principle #4 – Trails

Are Port Townsend trails a recreational facility? Yes

- The City has designated most of the trails as recreational facilities.
- Recreational facilities means that recreational immunity applies. This means that users proceed at their own risk and there is not an expectation that trails are maintained as transportation facilities in terms of meeting transportation standards such as ADA compliance, trip hazards, etc. However, many trails are used by the public for transportation at their own risk.
- Some trails are transportation facilities such as paved multi-use paths and sidewalks.

Principle #5 – Open Space

Can a right of way be managed or controlled by the City for the purpose of open space? Yes

- The City's adopted plans designate that the City's vast undeveloped rights of way are a public asset in terms of open space and urban forests.
- This impacts the underlying adjoining property use rights of undeveloped right of way.
- Interference with the open space policies in the plans can be managed by the City subject to property owner rights to access their property. The City must allow for reasonable access to private property via rights of way.

Principle #5 – Maintenance Responsibility

What is the responsibility of the City for maintaining rights of way?

- The City is responsible for maintaining the road surface, constructed drainage facilities, and utilities.
- The City is responsible for maintaining sidewalks and vegetation **ONLY adjoining city owned property** such as parks.
- The City is responsible for maintaining vegetation where the City has constructed aesthetic improvements such as street trees downtown, medians, roundabouts, etc.

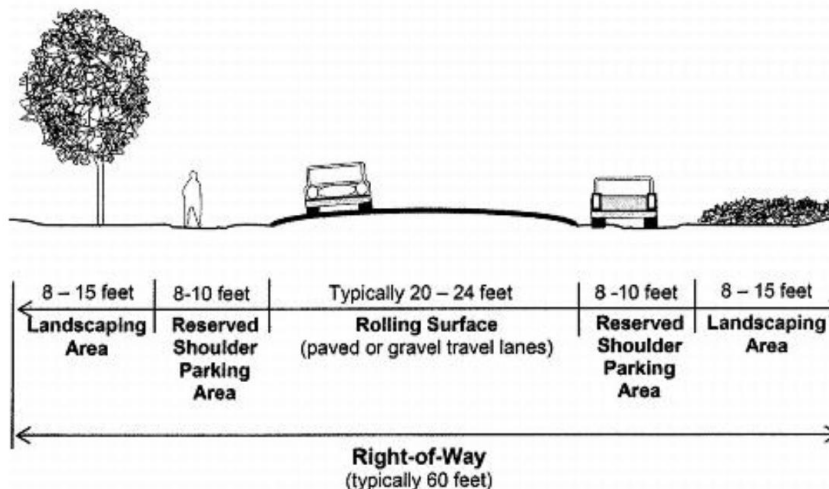
What is the maintenance responsibility of the underlying adjoining property owner?

- Sidewalks and pedestrian ways are to be maintained by the adjoining property owner (ie snow shoveling, vegetation clearing, and sometimes repair of sidewalks)
- Vegetation & trees between the edge of the traveled way and the right of way line in a developed right of way.
- Vegetation and trees between the centerline and right of way line in an undeveloped right of way.

Principle #6 – Management

What are the City's limits of management responsibility?

- City code generally delegates maintenance responsibility behind the sidewalk or between edge of the travel way and property line. However, city maintains control through permitting and code.
- Chapter 12.04.075 defines these management and permitting responsibilities.



Principle #7 – Trees in Rights of Way

Trees are managed by the City for urban forestry values, but maintained by the adjoining property owner in most rights of way. Only commercial streetscape and parks trees are maintained by the City.



Refer to Chapters 12.04.075 Section D and 12.04.150 which covers planting, removal and prohibitions regarding tree management.

Principle #8 - Conversion Process

When property is owned by the City on both sides of undeveloped right of way, the merger doctrine applies which means that the rights of way typically are merged with the adjoining property ownership.



Kah Tai Nature Park has effectively merged rights of way into the general park ownership of the City.

Principle #9 – Rights of Way Vacation

Rights of way can be vacated per RCW and City Code by City Council approval. Vacating a right of way releases all or part the public's interest in its easement to underlying property owner.

Right of way vacation is rare and generally discouraged by City policy and code unless there is a public interest in doing so.

Vacation generally results in the underlying property owner paying for the value of the release of the public easement. Analysis of value varies depending on unique factors associated with the specific vacation request.

Recap: Developed vs. Undeveloped Rights of Way

Historically rights of way have been categorized as open or unopened rights of way. Open means that the public interest has been asserted. Unopened means that the public interest has not yet been asserted. In most cities, open means that a transportation or utility facility has been constructed.

In Port Townsend, has the public asserts its interest in most if not all rights of way? YES.... Even open space is asserted as a public interest.

In describing Port Townsend's rights of way, undeveloped versus developed may be better terminology.

Illustrative Examples – Commercial Roadway



Typical commercial street where city maintains trees and to some extent sidewalk. Property owners also maintain sidewalk. Private uses such as streateries are allowed only by permit. This rights of way condition is the highest intensity of management by the City.

Illustrative Examples – Residential Roadway



Typical urban lot in a developed right of way with street, sidewalk, landscaping and driveway. Adjoining property owner maintains driveway, sidewalk, trees, and landscaping.

Illustrative Examples – Shared Use Path



Example of the Howard Street shared use path developed in right of way. This path is a City maintained transportation route. Adjoining property owners are responsible for the area up to the edge of the path.

Illustrative Examples – Recreational Trail



Typical Port Townsend Recreational Trail developed in right of way. City and volunteers provides limited maintenance. Recreational immunity applies. Adjoining property owner maintains from right of way line to centerline. Trails must be preserved as public asset even though they are not formal transportation routes.

Illustrative Examples – Privately maintained D/W



Typical privately maintained driveway developed in right of way of the end of the publically maintained Logan street. Public retains access rights to walk, bike, drive. Private property owners are required to maintain driveway and to the center of the right of way.

Illustrative Examples – Utility corridor



Sewer and power utilities developed in right of way. Sometimes, the only developed use for the right of way is for utilities such as water, sewer, stormwater, communications, and power. Adjoining property owner responsible for maintaining right of way to centerline and cannot interfere with utility provider.

Illustrative Examples – Open Space



Typical undeveloped right of way preserved as open space. In this case, some right of ways are bordered by JC Land Trust (purple) and City Ownership (green). Adjoining property owner is responsible for maintenance.

Thank you!
Questions/Comments

