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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3533

AN ORDINANCE adopting the Right-of-Way Use Code and adding a new Chapter 14.30 to the Bellevue City Code.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. A new Chapter 14.30 is hereby added to the Bellevue City Code, to read as follows:

14.30.010 Title. This Chapter is known as the Right-of-Way Use Code. It is referred to as the "Code."

14.30.020 Purpose. It is the purpose of this Code to provide for the issuance of right-of-way use permits in order to regulate activities within the right-of-way in the City of Bellevue in the interest of public health, safety and welfare; and to provide for the fees, charges, warranties, and procedures required to administer the permit process.

14.30.030 Territorial Application. This Code and the procedures adopted hereunder shall be in effect throughout the City of Bellevue.

14.30.040 Construction-Intent. This Code is enacted to protect and preserve the public health, safety and welfare. Its provisions shall be liberally construed for the accomplishment of these purposes.

It is expressly the purpose of this Code and any procedures adopted hereunder to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Code or any procedures adopted hereunder.

It is the specific intent of this Code and any procedures adopted hereunder to place the obligation of complying with the requirements of this Code upon the permittee, and no provision is intended to impose any duty upon the City of Bellevue, or any of its officers, employees or agents. Nothing contained in this Code or any procedures adopted hereunder is intended to be or shall be construed to create or form the basis for liability on the part of the City of Bellevue, or its officers, employees or agents, for any injury or damage resulting from the failure of the permittee to comply with the provisions hereof, or by reason or in consequence

of any act or omission in connection with the implementation or enforcement of this code or any procedures adopted hereunder by the City of Bellevue, its officers, employees or agents.

14.30.050 Definitions. The following words and phrases when used in this chapter shall mean:

Citation and Notice - Written document initiating a criminal proceeding after an arrest and issued by an authorized peace officer, in accordance with the Justice Court Criminal Rules.

Complaint - Written document certified by the prosecuting attorney initiating a criminal proceeding in accordance with the Justice Court Criminal Rules.

Department - The Department of Public Works and Utilities.

Directive Memorandum - A letter from the city to a right-of-way use permittee notifying the recipient of specific nonconforming or unsafe conditions and specifying the date by which corrective action must be taken

Director - The Director of the Department of Public Works and Utilities, or his/her designated representative.

Franchised Utilities - Utilities that have city approval to use city right-of-way for the purpose of providing their services within the city, whether by written franchise granted by the city or otherwise.

Non-Profit - Not for a monetary gain unless for charitable purposes.

Notice of Violation - A document mailed to a permittee or unauthorized user and posted at the site of a nonconforming or unsafe condition.

Oral Directive - A directive given orally by city personnel to correct or discontinue a specific condition.

Permit - A document issued by the city granting permission to engage in an activity not allowed without a permit.

Permit Center - The central location for applying for permits.

Private Use - Use of the public right-of-way for the benefit of a person, partnership, group, organization, company, or corporation, other than as a thoroughfare for any type of vehicles, pedestrians or equestrians.

Procedure - A procedure adopted by the Director, to implement this Code, or to carry out other responsibilities as may be required by this Code or by other codes, ordinances, or resolutions of the city or other agencies.

Right-of-Way - All public streets and property granted or reserved for, or dedicated to, public use for streets, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto.

Stop Work Notice - Notice posted at site of activity that requires all work to be stopped until City approves continuation of work.

Street Use Official - The designated employees of the Department responsible for inspecting the installation of warning and safety devices in the public right-of-way and restoration of public rights-of-way disturbed by work.

Transportation Division - The Transportation Division of the Department of Public Works and Utilities.

Underground Location Service - The Underground Utilities Location Center that will locate all underground utilities prior to an excavation.

Unsafe Condition - Any condition which the Director determines is a hazard to health, or endangers the safe use of the right-of-way by the public, or does or may impair or impede the operation or functioning of any portion of the right-of-way, or which may cause damage thereto.

14.30.060 Powers of the Director. The Director shall have the power to:

1. Adopt procedures as needed to implement this Code, and to carry out the responsibilities of the Department.
2. Administer and coordinate the enforcement of this Code and all procedures adopted hereunder relating to the use of rights-of-way.
3. Advise the city council, city manager and other city departments on matters relating to use of the right-of-way.
4. Carry out such other responsibilities as required by this Code or other codes, ordinances, or procedures of the city.
5. Request the assistance of other city departments to administer and enforce this Code.
6. Assign the responsibility for interpretation and application of specified procedures to the Transportation Division.

14.30.070 Permit Requirements.

1. It is unlawful for anyone to make private use of any public right-of-way without a Right-Of-Way Use Permit issued by the city or to use any right-of-way without complying with all the provisions of a permit issued by the city.
2. General and specific permit requirements are defined in the procedures referenced in this Code.

14.30.075 Additional Permits.

Additional permits for any use may be required by other city codes. The city does not waive its right to use the right-of-way by issuance of any permit

14.30.080 Right-of-Way Use Permits. The following types of Right-Of-Way Use Permits are established:

A. Type A - Short Term Non-Profit.

Type A permits may be issued for use of right-of-way for 24 or less continuous hours for non-profit purposes which do not involve the significant physical disturbance of the right-of-way.

This type of use may involve disruption of pedestrian and vehicular traffic or access to private property and may require inspections, clean-up and police surveillance. For periods longer than 24 hours these uses will be considered Type D, Long Term and Permanent. If any of these uses are for profit they are considered Type B.

Type A permits include but are not limited to the following when for non profit purposes:

Assemblies	Processions
Bike Races	Non-motorized Vehicle Races
Block Parties	Street Dances
Parades and Processions	Street Runs
Parking	

B. Type B - Short Term Profit.

Type B permits may be issued for use of right-of-way for 72 or less hours for for-profit purposes which do not involve the physical disturbance of the right-of-way.

This type of use may involve disruption of pedestrian and vehicular traffic or access to private property and may require inspections, clean-up and police surveillance. For periods longer than 72 hours these uses will be considered Type D, Long Term or Permanent.

Type B permits include, but are not limited to the following when they are for profit purposes:

Fairs
House Moves
Temporary Sale of Goods
Temporary Street Closures

C. Type C - Disturbance of City Right-of-Way

Type C permits may be issued for use of right-of-way for activities that will alter the appearance of or disturb the surface, super-surface or sub-surface of the right-of-way on a temporary or permanent basis.

Type C permits may be for either single uses or multiple uses. Type C single use permits will be issued to approved applicants who are planning a single type C activity at a single location in a short period of time.

Type C Multiple Use Permits will be issued to approved applicants who are planning many type C activities at several different locations in a short period of time.

Type C permits include but are not limited to:

Boring	Painting
Culverts	Sidewalks
Curb Cuts/Driveways	Street Trenching
Drainage Facilities	Utility Installation
Fences	
Landscaping	

D. Type D - Long Term and Permanent

Type D permits may be issued for use of right-of-way for activities for extended periods of time but which will not physically disturb the right-of-way.

The use of right-of-way for structures, facilities, and uses that involve capital expenditures and long term commitments of use require this type of permit.

Type D permits include but are not limited to:

Air rights	Sidewalk cafes
Bus shelters/stops	Special and Unique Structures-
Construction site/ haul roads	Fountains, Clocks, Flag Poles,
Loading Zones	Awnings, Marquees, Benches, Kiosks,
Mobile peddling	Signs, Mail Boxes, Banners,
Newspaper sale	Street Furniture, Decorations
Recycle facilities	Underground rights
Sales structures	Utility facilities
	Waste facilities

Type A uses that exceed 24 hours and Type B uses that exceed 72 hours will be treated as Type D uses.

14.30.090 Applications and Processing of Permits.

1. To obtain a Right-Of-Way Use Permit the applicant shall file an application with the Permit Center of the Design and Development Department.
2. Every application shall include the location of the proposed right-of-way use, a description of the use, the planned duration of the use, applicant contact information, and all other information which may be required as specified in procedures adopted hereunder, and shall be accompanied by payment of the required fees.

Certain applicants such as utilities and contractors, may be involved in frequent use of the right-of-way for repair, maintenance and construction in a short period of time. To avoid the issuance of a new permit for each use, the city will issue a 90 day permit for multiple use.

3. The Director shall examine each application submitted for review and approval to determine if it complies with the applicable provisions of this Code and procedures adopted hereunder. Other departments that have authority over the proposed use activity will be required to review and approve or disapprove the application. The Director may inspect the right-of-way proposed for use to determine any facts which may aid in determining whether a permit should be granted. If the Director finds that the application conforms to the requirements of this Code and procedures adopted hereunder, that the proposed use of such right-of-way will not unduly interfere with the rights and safety of the public, and if the application has not been disapproved by a department with authority, he may approve the permit, and may impose such conditions thereon as are reasonably necessary to protect the public health, welfare and safety and to mitigate any impacts resulting from the use.
4. All applications for permits will be submitted 30 days or more before the planned need for the permit. If unforeseen conditions require expedited processing time the city will attempt to cooperate, but additional fees to cover additional costs to the City may be charged.
5. Upon submittal of a completed application, the Transportation Division shall collect from the applicant an application fee in the amount in the fee schedule adopted by the council. Permittees who have an approved monthly billing status will continue with that process.

14.30.100 Permit Fees and Charges. The fee for each permit shall be set forth in a fee schedule to be adopted by the city council. Fees and charges adopted pursuant to this section may be increased or decreased by the Council on the Director's recommendation in accordance with changes in the costs incurred by the city. The city council shall, upon recommendation of the Director, establish the amount, rates and formulas for the following fees and charges:

A. Fees and Charges

1. Application Fee: A non-refundable application fee shall be charged for each Right-of-Way Use Permit application that is accepted for processing. This fee covers the costs of initial processing, counter service and record keeping. The application fee shall be the same for all types of Right-Of-Way Use Permits.
2. Processing of Application Fee: A fee for the processing of applications shall be charged. The amount of the fee shall be determined based upon the time and cost required to review, inspect, research and coordinate the applicants' data for each permit application.
3. Surface Cut Fee: A base fee will be charged for all permits that authorize surface cuts to any improved right-of-way. The base fee shall be charged for surface cuts less than 100 square feet or less than 100 feet in length. An additional fee shall be charged for surface cuts of more than 100 square feet or more than 100 feet in length based upon the relative size of the cut. An additional fee shall be charged for each additional 100 square feet. All fees will be doubled for cutting into improved right-of-way less than 24 months old.
4. Daily Use Fees: All Type B, C and D permits will include a fee of \$50.00 for each day (or part thereof) of use of the right-of-way in excess of 48 hours. The fee will compensate the City for monitoring and inspecting the site.
5. Multiple Use Fees: The fees for this special type C permit will depend upon the number of uses, size of each use, reporting requirements, coordination and purposes of use. One application is required and one permit will be issued for an estimated number of uses. Upon application the fee charged will be computed based on the estimated number of uses and the applicant will pay one-half this amount when the permit is issued. Upon expiration of the permit, the total amount due the city shall be computed based on the actual number of uses of the permit, and any excess fee shall be refunded and any balance due shall be paid by the permittee.

6. Excess Inspection Costs: The city may incur extra costs of inspection for certain permits that require more than the usual number of inspections. These costs may be incurred because of situations related to observed quality of work, traffic problems, schedule problems and cooperation of the permittee. Excess inspection fees will be charged based on the hourly rate of actual costs incurred by the city to make the excess inspections.
 7. House Move Charges: When a house move permit is issued the City shall impose a charge based on the actual cost to compensate for its time and expense. These costs may include street crews, signal crews and police, if required to assist in the move. A minimum fee will be charged at the time of permit issuance based on 4 hours of city crew time. A refundable deposit will also be required, which will be equivalent to the amount of the minimum fee. Costs for damage to city property occurring as a result of the move, or assistance on the house move by city crews in excess of 4 hours, shall either be deducted from the deposit or billed to the house mover and permittee directly.
 8. Repair and Replacement Charges: If the city should incur any costs in repairing or replacing any property as the result of the permittee's actions, the costs of repair and replacement will be charged to the permittee. These charges will be for the actual costs to the city.
 9. Waiver of Fees: Franchised utilities which must apply for permits because of city initiated construction projects may be granted a waiver by the Director of normal permit fees. This provision only applies to work that would not normally have been done by the utility.
- B. Review and Adjustment of Fees and Charges.
1. The Director will initiate, as needed, a review of Right-Of-Way Use Permit fees and charges to determine their continuing capacity to offset costs incurred by the city in providing services related to the administration of Right-Of-Way Use Permits.
 2. The Director may recommend to the City Council increases or decreases in the amounts, rates, and formulas of the subject fees and charges to reflect changes in the city's costs in providing the related services. Factors to be considered by the Director include the costs of labor, materials, supplies, vehicles and equipment, taxes and changes in operating procedures.

3. The city council will review and approve all changes to fees and charges.

14.30.110 Specifications. All work to be performed under any permit issued under this Code shall conform to all other city codes, the current Development Standards of the Department of Public Works and Utilities and all other standards used by the City in the administration of this Code.

14.30.120 Permit Exception.

1. A Right-of-Way Use Permit shall not be required of franchised utilities or city contractors when responding to emergencies that require work in the right-of-way, such as water or sewer main breaks, gas leaks, downed power lines or similar emergencies, provided that the Department shall be notified by the responding utility or city contractor verbally or in writing, as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or city contractor from the requirement to obtain a Right-of-Way Use Permit after beginning emergency work in the right-of-way.
2. Permits shall not be required for routine maintenance and construction work performed by city utilities and city maintenance crews.

14.30.130 Revocation of Permits. The Director may revoke or suspend any permit issued under Section 14.30.090 whenever:

1. The work does not proceed in accordance with the plans as approved, or conditions of approval, or is not in compliance with the requirements of this Code or procedures, or other city ordinances or state law;
2. The city has been denied access to investigate and inspect how the right-of-way is being used;
3. The permittee has made a misrepresentation of a material fact in applying for a permit;
4. The progress of the approved activity indicates that it is or will be inadequate to protect the public and adjoining property or the street or utilities in the street, or any excavation or fill endangers or will endanger the public, the adjoining property or street, or utilities in the street.

Upon suspension or revocation of a permit, all use of the right-of-way shall cease, except as authorized or directed by the Director.

14.30.140 Renewals of Permits. Each permit shall be of a duration as specified on the permit and may not be renewed. If continued use of the right-of-way is desired by the permittee after expiration of a permit, he must apply for a new permit.

14.30.150 Performance Deposits/Insurance. If the Director determines that there is a potential for injury, damage or expense to the city as a result of damage to persons or property arising from an applicant's proposed use of any right-of-way, the applicant may be required to make a cash deposit with the Finance Department or to provide a security device or insurance in a form acceptable to the Director for the activities described in the subject permit. The amount of the cash deposit, security device or insurance shall be determined by the Director.

The requirements for performance deposits and insurance are based on considerations of applicants prior performance, nature of the proposed use, cost of the activity, length of use, public safety, potential damage to right-of-way and potential liability or expense to the city.

14.30.160 Hold Harmless. As a condition to the issuance of any permit under this chapter, the permittee shall agree to defend, indemnify and hold harmless the City of Bellevue, its officers, employees and agents, for any and all suits, claims or liabilities caused by, or arising out of any use authorized by any such permit.

14.30.170 Guarantee. When there is a need to ensure conformance with the city's Development Standards, city or state construction standards, or other requirements, the applicant may be required to provide a guarantee of workmanship and materials for a period of one or more years as determined by the Director. Such guarantee may be in the form of a cash deposit or a security device in a form and amount approved by the Director.

14.30.180 Inspections. As a condition of issuance of any permit or authorization which requires approval of the Department, each applicant shall be required to consent to inspections by the Department or any other appropriate city department.

14.30.190 Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions.

1. Whenever the Director determines that any condition on any right-of-way is in violation of, or any right-of-way is being used contrary to any provision of this Code or procedures adopted hereunder or other applicable codes or standards, or without a Right-Of-Way Use Permit, the Director may order the correction or discontinuance of such condition or any activity causing such condition.

2. The Director is authorized to order correction or discontinuance of any such condition or activities following the methods specified in procedures adopted pursuant to this Code.
3. The Director shall also have all powers and remedies which may be available under state law, this Code, and procedures adopted hereunder for securing the correction or discontinuance of any condition specified in this section.
4. The Director is authorized to use any or all of the following methods in ordering correction or discontinuance of any such conditions, or activities as the Director determines appropriate:
 - a. Serving of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition.
 - b. Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within 10 days of notice, or such other reasonable period as the Director may determine.
 - c. Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed by the city related to such permits.
 - d. Issuance of an order to immediately stop work until authorization is received from the city to proceed with such work.
 - e. Service of summons and complaint certified by the prosecuting attorney or a citation and notice to appear by an arresting peace officer upon the permittee or other responsible person who is in violation of this or other city ordinances.
 - f. Any object or thing which shall occupy any right-of-way without a permit is declared a nuisance. The Department may attach a notice to any such object or thing stating that if it is not removed from the right-of-way within 24 hours of the date and time stated on the notice, the object or thing may be taken into custody and stored at the owner's expense. The notice shall provide an address and phone number where additional information may be obtained. If the object or thing is a hazard to public safety, it may be removed summarily by the City. Notice of such removal shall be thereafter given to the owner, if known. This section does not apply to motor vehicles.

- g. All expenses incurred by the city in abating the condition or any portion thereof shall constitute a civil debt owing to the city jointly and severally by such persons who have been given notice or who own the object or thing or placed it in the right-of-way, which debt shall be collectable in the same manner as any other civil debt.
- h. The city shall also have all powers and remedies which may be available under law, this code and procedures adopted hereunder for securing the correction or discontinuance of any conditions specified by the city.

14.30.200 Warning and Safety Devices.

- 1. Warning lights, safety devices, signs and barricades shall be provided on all rights-of-way when at any time there might be an obstruction or hazard to vehicular or pedestrian traffic. All obstructions on right-of-way shall have sufficient barricades and signs posted in such a manner as to indicate plainly the danger involved. Warning and safety devices may be removed when the work for which the Right-Of-Way Use Permit has been granted is complete and the right-of-way restored to the conditions directed by the Department.
- 2. As a condition for the issuance of any Right-of-Way Use Permit, the Transportation Division may require an applicant to submit a traffic detour plan showing the proposed detour routing and location and type of warning lights, safety devices, signs and barricades intended to protect vehicular or pedestrian traffic at the site for which the Right-of-Way Use Permit is requested. If a traffic plan is required, no Right-of-Way Use Permit will be issued until the traffic plan is approved.
- 3. Unless otherwise specified in adopted right-of-way use procedures the current editions of the following standard manuals shall apply to the selection, location, and installation of required warning and safety devices, provided that the Transportation Division or the Street Use Official may impose additional requirements if site conditions warrant such enhanced protection of pedestrian or vehicular traffic.
 - a. Manual on Uniform Traffic Control Devices for Streets and Highways, as adopted by the Federal Highway Administration.
 - b. Development Standards, City of Bellevue Department of Public Works and Utilities.

- c. Part VIII, "Regulations for Use of Public Streets and Projections over Public Property", Uniform Building Code.
4. Any Right-of-Way Use Permit that requires a partial lane or street closure will require a licensed flagperson, properly attired, or an off duty police officer for the purpose of traffic control during the construction.
5. All decisions of the designated Street Use Official shall be final in all matters pertaining to the number, type, locations, installation, and maintenance of warning and safety devices in the public right-of-way during any actual work or activity for which a duly authorized Right-of-Way Use Permit has been issued.
6. Any failure of a permit holder to comply with the oral or written directives of the Street Use Official related to the number, type, location, installation, or maintenance of warning and safety devices in the public right-of-way, shall be handled as provided for in B.C.C. 14.30 and in Right-of-Way Procedure P-190.1, "Correction and Discontinuance of Unsafe, Nonconforming, or Unauthorized Conditions."

14.30.210 Debris and Spilled Loads in the Right-of-Way.

1. Whenever it is necessary for the safety of the public, the city may remove any obstructions, hazards or nuisances from rights-of-way; and anyone causing the obstructions, hazards or nuisances shall be responsible for reimbursing the city for the expense of such removal.
2. The owner or operator of any vehicle which has spilled, dropped, dumped or in any manner whatsoever deposited any matter upon the right-of-way shall cause the right-of-way to be cleaned to the satisfaction of the Department. Upon failure to do so the Department may cause to have cleaned the right-of-way and the costs thereof shall be charged to the person or persons so responsible.

The Department has the authority to designate haul routes and time of day for operations involving hauling over public right-of-way.

3. Earth hauling contractors, builders, or anyone else utilizing vehicles upon rights-of-way shall provide persons or equipment to keep the right-of-way clean at all times to the satisfaction of the Department. Upon failure to do so, the Department may issue an immediate stop work order, revoke City permits, and the responsible person or persons may be

directed to immediately clean the right-of-way to the satisfaction of the Department. Upon failure to do so the Department may cause to have cleaned the right-of-way and charge the costs thereof to the person or persons so responsible.

4. Clearing, Grading, Excavation or Fill Permit is required for all activities that will involve the movement of 50 cubic yards or more of earth and vegetation. No Right-of-Way Use Permit will be required for work behind any improved surface (curbs, streets, sidewalks, ditch lines) when such a clearing, grading, excavation or fill permit has been issued.

14.30.220 Billings and Collections. The Department, jointly with the Finance Department, may establish administrative rules and procedures pertaining to the billing and collection of fees and charges adopted pursuant to this Code.

14.30.230 Adoption of Procedures. The Director may prepare and adopt procedures for the purpose of implementing this Code or to carry out other responsibilities as may be required by this Code or other codes, ordinances of the city or other agencies. Such procedures do not require approval by the city council.

14.30.240 Appeal of Right-of-Way Use Procedures, and Related Requirements. Any applicant who questions the specific Department procedures, requirements or directives related to the private use of the public right-of-way may request in writing that the Director grant relief from the requirement or grant an alternative interpretation of the requirement. The Director will decide upon such written requests within 10 days. Changes to requirements may be granted if they will improve safety, reduce costs, reduce schedule or improve quality.

14.30.250 Liability. The Director and other employees charged with the enforcement and administration of this Code, acting for the city in good faith and without malice in the discharge of their duties shall not thereby render themselves liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties.

14.30.260 Violation. Any person violating any provision of this Code is guilty of a civil infraction, Bellevue City Code 1.18.

Section 2. Severability. If any one or more sections, subsections or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Code and the same shall remain in full force and effect.

Section 3. In the event of any conflict with any provision of this Code by any prior code, ordinance, or resolution adopted by the city, the provisions of this Code shall prevail.

Section 4. This ordinance shall take effect and be in force thirty days after final passage by the city council.

PASSED by the City Council this 3rd day of September 1985, and signed in authentication of its passage this 3rd day of September 1985.

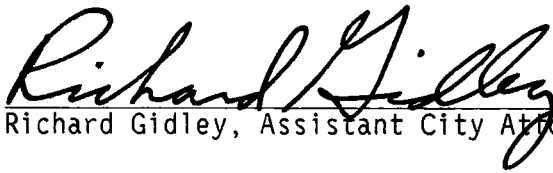
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Cary E. Bozeman, Mayor

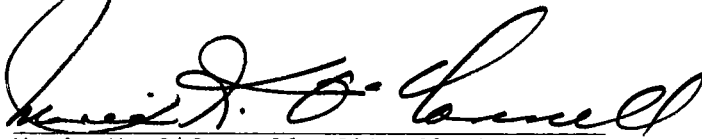
Approved as to form:

Richard Andrews, City Attorney



Richard Gidley, Assistant City Attorney

Attest:



Marie K. O'Connell, City Clerk

Published September 7, 1985