

ORDINANCE NO. 2019-____

AN ORDINANCE amending the City of Yakima Municipal Code Chapter 8.20, Right-Of-Way Use Permits . . .

WHEREAS, the City of Yakima allows for private uses of rights-of-way with applicable permits; and

WHEREAS, uses of the rights-of-way vary in type and duration, and it makes sense to have two types of right-of-way use permits based on duration of use; and

WHEREAS, small cell facilities also may be placed in the City's rights-of-way, and on City-owned facilities, and the FCC has preempted permitting regulations that limit the City's review authority; and

WHEREAS, based on the FCC regulations, small cell facilities should be administratively approved uses of the City's right-of-way, subject to zoning regulations and contractual agreements between the City and small cell facility developers, which is outlined in the amended ordinance; and

WHEREAS, the ordinance provides more consistency in obtaining right-of-way use permits; and

WHEREAS, the City Council of the City of Yakima finds it is in the best interests of the City and its residents to adopt the amendments to Yakima Municipal Code Chapter 8.20, Right-of-Way Use Permits outlined herein; now, therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Chapter 8.20 of the City of Yakima Municipal Code is hereby amended to read as follows:

**Chapter 8.20
RIGHT-OF-WAY USE PERMITS**

Sections:

- 8.20.010 Use of public right-of-way without permit prohibited.
- 8.20.020 Definitions.
- 8.20.030 Application for permit—Fee.
- 8.20.040 Processing of application.
- 8.20.050 Grant or denial of permit.
- 8.20.052 Criteria for residential right-of-way use permit consideration.
- 8.20.055 Sidewalk sign right-of-way use permit.
- 8.20.057 Small Wireless Facilities
- 8.20.060 Liability insurance required.
- 8.20.062 Right-of-way restoration.
- 8.20.065 Hold harmless agreement required.
- 8.20.070 Term of permit—Renewal.
- 8.20.075 Short-term permits.

8.20.077 Sidewalks shall remain accessible.

8.20.080 Revocation of permits.

8.20.090 Discontinuance of use on termination or revocation of permit.

8.20.100 Permit not transferable.

8.20.110 Safety and building code compliance.

8.20.120 Penalty for violation—Each day a separate offense.

8.20.130 Violations as nuisances.

8.20.010 Use of public right-of-way without permit prohibited.

It is unlawful for any person to use, for a private purpose, any public right-of-way utilized for a public purpose without first obtaining a permit therefor pursuant to this chapter and without otherwise complying with provisions of this chapter applicable to such occupancy or use; provided, the provisions of this chapter shall not apply to work in public right-of-way performed by the city, its agents or contractors, or to occupancy and use of public right-of-way under the authority of any franchise granted by the city, or to persons using or occupying public right-of-way pursuant to some other permission or authority granted by the city.

This chapter shall not apply to ~~political signs placed in public rights-of-way. Such areas may include but are not limited to the area between the sidewalk and the curb of a roadway. Signs regulated under YMC Chapter 15.08 of this Code, or Sidewalk Cafes or Street Beautification Projects placed in the public rights-of-way as regulated under YMC Chapter 5.80 of this Code.~~ This chapter does not apply to temporary signs placed in the right-of-way, which are regulated under YMC 15.08.110.

Further, this chapter does not apply to those uses of rights-of-way falling under other code sections, such as Special Event Permits or uses that are permitted as part of construction permits. (Ord. 2009-15 § 1, 2009: Ord. 93-83 § 2, 1993: Ord. 2938 § 1, 1986: Ord. 1672 § 1 (part), 1974).

8.20.020 Definitions.

As used in this chapter, unless a different meaning clearly appears from the context, the following words, phrases, and terms shall have the following meanings ascribed to them:

1. "Person" means a natural person, partnership, corporation or any other legal entity.
2. "Public right-of-way" means streets, alleys, sidewalks, planting strips, ~~and other public squares, places~~ and rights-of-way open to the use of the public including the space above and beneath the surface of such public rights-of-way.
3. "Use" means to construct, erect or maintain in, upon, over or under any public right-of-way any structure, item(s), materials, goods, machinery, container, dumpster, storage unit or equipment, for the private use of the adjoining property owner or occupant. (Ord. 2009-15 § 2, 2009: Ord. 1672 § 1 (part), 1974).

8.20.030 Application for permit—Fee.

A. Applications for permits to be issued pursuant to this chapter shall be filed with the community ~~and economic~~ development director upon an approved form, and shall be accompanied by a detailed scale drawing depicting the public right-of-way in the vicinity of the area for which the permit is sought, including existing utilities, street lights and traffic signal poles, street furniture and similar features of the area, as well as the dimensions and locations

of the proposed use of the right-of-way. The community development director may require a traffic control plan or other documents, which shall be provided by the applicant and approved by the community development director before a permit is issued. Such application shall contain an accurate description of the public right-of-way or portion thereof desired to be used under the authority of the permit sought, the use desired to be made of the public right-of-way by the applicant pursuant to the permit, the plans and specifications for any utility or structure desired in or on a public right-of-way, evidence showing the applicant to be the owner of, or entitled to the possession and use of, the property adjacent to the right-of-way concerning which the permit is sought and such other information deemed necessary or desirable by the chief of code administration to enforce compliance with or to otherwise administer the provisions of this chapter.

B. All applications shall be accompanied by an application fee. The application fee shall be ~~fifty-one hundred dollars as set forth in Ordinance 2938 § 2, 1986.~~ (Ord. 2009-15 § 3, 2009: Ord. 2938 § 2, 1986; Ord. 1672 § 1 (part), 1974).

8.20.040 Processing of application.

The code administration manager shall examine each application for compliance with requirements of this chapter and for compliance with any applicable provisions of the city's building code and shall endorse his/her findings on the application form and transmit it:

A. (1) For business/commercial uses, except as authorized in YMC 8.20.075 below for short-term permits, to the city clerk for consideration by the city council, ~~except that applications for permits to place signs in city-owned right-of-way, including sidewalk signs as described in YMC 8.20.055, shall be transmitted to and approved or denied by the community and economic development director or his/her designee,~~ or

B. (2) For residential uses within the residential zones (single-family and duplex, and/or located within a residential neighborhood), to the community review board (hereinafter "board"). (Ord. 2010-34 § 1, 2010: Ord. 2009-15 § 4, 2009: Ord. 2002-07 § 1, 2002: Ord. 1672 § 1 (part), 1974).

8.20.050 Grant or denial of permit.

Upon consideration by the city council or the board of the application for a permit, the council or board shall, by motion, approve or deny the application, except that applications for permits to place signs in city-owned right-of-way, including sidewalk signs as described in YMC 8.20.055, shall be considered and approved or denied by the community ~~and economic~~ development director, or his/her designee. Upon approval of an application by the council, board or, in the case of an application for a permit to place a sign in city-owned right-of-way, the community ~~and economic~~ development director, ~~the code administration manager~~ shall issue the permit upon applicant's compliance with requirements of ~~YMC 8.20.055 and 8.20.060~~ this Chapter.

The applicant or other interested persons may appeal to the city council within thirty days of the issuance of the director's written decision or the board's decision concerning an application for a permit. (Ord. 2010-34 § 2, 2010: Ord. 2009-15 § 5, 2009: Ord. 2002-07 § 2, 2002: Ord. 1672, § 1 (part), 1974).

8.20.052 Criteria for residential right-of-way use permit consideration.

A right-of-way use permit shall be granted by the community review board only when the applicant demonstrates that the permit will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. The applicant must clearly establish and substantiate that the request for permit conforms to all of the requirements and standards listed below:

A. That granting the right-of-way use permit will be consistent with the general purpose and intent of the underlying zoning district and will not be injurious to the neighborhood or otherwise detrimental to the public welfare;

B. That granting the right-of-way use permit will not authorize the establishment of any use not permitted in a particular zoning district;

C. That a unique circumstance, special circumstance or condition exists, fully described in the board's findings, specifically applicable to the land or structures for which the right-of-way use permit is sought. The special circumstance or condition must be peculiar to such land or structures and not generally applicable to land or structures in the neighborhood. The special circumstance or condition must also be such that the strict application of the right-of-way provisions would deprive the applicant of reasonable use of applicant's land or structure;

D. That an unavoidable hardship exists. It is not sufficient proof of hardship to show that lesser cost would result if the right-of-way use permit were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases without knowledge of the restrictions. It must result from the application of the desired use to the land or structure. It must be suffered directly by the applicant for the property in question, and evidence of a permit granted under similar circumstance elsewhere shall not be considered. Neither nonconforming uses nor neighboring lands or structures, nor buildings in other zoning districts shall be considered as factors relevant to the issuance of a right-of-way use permit; and

E. That the requested right-of-way use permit is the minimum remedy that will accomplish this purpose. (Ord. 2009-15 § 6, 2009).

8.20.055 Sidewalk and Projecting sign right-of-way use permit.

A right-of-way use permit shall be granted by the community ~~and economic~~ development director or his/her designee for a sidewalk sign or projecting sign and shall endorse the application form if it meets the following conditions:

A1. The business/commercial use has a current and valid business license from the city of Yakima, and is located in a commercial or industrial zoning district;

B2. The sign ~~has no movable parts and no electrification~~ complies with all the requirements found in YMC 15.08, et.al.;

C3. A site plan has been filed with the application, as required in YMC 8.20.030, which identifies the proposed location of the sidewalk sign and ensures that an area of the sidewalk at least four feet in width is maintained at all times for compliance with the Americans With Disabilities Act of 1990 standards which will not be impeded by the sidewalk sign;

~~4. The sign is removed daily from the sidewalk or right-of-way no later than ten p.m.;~~

~~5. The sidewalk sign will be placed along the sidewalk frontage of the business. One sign per business is allowed per street frontage of the actual location;~~

~~6. Sidewalk signs are prohibited from containing any image or picture displayed to the public in any manner that graphically depicts or portrays individuals in a state of dress or undress meeting the definitions of nudity or partial nudity as established in YMC 15.09.200, or which depicts individuals participating in lewd conduct as described in YMC 6.55.030, or which otherwise conveys an overtly sexual message (or obscenity as provided in YMC 5.30.040);~~

D7. Sidewalk and Projecting signs must comply with all provisions of this chapter including but not limited to application requirements, fees and renewal, liability insurance, appeals and safety compliance. (Ord. 2010-34 § 3, 2010).

8.20.057 Small Wireless Facilities

Small wireless facilities, as defined in YMC 15.29.020, proposed to be placed on an existing or new utility pole in the Right-of-Way and meeting all applicable criteria found in YMC 15.29.060(G) and 15.29.070(B) shall be issued a right-of-way use permit after completing a small wireless facility right-of-way use application. The FCC in 47 CFR section 1.6003 has established presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities. The city shall make every reasonable effort consistent with any conflicting provisions of state or federal law, and the preservation of the city's health, safety and aesthetic environment to comply with these time periods to the fullest extent possible.

A. Applications. The Public Works Director or their designee shall specify submittal requirements, including type, detail, and standards for an application to be complete. The director may require additional material such as maps, studies, or photographic simulations when the director determines such material is needed to adequately assess the proposed project. The director may waive specific submittal requirements determined to be unnecessary for review of an application after a written request for such waiver is made to the director. The director has the sole authority to grant or deny such a request and all waivers are granted on a case-by-case basis, narrowly tailored to minimize deviation from the requirements outlined herein.

B. Incomplete applications and denial. Applications will be processed, and notices of incompleteness provided, in conformity with state, local and federal law. If an application is incomplete, it may be rejected by the director by notifying the applicant and identifying the material omitted from the application. Applications may be denied without prejudice when the applicant fails to provide a substantive response to the city within 180 days after the city deems the application incomplete. If the application is denied, a new application and the applicable fees will be required for the same location.

C. Post-Installation Inspection. All small cell permits requesting use of a City-owned utility pole require a post-installation inspection by the Public Works Department. Such

inspection shall occur prior to bringing the small cell facility online. The cost of that inspection, in the amount of \$150.00, shall be paid by the applicant.

D. As-Built Drawings Required. After obtaining the permit and constructing the small cell facility, the applicant shall provide to the Public Works Director the as-built drawings of the small cell facility.

8.20.060 Liability insurance required.

Prior to the issuance of any permit pursuant to this chapter, the applicant shall file with the community ~~and economic~~ development director or his/her designee evidence of comprehensive public liability insurance, with limits of not less than five hundred thousand dollars combined single limit for bodily injury and property damage for residential uses and one million dollars combined single limit for bodily injury and property damage for business uses, with the city of Yakima named as an insured party, insuring against liability from injury or damage resulting from applicant's occupancy of or activities on public right-of-way under the permit to be issued, which insurance shall be maintained in effect during the term of the permit. (Ord. 2009-15 § 7, 2009: Ord. 1672, § 1 (part), 1974).

8.20.062 Right-of-way restoration.

Permit holders shall remove all facilities, personal property, or equipment from the right-of-way and restore the right-of-way, and any property within the right-of-way, to the condition it was in prior to the permit being entered into upon expiration or termination of the permit or the permit term. Any damage to the right-of-way, including, but not limited to, damage to curb, poles or sidewalk, shall be the responsibility of the permittee. In the event the permittee does not restore the right-of-way to its prior condition, the City may restore the right-of-way and invoice the permittee for the cost of repair and restoration. Permittee will have thirty (30) days after the date of mailing the invoice to make full payment to the City. In the event the permittee does not make full payment before the deadline, the City may place a lien on permittee's property and/or take any other action that the City deems appropriate to collect from permittee for the restoration and repair work done to the right-of-way.

8.20.065 Hold harmless agreement required.

Prior to the issuance of any permit pursuant to this chapter, the applicant shall sign a hold harmless and indemnification agreement approved by the City Attorney.

8.20.070 Term of permit—Renewal.

Permits issued pursuant to this chapter shall be valid for a period of up to one year from the date of issuance and shall be subject to renewal annually on application therefor, and on payment of renewal fee of ~~twenty-five~~ one hundred dollars ~~as set forth in Ordinance 2938 § 3, 1986,~~ provided permits granted under authority other than this chapter shall remain in full force and effect according to their terms without the necessity for application therefor or renewal thereof and without the payment of a permit fee, unless any such permit is terminated or revoked as provided by that permit. (Ord. 2009-15 § 8, 2009: Ord. 2938 § 3, 1986: Ord. 1672 § 1 (part), 1974).

8.20.075 Short-term permits.

For uses of a right-of-way for less than thirty (30) days, the following process shall be followed in lieu of the process outlined in sections 8.20.030-8.20.052 and section 8.20.070.

- A. Purpose. Short-term right-of-way permit uses are for those uses of the public right-of-way for less than thirty (30) days, and include, but are not limited to, placement of limited-term container-type storage units, placement of limited-term dumpsters, use and occupation of the right-of-way for construction projects for less than thirty (30) days, or use and occupation of the right-of-way to temporarily store landscaping materials being used in a project.
- B. Application. Applications for short-term right-of-way use permits shall be filed with the community development director upon an approved form and accompanied by a detailed scale drawing depicting the public right-of-way in the vicinity of the area for which the permit is sought, including existing utilities, street lights and traffic signal poles, street furniture and similar features of the area, as well as the dimensions and locations of the proposed use of the right-of-way. The application shall be filed no less than seven (7) business days before the proposed start-date of the permit. The community development director may require a traffic control plan or other documents, which all shall be provided by the applicant and approved by the community development director before a permit is issued. Such application shall contain an accurate description of the public right-of-way or portion thereof desired to be used under the authority of the permit sought, the use desired to be made of the public right-of-way by the applicant pursuant to the permit, the plans and specifications for any utility or structure desired in or on a public right-of-way, evidence showing the applicant to be the owner of, or entitled to the possession and use of, the property adjacent to the right-of-way concerning which the permit is sought and such other information deemed necessary or desirable by the chief of code administration to enforce compliance with or to otherwise administer the provisions of this chapter.
- C. Fee. The fee for a short-term right-of-way use permit shall be fifty dollars (\$50.00). Additional fees based on the location and use may be required.
- D. Processing. The planning manager or his or her designee, shall examine applications for compliance. Other city staff may examine applications if deemed appropriate by the planning manager or his or her designee. The planning manager will provide findings and conclusions to the community development director. If the short-term right-of-way use permit is in a residential area, the planning manager shall evaluate the request in light of the requirements of YMC 8.20.052. Upon review, the community development director may issue the permit based thereon, after receiving proof of insurance and the receipt of any other documents deemed necessary by the city.
- E. Insurance. The provisions of YMC 8.20.060, including, but not limited to the liability limits, shall apply to short-term right-of-way use permits.
- F. Expiration. Short-term right-of-way use permits shall expire on the date listed on the permit.
- G. Renewal. Short-term right-of-way use permits may be renewed one time upon completion of a new application and the payment of the application fee.

8.20.077 Sidewalks shall remain accessible.

Permit holders shall take all measures to keep sidewalks accessible to pedestrians. This means that a minimum of four (4) feet of sidewalk space must be available. Permit holders may be required to construct tunneling measures or other temporary measures to maintain pedestrian access. Permit applications should include information as to how the applicant plans to keep the sidewalk accessible.

8.20.080 Revocation of permits.

No permit granted pursuant to this chapter shall vest any permanent right in the permit holder; and any such permit may be revoked by resolution or motion of the city council, followed by notice to the permit holder given by the code administration manager that such permit is revoked, which notice shall be given not less than thirty days prior to the effective date of revocation specified in such notice. The notice shall be in writing and personally delivered to the permit holder or mailed to the permit holder at its address specified in the application. In the event the community ~~and-economic~~ development director, or his/her designee determines that the continued use of public right-of-way pursuant to a permit constitutes an immediate hazard to the public, such permit may be immediately suspended and further use thereof terminated pending city council's determination by resolution or motion to permanently revoke the permit. Permanent revocation shall be immediately effective upon written notice delivered to the permit holder in person or by mail as provided by this section. (Ord. 2009-15 § 9, 2009: Ord. 2002-07 § 3, 2002: Ord. 1672 § 1 (part), 1974).

8.20.090 Discontinuance of use on termination or revocation of permit.

Upon the (1) termination of a permit, unless renewed, (2) suspension of the permit by the community ~~and-economic~~ development director, or his/her designee, or (3) revocation of any permit issued pursuant to this chapter, the person to whom that permit was originally issued shall forthwith discontinue the use of public right-of-way authorized by such permit, and shall forthwith remove all structures and right-of-way obstructions authorized by such permit. In the event the community ~~and-economic~~ development director or his/her designee suspends the permitted use on the basis of an articulable hazard presented by said use, the permittee shall immediately remove the hazardous condition. If any such structure, obstruction or hazard is not so removed, the community ~~and-economic~~ development director or his/her designee may cause the same to be removed and perform any repair work to public right-of-way necessitated by such removal in order to render the public right-of-way safe for public use, and the person to whom the permit was originally issued shall be liable to the city for all expenses of such removal and repair. (Ord. 2009-15 § 10, 2009: Ord. 1672 § 1 (part), 1974).

8.20.100 Permit not transferable.

The privilege to use public right-of-way granted by any permit issued pursuant to this chapter shall be a personal privilege of the person to whom the permit is issued, and no such permit shall be transferable without the consent of the Yakima city council first being obtained. Any attempted transfer of any such permit without city council approval shall automatically render the permit null and void. (Ord. 2009-15 § 11, 2009: Ord. 1672 § 1 (part), 1974).

8.20.110 Safety and building code compliance.

All work performed by the authority of a permit issued pursuant to this chapter shall be accomplished in compliance with all applicable city building codes and other city ordinances,

and with the Washington Industrial Safety and Health Act, and shall be diligently pursued so as to cause the least possible inconvenience to the public. (Ord. 2009-15 § 12, 2009: Ord. 1672 § 1 (part), 1974).

8.20.120 Penalty for violation—Each day a separate offense.

Any person convicted of violating any provision or failing to comply with any requirement of this chapter shall be subject to a fine in an amount not to exceed two hundred fifty dollars or by imprisonment in the city jail facility for a period not to exceed ninety days; and any such violation or failure to so comply constitutes a continuing offense with each day constituting a separate offense of this section. (Ord. 2009-15 § 13, 2009: Ord. 1672 § 1 (part), 1974).

8.20.130 Violations as nuisances.

Any private use of public right-of-way contrary to the provisions of this chapter or other lawful authority is a public nuisance, subject to prevention or abatement by injunction or other appropriate remedy. Any items left in a public parking area, lane of travel, street, sidewalk or right-of-way may be removed after a 5-day notice is posted on-site and sent via regular and/or electronic mail (if such an address is provided) to the applicant. Items remaining after the notice period shall be considered abandoned. Cost of such removal shall be paid by the applicant. Nothing in this chapter shall inhibit the City from enforcing YMC 6.75 (Obstructing Passage on Streets and Sidewalks), RCW 9A.84.030 (Blocking Streets and Sidewalks) or removing items from public rights-of-way in cases of emergency or an immediate threat to the public health and safety. in an action brought by the city in the Superior Court of the state of Washington in and for Yakima County. (Ord. 2009-15 § 14, 2009: Ord. 2938 § 4, 1986).

Section 2. Severability. If any section, subsection, paragraph, sentence or clause of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the ordinance.

Section 3. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 1st day of October, 2019.

ATTEST:

Kathy Coffey, Mayor

Sonya Claar Tee, City Clerk

Publication Date: _____

Effective Date: _____