

ORDINANCE NO. 2020-_____

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, the City Council recently passed the Property Maintenance Code, which combined a number of previous code sections and vacated code sections no longer necessary; and

WHEREAS, one of the code sections vacated was Chapter 11.10, which included the creation and procedures of the Community Review Board; and

WHEREAS, under YMC 8.20, the Community Review Board hears applications for right-of-way use permits in residential zones, but since the Community Review Board was disbanded with the vacating of YMC 11.10, the procedure for evaluating right-of-way use permits in residential zones needs to be amended; and

WHEREAS, with the change in procedure there are also some other sections that need amending; 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. Section 8.20.030 of the City of Yakima Municipal Code is hereby amended to read as follows:

8.20.030 Application for permit—Fee.

A. Applications for permits to be issued pursuant to this chapter shall be filed with the community 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 a fee. The fee shall be one hundred dollars. (Ord. 2009-15 § 3, 2009: Ord. 2938 § 2, 1986; Ord. 1672 § 1 (part), 1974).

Section 2. Section 8.20.040 of the City of Yakima Municipal Code is hereby amended to read as follows:

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. 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 development director or his/her designee; or

B. For uses within the residential zones applicants shall submit the application for the permit to the Planning Division for review under the procedures established for an administrative adjustment, Yakima Municipal Code 15.10.030. The application must be accompanied by the fee required in YMC 8.20.030(B) above, and the fee required for the administrative adjustment. (Ord. 2010-34 § 1, 2010: Ord. 2009-15 § 4, 2009: Ord. 2002-07 § 1, 2002: Ord. 1672 § 1 (part), 1974).

Section 3. Section 8.20.050 of the City of Yakima Municipal Code is hereby amended to read as follows:

8.20.050 Grant or denial of permit.

Upon consideration by the city council or the planning division of the application for a permit, the council shall, by motion, or the planning division shall, by decision, 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 development director, or his/her designee. Upon approval of an application by the council, planning division or, in the case of an application for a permit to place a sign in city-owned right-of-way, the community development director shall issue the permit upon applicant's compliance with requirements of 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 planning division's decision concerning an application for a permit. City Council decisions may be appealed to the Yakima County Superior Court. (Ord. 2010-34 § 2, 2010: Ord. 2009-15 § 5, 2009: Ord. 2002-07 § 2, 2002: Ord. 1672, § 1 (part), 1974).

Section 4. Section 8.20.052 of the City of Yakima Municipal Code is hereby amended to read as follows:

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

A right-of-way use permit shall be granted by the planning division 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, in addition to the requirements of YMC 15.10.030, 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).

Section 5. Section 8.20.060 of the City of Yakima Municipal Code is hereby amended to read as follows:

8.20.060 Liability insurance required.

Prior to the issuance of any permit pursuant to this chapter, the applicant shall file with the community 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 effective during the entire term of the permit. (Ord. 2009-15 § 7, 2009; Ord. 1672, § 1 (part), 1974).

Section 6. Section 8.20.062 of the City of Yakima Municipal Code is hereby amended to read as follows:

8.20.062 Right-of-way restoration. Permit holders shall remove all facilities, improvements, 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.

Section 7. Section 8.20.100 of the City of Yakima Municipal Code is hereby amended to read as follows:

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. Any attempted transfer of any such permit shall automatically render the permit null and void. (Ord. 2009-15 § 11, 2009: Ord. 1672 § 1 (part), 1974).

Section 8. Section 8.20.120 of the City of Yakima Municipal Code is hereby amended to read as follows:

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 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).

Section 9. 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 10. 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 ____ day of ____, 2020.

ATTEST:

Patricia Byers, Mayor

Sonya Claar Tee, City Clerk

Publication Date: _____

Effective Date: _____