

**CITY OF YAKIMA APPLICATION FOR
STREET BREAK PERMIT CUT OR
CONSTRUCTION**

Curb - Street - Alley - Sidewalk - Driveway - Utility

\$100.00

Today's Date _____ Anticipated Work Start Date: _____

Please complete all information. Incomplete information will delay approval of this application and permit issuance.	
Exact Street Address of Work:	
Owner Information Name:	Contractor Information Name:
Address:	Address:
Phone:	Phone:
Applicant: <input type="checkbox"/> Property Owner <input type="checkbox"/> Contractor Applicant must provide: <input type="checkbox"/> Insurance Forms and Certificates or <input type="checkbox"/> Bond	Contractor's State Registration Number: Contractor's City Business License: Contact Person: Contact phone:
Please complete all information - If information does not apply, write N/A	

If this application is for new construction, you must provide a copy of your plans that have been approved by Codes Administration and/or Engineering. If this application is for the placement of new or repair of structure in the right-of-way, please use a separate sheet of paper to provide a sketch or drawing that shows the property's general location within the city and where on the property the work will be done. Please include details on the drawing such as orientation, dimensions, utility locations, existing structure, property boundaries, rights of way, easements, etc. Please indicate the number of attachments here: []

Briefly state the purpose of this work and what will be done: _____

Please check all that apply:		
<input type="checkbox"/> Commercial Driveway	<input type="checkbox"/> Curb - New	<input type="checkbox"/> Alley Cut - ASHPALT
<input type="checkbox"/> Residential Driveway - NEW	<input type="checkbox"/> Curb - CUT/REPLACE	<input type="checkbox"/> Alley Cut - DIRT
<input type="checkbox"/> Residential Driveway - REPLACE	<input type="checkbox"/> Street Cut - ASPHALT	<input type="checkbox"/> Excavate Right of Way Only
<input type="checkbox"/> Sidewalk - NEW	<input type="checkbox"/> Street Cut - CONCRETE	<input type="checkbox"/> Other
<input type="checkbox"/> Sidewalk - CUT/REPLACE	<input type="checkbox"/> Street Cut - DIRT	

Do you propose to close or restrict traffic any section of street or alley? Yes No

If yes, you must complete a Temporary Public Right of Way Use Form and discuss your traffic control issues with Traffic Engineers located at Public Works. This form can be downloaded from this web-site. <http://www.yakimawa.gov/services/engineering/docs/street-break-application.pdf>

I Believe the information contain in this application is correct and true. I understand that approval of this application will be based on the information contained herein and no work is authorized that is not stated here. I understand that the work performed must conform to city standards and specifications including the STREET BREAK PERMIT CONDITIONS and that condition are subject to change without notice.

Name of Applicant (Please Print): _____

Signature of Applicant: _____ Date: _____

Street Break Permit Requirements:

1. The applicant shall comply with the applicable sections of Titles 8, 12, 14 and 15 of the City of Yakima Municipal Code, applicable City of Yakima Standard Details, and the applicant provisions denoted below.
2. Applicant shall be responsible for all costs and expenses incident to the performing of this work and will also be responsible for any loss or damage that may be directly caused by the performing of this work.
3. A copy of this permit shall be kept in the possession of the person performing this work.
4. The Applicant shall maintain the required Insurance forms and certificates for the entire time that any work is performed subject to this Permit.
5. Open cuts in streets shall be filled, compacted and patched by the Permittee within 48 hours after completion of work, unless the inspector agrees, in advance, to a longer time period.
6. The contractor shall furnish and maintain signs, barricades, lights, flares or any other appurtenance necessary to protect the public or when directed by the Street Inspector in accordance with the MUTCD, Sec. VI.
7. All work shall be performed to the satisfaction of the City Engineer. If said work is not completed or approved, the City Engineer will hire the work done and the applicant shall pay all costs, in full.
8. This permit is valid for 180 calendar days from date of issue.
9. The responsible party shall insure that the street break inspector is notified three (3) working days in advance of starting work and keep the inspector informed on the progress of work so inspections can be made. Work accomplished without proper notification shall be redone with proper inspection.
10. Sidewalk & driveway approaches may be removed & installed by the property owner, following all City specifications. A fully licensed contractor must do any work involving the roadway or curb and gutter.
11. Backfill around or under infrastructure shall be 100% select (5/8 minus) full depth of trench and compact to 95% of ASTM 1557.
12. Driveway location shall be as limited by YMC 15.06.065.
13. If applicant proposes to restrict the traffic to any section of street or alley, the applicant is required to complete and submit for review/approval a Temporary Right of Way Use form and discuss traffic control issues with the Street Inspector.

Excerpt from Title 8 Yakima Municipal Code STREETS AND SIDEWALKS:

8.72.060 Bond—Insurance.

(a) No permit shall be issued pursuant to this chapter unless the applicant files with the director of community and economic development or designee a bond issued by a surety company authorized to do business in the state of Washington, which bond shall be in an amount estimated by the director of community and economic development or designee to be the cost of replacing to its original condition any public street, alley, sidewalk, highway or other public place to be disturbed by applicant under the permit applied for, and conditioned that the applicant will immediately on completing work under the permit replace to its original condition any portion of any public street, alley, sidewalk, highway or other public place disturbed or affected by the applicant under the permit applied for, and that applicant shall correct any defects which occur within two years after the completion of any such replacement work; provided, that cash or certified check may be deposited with the city by applicant in lieu of, and in the same amount as, the bond required by this section, which cash deposit shall be held by the city subject to the same conditions required in said bond, with an appropriate amount of said cash deposit to be returned to applicant on the expiration of two years from the completion of all work performed under the permit.

(b) No permit shall be issued pursuant to this chapter unless applicant shall furnish to the director of community and economic development or designee a policy or certificate of public liability and property damage insurance covering the operations of applicant under the permit applied for in an amount not less than one hundred thousand dollars for each person and three hundred thousand dollars for each incident for personal injury, and fifty thousand dollars for property damage for each incident of liability, naming the city of Yakima as an additional insured in such policy which shall provide that the same shall not be cancelled without ten days' written notice being given by the insurance company to the director of community and economic development or designee. (Ord. 2007-05 § 5, 2007: Ord. 994 § 6, 1968: Ord. B-2037 § 6, 1957).

ORDINANCE NO. 2014-015

AN ORDINANCE relating to excavations in public rights-of-way; repealing current Chapter 8.72 of the Yakima Municipal Code (YMC) and adopting new Chapter 8.72 YMC regarding excavations in public rights-of-way; stating definitions, procedures for issuance of permits, and enforcement.

WHEREAS, the City Council has previously adopted ordinances establishing criteria for issuance of permits, administration and enforcement of provisions regulating excavations in public rights-of-way, all as codified at Chapter 8.72 YMC; and

WHEREAS, the City Council finds and determines that such chapter should be repealed, and new Chapter 8.72 YMC adopted, to establish new procedures regarding issuance of permits, administration and enforcement of provisions regarding excavations in public rights-of-way; and

WHEREAS, the City Council finds and determines that new Chapter 8.72 YMC should be adopted as shown and set forth in Exhibit "A" attached hereto and by this reference incorporated herein, and that current Chapter 8.72 YMC as shown and set forth in Exhibit "B" should be repealed, and that new Chapter 8.72 YMC approved herein shall replace and supersede repealed Chapter 8.72 YMC; now, therefore

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Chapter 8.72 of the Yakima Municipal Code is hereby adopted to read as set forth in Exhibit "A" attached hereto and incorporated herein, which, upon the effective date of this ordinance, shall supersede and replace the existing Chapter 8.72 YMC repealed pursuant to Section 2 below.

Section 2. Existing Chapter 8.72 of the Yakima Municipal Code as set forth in Exhibit "B" attached hereto and incorporated herein, is hereby repealed, effective upon the effective date set forth in Section 3 below.

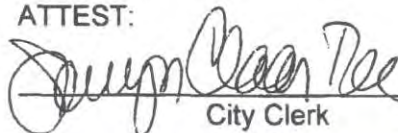
Section 3. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 15th day of July, 2014.



Micah Cawley, Mayor

ATTEST:



City Clerk



Publication Date: July 18, 2014
Effective Date: August 17, 2014

EXHIBIT "A"

**Chapter 8.72
EXCAVATIONS IN PUBLIC RIGHTS-OF-WAY**

Sections:

- 8.72.010 Purpose.
- 8.72.020 Definitions.
- 8.72.030 Excavation permit required – Administration.
- 8.72.040 Conditions of permit – General contractor is responsible for the permit and all subcontractors.
- 8.72.050 Execution of work.
- 8.72.060 Review of Ordinance
- 8.72.070 Fees.
- 8.72.080 Violations – Civil Penalties – Appeals – Criminal Penalty.

8.72.010 Purpose.

The purpose of the chapter is to preserve and protect the quality and longevity of city roadway infrastructure by restoring the public roads to their former condition after street excavations.

8.72.020 Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Administrator" means the city's utilities and engineering department.

"Applicant" means any person making written application to the administrator for an excavation permit hereunder.

"City" means the City of Yakima.

"City council" or "council" means the city council of the City of Yakima.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, but not limited to, damage to persons or property from natural or manmade consequences, such as storms, earthquakes, riots or wars.

"City manager" means the city manager of the City of Yakima or his or her designee.

"Excavation work" means the excavation and other work permitted under an excavation permit and required to be performed under this chapter.

"Paving Condition Index" or "PCI" means a written rating measuring pavement condition using a numerical index between 0 and 100, where 100 equals no defects, that is calculated from a visual survey of street distress based upon principles or practices reasonably accepted within the civil engineering or traffic engineering profession. Principles or practices reasonably accepted within the civil engineering or traffic engineering profession include, but are not limited to, the Washington State Department of Transportation (WSDOT) extended method in determining paving distress ratings, the WSDOT pavement distress manual, the WSDOT local agency pavement management guide, and/or methodologies recommended by the American Association of State Highway and Transportation Officials (AASHTO) and American Society for Testing and Materials (ASTM).

"Permittee" means any person who has been granted and has in full force and effect an excavation permit issued hereunder.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Street" means and includes any street, highway, sidewalk, alley, avenue, easement granted to or held by the city for public use, or other public way or public grounds in the city.

8.72.030 Excavation permit required – Administration.

A. It is unlawful for any person to dig up, break, excavate, tunnel, or undermine, any street, alley, sidewalk, highway, thoroughfare or other public place, without first obtaining an excavation permit from the City and thereafter complying with the requirements of the permit. The review and approval of such permit applications shall be performed by the utilities and engineering department. Receipt of applications and fees, issuance of approved permits, administration and enforcement of the provisions of this chapter shall also be performed by the utilities and engineering department.

B. Nothing in this chapter shall be construed to prevent any person from maintaining any utility facilities in or under any right-of-way by virtue of any law, ordinance or permit as may be necessary for the preservation of life or property in the case of an emergency, provided that the person shall obtain an excavation permit in arrears, within two (2) business days following the conclusion of the emergency situation and any required response.

8.72.040 Conditions of permit.

A. The applicant is responsible for the permit and the traffic control plan. The permit covers the general contractor's subcontractors as long as such subcontractors are not excavating in the public right of way.

B. The excavation permit application form and submittal requirements shall be in such form as prescribed by the City. The following information shall be required for application:

1) General

- i. The name and residence or business address of the applicant, including the applicant's state contractor's license;
- ii. The location and approximate area of the excavation;
- iii. The purpose, a plan or drawing, and a schedule for the proposed period of excavation;
- iv. A traffic control plan;
- v. Insurance and bond;
- vi. A plan showing the specific location and area of the excavation, including the dimensions of its length and width, and any other information that may be deemed by the City to clearly explain the work.

2) The applicant shall pay fees as determined by Section 8.72.070 of this code.

- i. No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any public right-of-way to relocate the facilities at no cost to the city, in the event that relocation is required by the city to accommodate public safety within the public right-of-way. Any directive must comply with RCW 35.99.060 Relocation of Facilities – Notice – Reimbursement.

C. The permittee shall, at a minimum, be responsible for public safety as follows:

1) Comply with all current federal, state and local safety regulations and all federal and state disability laws including those requiring an accessible path of travel.

2) Utilize appropriate traffic control, per the Manual on Uniform Traffic Control Devices (MUTCD), at all times for the duration of the permit.

3) A legible traffic control plan shall be included with all permit applications by the applicant unless a traffic control plan has already been submitted and approved.

- i. Traffic control plans shall be designed and drawn, using MUTCD standards, by an American Traffic Safety Services Association (ATSSA), or equivalent certifying entity, certified Traffic Control Supervisor.

- a) A "training" grace period of 90 days, from the date this ordinance is enacted, will be allowed for persons designing and drawing traffic control plans to be certified.

4) Excavations shall not be left unprotected at the end of a shift unless continuous shifts are planned.

- i. Backfill, steel plates, security fencing and other safety options may be considered on a case-by-case basis by the City.
- ii. Barricades, warning tape and plastic fence are not acceptable alternatives.

- D. The permittee shall designate an employee responsible for the installation, maintenance and removal of barricades and warning signs, as required by the approved traffic control plan.
- 1) Barricades shall not be placed on sidewalks, pedestrians or bike paths, or dedicated bike lanes unless said pathways are permitted to be closed.
 - 2) Barricades, including supports, shall be moved outside the clear zone when not in use.
 - 3) The city will inspect barricading for compliance with approved traffic control plans as it deems necessary.
 - 4) Barricades and warning signs shall be removed from the right-of-way promptly at the completion of the work.
- E. All flaggers shall be trained and certified by a training agency normally engaged in the business of flagger training. Flaggers must show certification cards on request. Approved safety wear is required.
- F. The permittee shall be responsible for the utility location service, surface (asphalt, concrete, other) cut, excavation, backfill, compaction, surface replacement, testing, any necessary remedial work, and materials incorporated in the work.
- G. Indemnification, hold harmless, insurance and bond.
- 1) Indemnification and hold harmless.
 - i. Applicant agrees to protect, defend, indemnify, and hold harmless the city, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) resulting from death or bodily injury to any person or damage or destruction to a third party or third parties to the extent caused by any negligent act and/or omission of the applicant, its officers, employees, agents, volunteers and/or subcontractors, arising out of or relating to the issuance of a permit to applicant pursuant to Chapter 8.72 YMC or the work done by applicant or its subcontractors after receiving the permit, and/or the performance of work done pursuant to a contract with the city.

- ii. Nothing contained in this section or this contract shall be construed to create a liability or a right of indemnification in any third party.

2) Insurance.

i. General Requirements.

- a) The applicant shall obtain the insurance described in this section from insurers approved by the State Insurance Commissioner pursuant to RCW Title 48. The insurance must be provided by an insurer with a rating of A-: VII or higher in the A.M. Best's Key Rating Guide, which is licensed to do business in the state of Washington (or issued as a surplus line by a Washington surplus lines broker). The city reserves the right to approve or reject the insurance provided, based on the insurer (including financial condition), terms and coverage, the certificate of insurance, and/or endorsements.
- b) The applicant shall keep this insurance in force during the term of the affected work and for thirty days after the physical completion date, unless otherwise indicated (see subsection (c) below).
- c) If any insurance policy is written on a claims-made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this permit. The policy shall state that coverage is claims-made, and state the retroactive date. Claims-made form coverage shall be maintained by the applicant for a minimum of thirty-six months following the final completion or earlier termination of this permit, and the applicant shall annually provide the city with proof of renewal. If renewal of the claims-made form of coverage becomes unavailable, or economically prohibitive, the applicant shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the city to assure financial responsibility for liability for services performed.
- d) The applicant's and all subcontractors' insurance coverage shall be primary and noncontributory insurance as respects the city's insurance, self-insurance, or insurance pool coverage.
- e) The applicant shall provide the city and all additional insured's with written notice of any policy cancellation, within two business days of their receipt of such notice.
- f) Upon request, the applicant shall forward to the city a full and certified copy of the insurance certificate.
- g) The applicant shall not begin work under the permit until the required insurance has been obtained and approved by the city.
- h) Failure on the part of the applicant to maintain the insurance as required shall constitute a material breach of permit, upon which the

city may, after giving five business days' notice to the applicant to correct the breach, immediately terminate the permit.

- i) All costs for insurance shall be the responsibility of the applicant.
- ii. Additional Insured. All insurance policies, with the exception of workers' compensation, shall name the following listed entities as additional insured(s):
 - a) The city and its elected and appointed officials, officers, employees, agents and volunteers.
 - b) The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the applicant, whether primary, excess, contingent or otherwise, irrespective of whether such limits maintained by the applicant are greater than those required by this permit, and irrespective of whether the certificate of insurance provided by the applicant pursuant to subsections iv and v of this section describes limits lower than those maintained by the applicant.
- iii. Subcontractors. Applicant shall ensure that each subcontractor of every tier obtains and maintains at a minimum the insurance coverages listed in subsection v of this section. Upon request of the city, the applicant shall provide evidence of such insurance.
- iv. Evidence of Insurance. The required certificates of insurance in subsection v of this section shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this contract or permit. The policy shall name the city, its elected and appointed officials, officers, employees, agents and volunteers as additional insured's, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the city prior written notice. A copy of the additional insured endorsement will be included with the certificate. The insurance shall be with an insurance company or companies rated A-: VII or higher in Best's Guide and admitted in the state of Washington (or issued as a surplus line by a Washington surplus lines broker).
- v. Coverages and Limits.
 - a) Insurance.
 - a. At all times during performance of the services, applicant shall secure and maintain in effect insurance to protect the city from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this contract or permit. Applicant shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The city reserves the right to require higher limits should it deem it necessary in the best interest of the public.

b. Commercial General Liability Insurance. Before this contract or permit is fully executed by the parties, applicant shall provide the city with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total minimum liability limit of one million dollars per occurrence combined single limit bodily injury and property damage, and two million dollars general aggregate. The aggregate limit will apply "per job" or "per project." The policy will include Washington stop gap (employer's liability) coverage.

b) Commercial Automobile Liability Insurance.

a. If the applicant owns any vehicles, before this contract or permit is fully executed by the parties, applicant shall provide the city with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total minimum liability limit of one million dollars per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "any auto" and be shown on the certificate.

b. If the applicant does not own any vehicles, only "non-owned and hired automobile liability" will be required and may be added to the commercial liability coverage at the same limits as required in that subsection above entitled "Commercial General Liability Insurance."

c) Workers' Compensation. The applicant shall comply with workers' compensation coverage as required by the industrial insurance laws of the state of Washington.

3) Bond.

- i. The applicant shall provide a minimum of \$10,000 bond to assure successful completion of the permitted work. The city may use this bond to complete unfinished work or to correct any damage to existing infrastructure that is caused by the permittee.
- ii. The bond may be written for a single event, a specific duration or it may be evergreen.
- iii. The city reserves the right to request additional bonding should it be determined that the amount of the work or risk exceeds the capacity of the bond.
- iv. If the bond is for a single event, the bond shall be returned to the permittee upon successful completion of the work, as determined by the City.
- v. This requirement is not in addition or instead of the bonding/insurance requirements for a city capital improvement project.

- H. Roads less than five years old can be cut, but will cost 150% of restoration fee with no PCI discount.
- I. The permittee shall notify the City upon completion of the work.
- J. The city will provide any necessary inspections, during normal business hours, at the applicant's expense. Should the permittee request inspections outside normal business hours, or should additional inspections be necessary to ensure public safety, the permittee shall pay for all additional inspection costs, including overtime costs.
- K. Except as otherwise expressly provided herein, all costs of complying with this chapter shall be borne by the applicant/permittee.
- L. Upon receipt of a complete excavation permit application package, the City shall determine and set forth all requirements, approve or disapprove the application, and, if approved, sign and return it to the applicant with a permit number.
 - 1) Each permit will state the estimated start and completion date of the permitted work.
 - i. 1-30 days (\$100) - Permit
 - ii. 30 additional days (\$100) – Permit extension
 - 2) The City may grant permit extensions if requested by the permittee.
 - i. The permittee must request the permit extension at least 24 hours prior to the stated completion date of the permit.
 - ii. Additional fees required by the requested extension must be paid prior to the issuance of the extension.
 - 3) The City may modify the permit if circumstances or conditions appearing after the work is started make it impossible, dangerous or excessively inconvenient to the travelling public for the permittee to comply with the requirements of the permit.
 - 4) No person in violation of any requirement of this chapter shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected.
 - i. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity.

8.72.050 Execution of work.

A. Work hours.

- 1) The permittee is encouraged to perform the work outside of normal commute times, however, the permittee may make its case to the City for when the work needs to be done.
 - i. Alternate hours, including nights or weekends, may be required for operations that unduly disrupt traffic flows or represent potential safety hazards.

- B. A copy of the approved excavation permit shall be kept at the work site all times while such work is in progress.
- C. Permittee shall conform to any public notification requirements included in the permit, contract documents, or approved plans.
- D. All persons performing work shall take reasonable precautions not to damage or destroy existing facilities.
- E. Excavation requirements are referenced in the city's design standards, as posted on the Department of Utilities and Engineering webpage and office.

1) Restoration.

- i. Any disturbance of pavement (including damage caused by dumpsters or construction drop boxes), sidewalk, driveways, landscaping, striping or other marking, traffic loops or other devices, or any other feature shall be restored, repaired or replaced to City standards or to the condition existing prior to the disturbance, as modified by the requirements herein, if no restoration standard exists.
 - a) Destructive cuts for utility locates shall be as small as possible and shall be restored with flo-fill or low PSI concrete as approved by the director.
- ii. Replacement of roadway in lieu of restoration fee, may be requested by the permittee and is permissible if agreed to by the City.
- iii. Work areas, including adjacent areas that were cleared/grubbed or damaged, shall be stabilized and reseeded within 14 calendar days, weather permitting and seasonally adjusted, after the permit completion date.
- iv. All excavations within the right-of-way shall be properly backfilled and shall require a two (2) year warranty.
- v. Sidewalks, curbs, gutters or combination curbs and gutters shall be removed to nearest joint. All concrete used to replace curbs and gutters shall obtain a minimum compression strength of 3,000 p.s.i. at 28 days. Curbs and gutters shall be replaced to conform to the same shape, size and continuous gradient as existing curbs and gutters.
- vi. After backfilling is completed, and prior to repaving the cut, the contractor or permittee shall remove all loose paving material and trim the edges of the excavation at the street surface.
- vii. Roads and sidewalks shall be restored to a safe, passable condition prior to the work area being opened for public use.

- a) Temporary surfaces may be in place for no more than 72 hours unless weather or other mitigating circumstances are present.
 - i. The City's approval, with conditions and allowable duration, is required to leave temporary surface in place for longer than 72 hours.
 - ii. Failure to comply with the City's conditions will constitute a violation under this chapter.
 - iii. Maintenance of temporary surface will require a separate encroachment permit if not completed as part of the original work.
 - iv. If the temporary surface is not maintained in a safe and acceptable manner, and the permittee does not respond or is not able to respond in a timely manner to maintain the temporary surface as required by the city, the city may cause the work to be done.
 - 1. The cost thereof, including any inspection costs and administrative overhead incurred by the city, shall be assessed against the permittee.

2) Repair of failed surface over excavation.

- i. Should the pavement or sidewalk surface over any excavation sink or break within two years after the excavation has been completed the permittee shall, upon written notice from the City, immediately repair the installation or backfill and have the pavement restored as specified by the City, within such time period as may be specified by the City.
 - a) If the permittee does not respond or is not able to respond in a timely manner as required by the City, the City may cause the work to be done.
 - b) The cost thereof, including any inspection costs and administrative overhead incurred by the city, shall be assessed against the permittee.

F. Maintenance. The permittee shall maintain the work site in a clean and orderly manner.

G. Failure to complete work. If any part of the work referred to in this chapter is not completed within the time set forth in the permit, the City may provide written notice to the person performing the work to complete the work within forty-eight (48) hours thereafter.

- i. If the work is not completed within this time period, the city may cause the work to be performed at the expense of the applicant, including such work as

restoring the work area to a safe and passable condition until the work can be completed.

8.72.060 Review of Ordinance

This ordinance will be reviewed and revised as necessary, at least annually, by the City.

8.72.070 Fees.

- A. All applicants and permittees subject to this chapter shall pay permit fees and be subject to penalty fees if they violate the requirements of this chapter, except as provided below.
- 1) City projects or crews that are funded out of the general fund may be exempt from paying permit fees, depending on the original source of the project funding, but must comply with the remainder of this chapter.
 - 2) City projects or crews that are funded from Fund 142, Arterial Streets Fund, may be exempt from paying restoration fees, depending on the original source of the project funding, but must comply with the remainder of this chapter.
 - 3) Roads that the City plans to resurface or reconstruct within the following 18 months are exempt from the resurfacing fee. Notice shall be provided by December 1 of each calendar year.
 - 4) Restoration fee area shall be calculated in square feet, as follows:
 - i. \$4.05/square foot of trench area, including an additional 3' zone of influence on each side of the trench.
 - ii. Roads more than five (5) years old shall be adjusted by the road Pavement Condition Index (PCI), represented in decimal form, to compensate for the existing condition of the road when cut.
 - *Example: the restoration fee of a road with a PCI of 40 would be discounted by 60%*
 - iii. Roads less than five (5) years old will cost 150% of restoration fee except in the case of emergency excavation they will be charged only 100% of the restoration fee. Roads less than 5 years old, regardless of the reason for the cut will not be adjusted by the PCI.
 - 5) Revenues collected for restoration fee shall be deposited in the street reconstruction account.
 - 6) The following fees shall apply to right-of-way use permits:
 - i. Base administration fee = \$100.00 (renewable monthly)
 - ii. Inspection fee - \$60.00/hour with a one hour minimum.
 - ii. Penalty fees – Failure to comply with this chapter: \$500/violation/day.

8.72.080 Violations – Civil Penalties – Appeals.

A. General – Authority of City.

Whenever the City finds probable cause to believe violation of any of the provisions of this chapter exists, the City shall notify the person responsible for the alleged violation in writing and shall order the necessary corrections to be made. If such violation is not corrected within the period of time established by the City, the City may invoke the remedies set forth in this section and/or any other remedy available under state law or city code. The provisions in this section are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against any person violating the provisions of this chapter, together with any other action available under state law or city code.

B. Procedure – Notification of Violation – Effect of Violation – Appeals.

The City shall notify any person found to be in violation with this chapter of the scope of violation, the provisions violated, the date of violation (if known), and the required correction.

(1) Said notice of violation and correction shall be in writing and may be hand-delivered, faxed or e-mailed to the person or persons responsible for the violation. The notice shall advise such person(s): (a) that failure to correct the violation within the time specified will subject the violator(s) to imposition of a civil penalty fee up to \$500 per violation for each day the violation remains uncorrected; (b) that all violations shall be corrected and all assessed penalties paid prior to issuance of another right-of-way use permit to such persons(s); (c) that the city reserves the right to invoke any other remedy available under state law and city code, including but not limited to, filing of criminal charges pursuant to subsection C of this section; and (d) appeal rights available to the person or persons receiving the notice of violation and correction as set forth in subsection (4) below.

(2) Should that person fail to correct the violation within the period of time directed, the director is authorized to assess against the person or persons causing such violation a civil penalty fee up to \$500 per violation for each day the violation remains uncorrected. Written notice of the assessed penalty fee shall be hand-delivered, faxed or e-mailed to each person determined to be responsible for such violation.

(3) All violations shall be corrected and all penalties assessed must be paid prior to the city's issuance of another right-of-way use permit to such person.

(4) Appeal of administrative decision. Any person aggrieved by a decision of the administrator denying a permit, revoking a permit, imposing any condition on a permit not authorized by this chapter, or issuance of a notice of violation and correction under this chapter, shall have the right to appeal to the legislative body in accordance with the procedure set forth in YMC 15.16.040 and 15.16.050. Decisions of the legislative body may similarly be appealed to the Yakima County superior court in accordance with the process and procedure set forth in YMC 15.16.060.