

ORDINANCE NO. 2022-05

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,
AMENDING CHAPTER 12.08 OF THE RICHLAND MUNICIPAL
CODE RELATED TO RIGHT-OF-WAY CONSTRUCTION.**

WHEREAS, the City has need, from time to time, to amend the Richland Municipal Code (RMC) to update standards and improve clarity; and

WHEREAS, Chapter 12.08 RMC related to Right-of-Way Construction establishes a process for issuing permits for construction in the City’s public rights-of-way; and

WHEREAS, the City issues permits for right-of-way construction that result in cutting and removing pavement from existing public streets; and

WHEREAS, cutting, removing, and patching pavement reduces the effective service life of the pavement; and

WHEREAS, the City requires permittees to restore damage caused by construction; and

WHEREAS, the City, as the owner and party responsible for pavement maintenance, has an interest in obtaining high quality pavement patches that minimize the impact to pavement service life; and

WHEREAS, the cities of Richland, Kennewick, Pasco, and West Richland have worked together to establish standards to mitigate damage caused by removing pavement on public streets; and

WHEREAS, the City’s best interests are served by adopting standards to protect the City’s investment in public infrastructure by preserving the driving surface of public streets.

NOW, THEREFORE, BE IT ORDAINED by the City of Richland as follows:

Section 1. Chapter 12.08 of the Richland Municipal Code, entitled Right-of-Way Construction, as first enacted by Ordinance No. 119, and last amended by Ordinance No. 28-20, is hereby amended as follows:

**Chapter 12.08
RIGHT-OF-WAY CONSTRUCTION**

Sections:

12.08.010 Definitions.

12.08.020 Construction permit required.

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12.08.010 Definitions.

For the purposes of this chapter the following terms, phrases and words shall have the meaning given herein:

“Applicant” is any person making written application to the director for a construction permit hereunder.

“City” is the city of Richland.

“City engineer” is a professional civil engineer licensed in the state of Washington who establishes the infrastructure improvement standards for the city. This is the same person as the public works director.

“Construction permit,” also known as a use permit or a right-of-way permit, is the authorization granted by the city for an applicant to work in a specified right-of-way or easement to conduct the agreed upon work.

“Construction work” is the excavation and other aboveground construction work permitted under a construction permit and required to be performed under this chapter.

“Director” means the public works director for the city of Richland or designated representative.

“Easement” means any city-held easement for access and public utilities.

“Improvement” is any public or private improvement, including the property of public utilities.

“Pavement condition index,” also known as PCI, is a numerical index between 0 and 100 used to indicate the condition of the pavement in a section of street. PCI is determined by the city.

“Permittee” is any person who has been granted and has in full force and effect a construction permit issued hereunder.

“Person” is any person, firm, corporation or service provider as defined under RMC Title 28.

“Public infrastructure” is any necessary construction, performed within the city right-of-way or on private property, to install city facilities, including streets, sidewalks, storm drainage, street lights,

sanitary sewers and/or water lines and necessary appurtenances, as identified within ~~city standards~~ [public works standards](#).

“Public works standards” means the city’s engineering, design, and construction standards and specifications governing the construction of public and private infrastructure improvements. The city’s engineering design standards include, but are not limited to documents establishing infrastructure standards as authorized by the director and published on the city’s web site.

“Right-of-way” or “public way” means all property in which the city has any form of ownership or title and which is held for public street or utility purposes, regardless of whether or not any street or utility exists thereon or whether it is used, improved or maintained for public use.

“Street” is any street, highway, sidewalk, alley, avenue or other public way, easement, or other public place in the city.

12.08.020 Construction permit required.

Except as provided in subsection (D) of this section, a construction permit is required of any person or entity who performs construction work within existing or proposed city rights-of-way, easements, or on city-owned infrastructure, including, but not limited to:

- A. Any attachments to city-owned utility poles that materially change the clearance, mechanical, structural or electrical characteristics of any joint pole installation;
- B. Dig up, break, excavate, tunnel, undermine or to make or cause to be made any excavation in, under or above any right-of-way for any purpose or to place, deposit or leave upon any right-of-way any earth or other excavated material obstructing or tending to interfere with the free use of the right-of-way; or
- C. Installation of any new city-owned infrastructure or private utilities. Construction work does not include routine maintenance, water, sewer or irrigation service repairs, new telecommunications, power, phone or cable service connection drops to customers, unless such maintenance, repairs or service connection drops are new pole attachments, disturb the other joint pole users, disturb the roadbed or other public infrastructure, or in any substantial manner obstruct the flow of traffic.
- D. Capital improvement projects in which the city executes a construction contract with a contractor are exempt from the right-of-way construction permit requirement.

Notwithstanding any other provision of this title, the city must act on a request for a construction permit by a service provider of telecommunicating services within 120 days of receipt of a completed application, unless the applicant consents to a different time period or the applicant has not obtained all other permits requested by the city.

12.08.030 Construction permit – Application.

No construction permit shall be issued unless a written application for the issuance of a construction permit is submitted to the director. The application shall be provided by the city. The

following additional material shall be required within the application:

A. Construction plans certified by a professional engineer registered in the state of Washington; and

B. A copy of the contractor's and all subcontractors' state licensing and bonding compliance, and current city of Richland business licenses; and

C. A certificate of insurance meeting the requirements of RMC 12.08.090.

12.08.040 Construction permit fees.

A permit fee shall be charged by the director for the review of permit applications and engineering plans and for issuance of a construction permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work.

The construction permit fee shall consist of one of the following components:

A. Single-Family Residential Improvements. A permit fee to cover administrative and inspection costs shall be \$150.00.

B. For Utility Trenching. A permit fee to cover administration and inspection costs shall be \$250.00.

C. For Public Infrastructure. The following fees shall apply to the permitting of infrastructure in support of commercial or industrial site development and for subdivisions, including short plats, long plats and binding site plans:

1. Plan Review Fee. The applicant shall pay a plan review fee as established by the director for the review of infrastructure engineering plans. The fee shall be based on a cost per page, and a distinct fee amount shall be established for subdivision projects and commercial/industrial site development projects based on the complexity and cost of the plan review process. The content and format of engineering plans shall conform to standards established by the director. The plan review fee shall apply each time a project is submitted for review. The director may, at the director's sole discretion, reduce fees for a project requiring three or more iterations of plan review on a finding that the city provided inaccurate or misleading requirements to the applicant.

2. Prior to the issuance of the construction permit, a permit fee to cover the administrative and inspection costs shall be paid in the amount of three percent of the estimated construction cost of city infrastructure. The fee shall be calculated using an infrastructure cost and permit cost estimating tool developed and maintained by the director. The cost estimating tool shall be updated regularly by the director to reflect the current local market for typical infrastructure construction costs. The permit fee for projects that include unique design elements not included in the city's cost estimating tool shall calculate a fee for the unique elements based on an engineer's cost estimate prepared and stamped by a licensed civil engineer and approved by the city engineer.

Large projects: The following provides a different fee level for certain projects. To qualify for the reduced fee described below the applicant must receive approval for the proposed project's scope

of work from the director prior to issuance of a construction permit. For public infrastructure being constructed beyond the boundaries of a preliminary plat or site plan, the estimated cost of construction for which exceeds \$1,000,000, the permit fee under this subsection shall be two percent of the estimated construction costs as determined by use of the city's cost estimating tool and/or the fee calculation for unique design elements described above.

D. For Commercial with Private Stormwater Facilities. A permit fee to cover the administration, plan review and inspection costs shall be \$250.00.

E. For City Pole Attachments. An application fee to cover the administrative and plan review costs shall be \$250.00. Prior to issuance of the construction permit, the applicant must identify, in writing, the professional engineer that will certify the construction of the pole attachments per RMC 14.31.030(A).

12.08.050 Notice required.

The permittee shall give to the director notice not less than 48 hours before any work under a construction permit is commenced and shall notify the director upon completion of the work. In the event of an unexpected repair or emergency, a permittee may commence work as required under the circumstances, provided the permittee obtains a construction permit within 48 hours after work is commenced. Unexpected repairs and emergency work shall comply with all other requirements of this title. [Ord. 28-01].

12.08.060 Construction standards.

All work within the city right-of-way shall be in accordance with ~~the adopted city standards~~ [public works standards](#) in effect at the time of the application for the construction permit.

12.08.065 Pavement cut requirements.

All construction work on paved streets resulting in cutting or excavation within the street shall be restored per public works standards and as required in this section.

A. For streets with a PCI equal to or greater than 75, or that have been resurfaced with a slurry seal, chip seal, cape seal or similar treatment less than one (1) inch thick within the calendar year in which the construction permit was issued, no cutting or excavation is permitted, except for the following situations and at the discretion of the director:

1. Emergencies that endanger life, property, or public health and safety.
2. Interruption of essential utility service.
3. Work mandated by city, state, or federal legislation.
4. New service to a specific location cannot be reasonably provided by another route or using trenchless technology methods.
5. Minor core drilling or potholing (maximum 8-inch bell hole) to locate utilities.

B. If construction work is authorized by the city for the reasons identified in subsections (1)-(5) above, pavement patches shall meet the following requirements:

1. Lateral cuts perpendicular to the flow of traffic shall be have the pavement removed and replaced a minimum of 25 feet wide, centered on the trench cut, to include the full width of each travel lane or shoulder disturbed by the cut or excavation. Removal shall be by grinding pavement a minimum of 1.75 inches deep, or by saw cutting and excavation. Paving shall be accomplished with a paving machine.

2. Longitudinal cuts parallel with the flow of traffic shall have the pavement removed and replaced to include the full width of each travel lane or shoulder disturbed by the cut or excavation. The minimum longitudinal patch length shall be 25 feet. Removal shall be by grinding pavement a minimum of 1.75 inches deep, or by saw cutting and excavation. Paving shall be accomplished with a paving machine.

3. For lateral patches less than 25 feet apart from edge-of-patch to edge-of-patch, work shall be incorporated into a single patch. For longitudinal patches, if the outside travel lane is patched, the adjacent paved shoulder shall also be replaced if less than four (4) feet of width remains.

4. All patches shall be at least as thick as the adjacent road section or shall meet the public works standards' minimum road section thickness for the classification of the street, whichever is thicker.

5. Minor core-drilled holes and potholes shall be backfilled with control density fill (CDF), or as approved by the director.

6. All patches shall have the perimeter joints of the patch crack-sealed.

7. Disturbed traffic markings and striping shall be restored with approved in-kind materials.

C. Streets with a PCI of less than 75 that have not been resurfaced with any pavement treatment within the calendar year in which the construction permit was issued may be cut or excavated if utility work cannot reasonably utilize another route or trenchless technology. If construction work is authorized by the city under this subsection, pavement patches shall meet the following requirements:

1. Lateral cuts perpendicular to the flow of traffic shall be have the pavement removed and replaced a minimum of six (6) feet wide, centered on the trench cut, to include one-half width or all of each travel lane disturbed by the cut (to prevent a joint in the wheel path). There shall be a minimum of one (1) foot of patch width beyond each side of the trench cut.

2. Longitudinal cuts parallel with the flow of traffic shall have the pavement removed and replaced to include one-half width or all of each travel lane disturbed by the cut or excavation (to prevent a joint in the wheel path). There shall be a minimum of one (1) foot of patch width beyond each side of the trench cut. Minimum length of the patch in a travel lane shall be six (6) feet.

3. For lateral patches less than 25 feet apart from edge-of-patch to edge-of-patch, work shall be incorporated into a single patch. For longitudinal patches, if the outside travel lane is patched, the adjacent paved shoulder shall also be replaced if less than four (4) feet of width remains.

4. All patches shall be at least as thick as the adjacent road section or shall meet the public works standards' minimum road section thickness for the classification of the street, whichever is thicker.

5. Minor core-drilled holes and potholes shall be backfilled with control density fill (CDF), or as approved by the director.

6. All patches shall have the perimeter joints of the patch crack-sealed.

7. Disturbed traffic markings and striping shall be restored with approved in-kind materials.

D. The completed surface of the pavement shall not vary more than one-fourth (1/4) inch from the lower edge of a ten-foot straightedge placed parallel with the flow of traffic.

E. The contractor shall be responsible for the continued performance of the patched asphalt to conform to this section and the public works standards for two (2) years after the permit is closed by the city's acceptance of the patch.

12.08.070 Damage to existing improvements.

All damage done to existing public or private improvements during the progress of the construction work shall be repaired by the permittee to an equal or better condition. Methods and materials for such repair shall conform with public works standards ~~adopted-city standards~~. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the director shall have the authority to cause said necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee and the permittee shall also be liable on his or its bond therefor.

12.08.080 City's right to restore right-of-way and easements.

If the permittee shall have failed to restore any city right-of-way or easement to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the right-of-way construction work covered by such permit or if the work of the permittee is defective and the defect is discovered within one year from the completion of the right-of-way construction work, the director, if he deems it advisable, shall have the right to do all work and things necessary to restore the right-of-way and/or easement and to complete the right-of-way construction work. The permittee shall be liable for general overhead and administrative expenses. The city shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply in payment of the amount due it any funds of the permittee deposited as herein provided and the city shall also enforce its rights under the permittee's surety bond, if any, provided pursuant to this chapter. No additional permits shall be granted until the invoice for city-performed work has been paid.

12.08.090 Insurance – Evidence.

A permittee, prior to the commencement of construction hereunder, shall furnish the director with

satisfactory evidence in writing that the permittee has in force during the performance of the construction work the following coverage:

A. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01. The coverage limits shall be a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident; and

B. Commercial general liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The commercial general liability insurance shall be endorsed to provide a per-project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The public entity shall be named as an additional insured under the contractor's commercial general liability insurance policy with respect to the work performed for the public entity using ISO Additional Insured Endorsement CG 20 10 10 01 and Additional Insured – Completed Operations Endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage. The coverage limits shall be no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products – completed operations aggregate limit; and

C. Worker's compensation coverage as required by the industrial insurance laws of the state of Washington.

Each policy shall name the city as an additional named insured for the job.

12.08.100 Insurance – Exception.

Any owner of real estate building or repairing or engaging another to build or repair a sidewalk abutting on his property shall not be required to provide evidence of public liability insurance, where no other work is involved. Insurance established under city right-of-way licenses, master permits or facilities leases may be substituted for the insurance required by RMC 12.08.090, provided the insurance coverage equals or exceeds that required by RMC 12.08.090.

12.08.110 Indemnification and hold harmless.

The permittee shall defend, indemnify and hold harmless the city, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising or issuing out of the granting of permits under this section, except as may be caused by the negligence or willful conduct on the part of the city of Richland.

12.08.120 Violations – Penalties.

Any person who has violated any provision of this chapter shall have committed a civil infraction subject to a civil penalty as set forth in RMC 10.02.050(E).

Provided, if the same violator has been found to have committed an infraction violation for the same or similar conduct two separate times, with the violations occurring at the same location and

involving the same or similar sections of the Richland Municipal Code or other similar codes, the third or subsequent violation shall constitute a misdemeanor, punishable as provided in RMC 1.30.010 for criminal offenses.

For any violation of a continuing nature, each day's violation shall be considered a separate offense and shall subject the offender to the above penalties for each offense.

12.08.130 Severability.

The invalidity of any section, subsection, provision, clause, or portion thereof, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener's errors/clerical errors, section numbering, references, or similar mistakes of form.

PASSED by the City Council of the City of Richland, Washington, at a regular meeting on the 1st day of March, 2022.


Michael Alvarez, Mayor

Attest:


Jennifer Rogers, City Clerk

Approved as to Form:


Heather Kintzley, City Attorney

First Reading: February 15, 2022

Second Reading: March 1, 2022

Date Published: March 6, 2022