

ORDINANCE NO. 02019-024

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING TITLE 21 OF THE YUMA CITY CODE, CHAPTER 210, BY ADDING A NEW SUBCHAPTER TITLED, "STREET PRESERVATION," WHICH PROVIDES FOR WORK WITHIN PUBLIC STREETS, EASEMENTS OR RIGHTS-OF-WAY, WITH A PENALTY FOR VIOLATIONS THEREOF

WHEREAS, City of Yuma (City) streets and rights-of-way are a valuable public assets acquired and maintained at taxpayer's expense; and,

WHEREAS, the City desires to minimize extraordinary expenses attributable to loss of useful life of City streets; and,

WHEREAS, pavement cuts in streets, easements and rights-of-way accelerate degradation of street surfaces and cause additional maintenance activities and costs; and,

WHEREAS, the establishment of pavement preservation guidelines, pavement restoration fees, inspection and maintenance fees, in addition to regular permit fees, will ensure that work in City streets is performed in accordance with approved City specifications and standards and that the City is compensated for the damage and early deterioration of City streets attributable to permitted work in City streets; and,

WHEREAS, a Street Preservation ordinance shifts the costs associated with implementing the permit and inspection service and additional maintenance to those persons or entities requesting the permit,

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Yuma, Arizona, as follows:

SECTION 1: Yuma City Code Title 21, Chapter 210 is amended to add a subchapter titled, "Street Preservation" as follows:

Street Preservation

§ 210-25 Applicability. The provisions of this subchapter provide authority to the City Engineering Department to: 1) prohibit the opening, cutting or excavation of any street or sidewalk without approval of the City Engineer; 2) establish permit, indemnity and bonding requirements for work within the City's easements or rights-of-way; 3) establish permit, inspection and surcharge fees for persons requesting to work within the public rights-of-way and easements by cutting the pavement and/or sidewalks.

§210-26 Authority of the City Engineering Department to prohibit the opening, cutting or excavation of any street or sidewalk without an approved permit.

- A. It shall be unlawful for any person to make, build, construct, install, cut, remove, excavate or replace any pavement, driveway, curb, gutter, sidewalk, pipes, and conduits within City easements and/or rights-of-way without an approved permit issued by the City Engineer or designee.

- B. Notwithstanding subsection (a) of this Section, repairs to any pavement, curb, gutter, driveway, pipes or conduits may be made by the original party constructing the improvements or their successors in interest in accordance with the original approved permit, subject to any necessary updated traffic control plans and permitting.
- C. Whenever a cut or excavation is necessary for the protection of public health and safety and must be performed outside the normal City working hours, applicants and/or owners shall obtain any required permits within three (3) working days of the commencement of the work.
- D. The pavement cut restrictions and associated fees in this ordinance shall not apply to the City or any contractor working on behalf of the City for any utility repair, maintenance, relocation or replacement.
- E. The City Engineer may authorize an exception or partial exception to the pavement cut restrictions in this ordinance under any one of the following conditions:
 - (1) A verifiable emergency exists that endangers life or property;
 - (2) There is an interruption of essential utility service;
 - (3) Utility or other service for buildings is required where no other feasible means of providing such service exists;
 - (4) Utility or construction work performed by or on behalf of the City; or
 - (5) A pavement cut is required by City, County, State or Federal regulation.

§210-27 Permit Requirements for work within the City's roads, easement or rights-of-way.

A. Permit Application

- (1) All applications to the City for a permit to open, cut or excavate in any street or sidewalk, easement or right-of-way shall be in writing on a form promulgated by the City and shall be accompanied by at least one copy of plans showing the location of the work to be accomplished with reference to street lines, utilities, buildings, curbs, sidewalks, trees, poles or other objects that might affect the work.

All Applications shall include a permit and plan review fee to cover the City's cost of plan review, inspection and issuing the permit. The permit fee shall be the amount set forth in Section 3 of this Ordinance entitled "Permit Fees and Pavement Cut Surcharge." No part of the permit and plan review fee shall be refundable.

B. Qualifications of Applicant

- (1) Applicants for permits may be either an owner or a contractor. If the improvement to be constructed under the permit is not to become the property of the City and if the applicant is someone other than the owner, the owner shall also sign the permit form indicating consent agreement to the conditions of the permit
- (2) It shall be unlawful to perform construction work in the public rights-of-way except as permitted in this section. The work under a permit issued by the City may be performed only by:
 - (a) Contractors Licensed by the State of Arizona to work in the public rights-of-way and easements for the type of work to be accomplished;
 - (b) Public Service Corporations and Telecommunication Licensees; or
 - (c) Governmental Agencies.

- C. Right to Repair Street Cuts. In the event that the applicant for a pavement cut has failed inspection for one or more pavement cuts within the preceding one-year period, in the determination of the City Engineer or his designee, the City may condition the issuance of any further permits to make a pavement cut upon the City repairing the pavement cut. In the event the City repairs the pavement cut, the City will charge the City's estimated repair fee and an administrative charge of ten percent (10%) of the estimated repair fee. In the event final construction cost is less or more than the estimated repair fee, the difference of the fee and the administrative charge will be refunded or invoiced for payment within 30 days by the applicant.
- D. Duty to Repair Street. It shall be the duty of every person working in the public right-of-way who causes any damage to the public street or other facility to repair the facility in accordance with City standards, specifications and guidelines, under a City permit, review and inspection, and in such manner that the street or facility is returned as nearly as practicable to its original condition and warranty the repair for a period not less than one (1) year from the date of final acceptance of the repair.
- E. Restoration. For those streets that have been subject to pavement maintenance in the last three (3) years, the applicant shall restore the pavement structural section with a matching pavement section, extending a minimum 12-inches beyond the trench cut edge in all directions. If at the one-year warranty inspection there are signs of reflective cracking or other failure at the repair, the applicant shall be required to apply a seal coat treatment consistent with current City standards on the half street where the repair was made to cover all cut lines for a distance 25 feet from each end of the pavement cut or the nearest curb line if less than 25 feet.
- F. Compliance with Standard Details and Specifications. All work done under permits granted by authority of this Ordinance shall be completed within the time set in the approved permit. All work shall be done in accordance with the official grades, specifications, standards and guidelines of the City.
- G. Liability of Applicants Repairing Street for Defective Repair
- (1) Any applicant or owner who fails, neglects or refuses to repair or maintain the repair to a public street or facility in the City's rights-of-way or easements as required by this Ordinance shall be given a written notice from the City Engineer or designee to repair the public street or facility. Such notice shall contain a brief statement of the violation and the name, address and telephone number of a City representative who may be contacted for further information. The notice shall further inform such persons that failure to comply with the notice within the stated time will cause the City to perform the work and that all charges, plus the ten percent (10%) administrative fee will be billed to the owner and applicant.
 - (2) When any persons to whom notice has been given, fails, neglects or refuses to repair or maintain the repair to a public street or facility by the date set for compliance within the notice, the City Engineer or designee shall repair or maintain the public street or facility and take such other action as necessary to abate the failure to repair or maintain the public street or facility within the time period set forth in the written notice to the permit holder. Owner and applicant shall jointly and severally be responsible to pay the City its entire cost, including design, engineering and incidentals, together with applicable overhead and administrative charges. The City Finance Department or designee shall bill the cost and administrative charges. If the owner or applicant fails to pay, the City Finance Department or designee may initiate collection proceedings as allowed by law and add to the billed amount collection costs and attorneys' fees plus applicable overhead and administrative charges.

- (3) The City Engineer or designee shall have the authority to determine the date of completion of the initial repair period and whether or not the repair has satisfactorily performed for a warranty period of one (1) year. In determining whether or not a repair has satisfactorily performed, the City Engineer or designee shall apply normal engineering practices for the type of street or facility in question and such other applicable specifications, standards and guidelines as adopted by the City.

§210-28 Financial Assurance, Bonding Requirements.

- A. The City shall require each applicant referred to in this Ordinance, before granting a permit, to deposit a financial assurance or post a surety bond equal to the cost of the work proposed in the application, as determined by the City Engineer or designee. The financial assurance or surety bond shall constitute a guarantee that the work shall be done in accordance with permit and City specifications, standards and guidelines. The applicant shall be given a receipt for the financial assurance.
- B. If a surety bond is posted, it shall be executed by the applicant as principal, with a corporation duly authorized to transact business in the State of Arizona. The bond shall be in favor of the City, shall be continuous in form and shall be conditioned that the total aggregate liability of surety for all claims. The bond shall be released upon satisfactory performance and acceptance of the work, or may be cancelled after the applicant has provided other security satisfactory to the City that will cover obligations that remain.
- C. If the City Engineer determines that the amount of financial assurance required is less than five hundred dollars, the City Engineer or designee may waive the requirement for financial assurance.
- D. The surety bond or financial assurance shall not be required where the other provisions of City Code also cover the improvements and cost of work proposed in the application.

§210-29 Indemnification Requirements. As a condition of issuance of a permit, applicant shall protect and hold harmless the City of Yuma, its agents, servants and employees from any and all liability for injuries to persons or property resulting from or caused by activities associated with the work described in the permit and upon City request, may require proof of insurance, naming the City of Yuma as additional insured during the term of the work.

§210-30 Permit Fees and Pavement Cut Surcharge.

- A. All applications shall include, in addition to the normal permit, a plan review and inspection fee, excavation fee and a pavement cut surcharge. The fees and surcharges provided for herein shall be in addition to, and will not be offset by any license and franchise fees, expenses and taxes and permit fees. Fees and surcharges will be per the following table:
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|--|----------|
| (1) Plan Review Fee: | \$100.00 |
| (2) Inspection Fee: | \$70.00 |
| (3) Excavation Fee: | \$100.00 |
| (4) Pavement Cut Surcharge: | |
| (a) Pavement less than 12 months old with: | |
| (i) Openings less than 9 square feet or | |

9 linear feet of trench:	\$1,000.00
(ii) Trenches over 9 feet long for every 50 linear feet or fraction thereof:	\$2,500.00
(b) Pavement 12 to 24 months old with:	
(i) Openings less than 9 square feet or 9 linear feet of trench:	\$750.00
(ii) Trenches over 9 feet long for every 50 linear feet or fraction thereof:	\$1,875.00
(c) Pavement 24 to 36 months old with:	
(i) Openings less than 9 square feet or 9 linear feet of trench:	\$500.00
(ii) Trenches over 9 feet long for every 50 linear feet or fraction thereof:	\$1250.00

- B. All Pavement Cut Surcharge fees collected shall be placed in the City's street fund, designated for street maintenance and shall be used to offset the cost of resurfacing City streets.

SECTION 2: Violations of this Ordinance are subject to the following penalties:

It shall be unlawful for any person, firm or corporation to violate, or cause the violation of, any provision of this ordinance. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a class 1 misdemeanor and shall be punished by a fine not to exceed \$1,000, or by imprisonment for not more than six months, or by both fine and imprisonment. Each separate day or part thereof during which any violation of this ordinance occurs or continues shall constitute a separate offense, and upon conviction thereof, shall be punishable as herein provided.

Adopted this _____ day of _____, 2019.

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney