

CHAPTER 3 Public Right-of-Way Construction

SECTION:

- 8-3-1: Definitions
- 8-3-2: Permit Required
- 8-3-3: Exceptions
- 8-3-4: Insurance
- 8-3-5: Application for Permit
- 8-3-6: Location Procedure
- 8-3-7: Completion of Work and Backfilling
- 8-3-8: Time to Complete Repairs
- 8-3-9: Maintenance and Safeguards
- 8-3-10: Warranty of Repairs
- 8-3-11: Repairs by City
- 8-3-12: Remedy for Noncompliance
- 8-3-13: No Duty
- 8-3-14: Costs of Removal

8-3-1: **DEFINITIONS.** For the purposes of this chapter, certain terms shall have the meanings ascribed below:

ACT: The Underground Facilities Damage Prevention Act as set forth in Idaho Code Section 55-2201, et seq.

CONSRUCTION: The construction, placement or laying of any asphalt or concrete pavement, sidewalk, driveway, curb, gutter, water line, sanitary sewer line; storm drain line, telephone line, conduit or facilities, electrical line, conduit or facilities, cable

TV line, conduit or facilities, gas line or facilities, or any other structure or facilities in any street, alley, easement or other public right of way of the City.

EXCAVATION: Any operation in which earth, rock or other material in the ground is moved or otherwise displaced by any means, including, but not limited to explosives.

EXCAVATOR: Any person who engages directly in excavation.

REPAIR: The improvement, alteration, modification or replacement of any asphalt or concrete pavement, sidewalk, driveway, curb, gutter, water line, sanitary sewer line, storm drain line, telephone line, conduit or facilities, electrical line, conduit or facilities, cable TV line, conduit or facilities, gas line or facilities, or any other structure or facilities in any street, alley, easement or other public right of way of the City.

UNDERGROUND FACILITY: Any item buried or placed below for use in connection with the storage or conveyance of water, unless being delivered primarily for irrigation, sewage, electronic, telephonic or telegraphic communications, cable television, electrical energy, petroleum products, gas, gaseous vapors, hazardous liquids or other substances, including, but not limited to pipes, sewers, conduits, cables, valves, lines, wires manholes, attachments and those parts of poles or anchors located below ground.

WORKING DAYS: All days except Saturdays, Sundays and legal holidays.

WORKING HOURS: The hours from eight o'clock (8:00) a.m. to five o'clock (5:00) p.m. of any working day.

8-3-2: **PERMIT REQUIRED.** No person shall engage in any construction, repair or excavation in any street, alley, easement or other public right of way within the City without first obtaining a permit from the City. No permit under this chapter shall be valid until or unless the notice provisions of Idaho Code Section 55-2201, et seq., have been complied with. The permit shall clearly define the area within which the permittee may do such construction, repair or excavation. A copy of the permit shall be kept on file with the City Engineer for a period of not less than five (5) years after its issuance. Any person engaging in any construction, repair, or excavation within any public right of way without a permit, or otherwise damaging a street, sidewalk, pavement, underground facility shall be liable for the actual costs of repair, whether such repair is completed by the City, another contractor, or a third party.

(Ord. 259-04-21, 4/20/2021).

8-3-3: **EXCEPTIONS.** Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, a permit shall not be required for the following excavations:

- (A) The tilling of soil to a depth of less than 15 inches for agricultural purposes;
- (B) For placement of highway guardrail posts, sign posts, delineator posts, culverts, electric poles, telephone poles and traffic control device supports in the same approximate location and depth of the replaced item within a public highway right of way.
- (C) For the placement of a private mailbox structure, provided such placement conforms to section 6-4-10 of this Code.

(Ord. 203-03-2016, 03/15/2016).

8-3-4: **INSURANCE.** No permit shall be issued pursuant to this chapter unless the applicant presents with the application, or has on file with the City Engineer, a certificate of insurance from an insurance company qualified to write insurance contracts within the State of Idaho, certifying that the applicant has a policy of public liability insurance in an amount of not less than five hundred thousand dollars (\$500,000) single limit liability for personal injury, death and property damage; provided, however, if the work to be done under the permit is limited to excavation in an easement situated entirely on private property or is for construction of a concrete sidewalk, driveway or curb and gutter within a street right of way, but parallel with and adjacent to private property, the amount of such insurance shall be not less than one hundred thousand dollars (\$100,000) single limit for personal injury, death and property damage. Said insurance policy shall contain a clause requiring that the City be given at least thirty (30) days' advance written notice in the event of expiration or anticipated cancellation. The permit shall be revoked at the time such insurance expires or is cancelled unless a certificate of comparable insurance is filed with the City Engineer prior to the time of cancellation or expiration of the original policy of insurance.

8-3-5: **APPLICATION FOR PERMIT.** Applications for construction, repair and excavation permits shall be made at the office of the City Engineer. The application shall state the applicant's name, business or home address, the applicant's City Contractor's license number (if any), telephone number, the location of the construction, repair or excavation, the date notification was given to all one number locater services or the owner of any underground public facility pursuant to the Act, and the nature of the work to be performed at the location specified. If the applicant demonstrates compliance with the provisions of this chapter and the construction, repair or excavation work complies with this Code and will not endanger public health, safety or welfare, the City shall issue the permit, provided the City may issue the permit subject to such conditions as are necessary to protect the public health, safety and welfare.

8-3-6: **LOCATION PROCEDURE.** If the permittee desires the City to locate any water main, sewer main or other utility line, the permittee shall give written or oral notice to the City Engineer or his designated representative not more than twenty-four (24) hours nor less than twenty-four (24) working hours prior to commencing construction, repair or excavation. If the permittee, after commencing work, shall cease construction, repair or excavation for more than one working day, then notice shall again be given to the City Engineer or his designated representative not more than twenty-four (24) hours nor less than two (2) working hours prior to the time when construction, repair or excavation shall again commence.

8-3-7: **COMPLETION OF WORK AND BACKFILLING.** All work shall be expeditiously performed and completed as soon as reasonably possible. Upon completion of construction or repair, the permittee shall promptly backfill any street, alley, easement or other public right of way in which permittee has made any excavation. Such backfilling shall be done in accordance with the City Standard Drawings and Engineering Specifications adopted by ordinance of the City.

8-3-8: **TIME TO COMPLETE REPAIRS.** Permanent asphalt repairs shall be completed by the permittee not later than three (3) days after the excavation has been backfilled, unless otherwise authorized by the City Engineer or his designated representative. If weather conditions prohibit permanent repairs, the City Engineer, or his designated representative, may authorize the use and installation of temporary cold patches. Such temporary cold patches shall be replaced by the permittee as soon as weather permits.

8-3-9: **MAINTENANCE AND SAFEGUARDS.** The permittee shall continuously maintain the construction, repair or excavation site in a safe condition and keep the site free from any condition that may cause risk of harm to any person or property at all times after the work has

commenced and until all work, including permanent patching, has been completed and accepted by the City. During such time, permittee also shall provide, install and continuously maintain proper safeguards, signs and barricades at the construction, repair or excavation site. Such signs and barricades shall conform to the requirements and standards set forth in the most recent edition of the Manual on Uniform Traffic Control Devices published by the U.S. Department of Transportation, Federal Highway Administration, or any other manual adopted by the Idaho Department of Law Enforcement pursuant to the provisions of Idaho Code Section 49-201.

8-3-10: **WARRANTY OF REPAIRS.** The permittee shall warrant to the City the adequacy and continued satisfactory condition and function of all backfill and permanent patches installed by permittee or by any agent or employee of permittee for a period of one year after the permanent patch has been accepted by the City Engineer. Such warranty shall extend only to any unsatisfactory condition or function caused by inferior design, workmanship and materials furnished by permittee or by any agent or employee of permittee.

8-3-11: **REPAIRS BY CITY.** If the permittee fails to install permanent patching within three (3) days after completion of backfill, or if the permittee fails to honor the warranty set forth in the preceding section after demand by the City, the City may complete the work and make such repairs. If such repairs are completed by the City, the City may charge the cost of the repairs to the permittee. The cost of repairs shall be based upon the actual charges and cost to the City of repairs at the time the repair was completed. If the permittee is charged with the City's costs of repairs, the permittee shall pay such cost within five (5) days after the City has given written notice to permittee of the cost.

8-3-12: **REMEDY FOR NONCOMPLIANCE.** If any permittee fails to perform any duty imposed by this chapter or if any permittee fails to pay cost the costs assessed pursuant the preceding section within the time provided therein, the City, at its option and upon prior written notice to permittee, may suspend or revoke any contractor's license issued by the City to the permittee, cancel or revoke all permits held by the permitted and refuse to issue to the permittee further permits for construction, repair or excavation in public rights of way or easements of the City.

8-3-13: **NO DUTY.** Nothing in this chapter shall be deemed or construed to impose any private duty or obligation upon the City to properly or accurately locate any utility line or facility or to ensue a result of the failure of any permittee to comply with the provisions hereof.

8-3-14: **COSTS OF REMOVAL.** If any private fence, pipe, pavement, structure, building, appurtenance, or other property encroaches upon or interferes with any public, governmental, or

utility property, right-of-way, easement, or other property interest, the property owner of the property and/or associated real property shall be liable for the actual costs of removing the encroaching or interfering property if:

- (A) Such removal is reasonably necessary to the public, governmental, or utility entity's exercise of its property, right-of-way, easement, or other property interest; and
- (B) The public, governmental, or utility entity provides written notice to the property owner at least 72 hours before removing the encroachment or interference, which notice must: (1) reference this Section, (2) state the date and time the removal is scheduled to take place, and (3) state that the property owner will be required to pay the actual costs of removing the encroaching or interfering property unless the property owner removes the property before the date and time stated in the notice.

(Ord. 243-07-20, 7/21/2020).