

Chapter 90 - STREETS AND SIDEWALKS⁽¹⁾

Footnotes:

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Charter reference— Authority of city to regulate use of streets and other public places, § 5; acquisition of property for streets, § 7; department of public works, ch. X; planning and zoning commission's duties as to streets, § 160; city exempt from liability, § 165; damage or injury from defect in street, etc., § 169.

State Law reference— Authority of city with respect to streets, Vernon's Ann. Civ. St. art. 1175(2)—(7), (9); right of eminent domain, V.T.C.A., Local Government Code § 251.001; destruction of property, V.T.C.A., Penal Code § 28.03 et seq.; general authority of home-rule municipalities concerning highways, streets and alleys, V.T.C.A., Transportation Code § 311.001 et seq.

ARTICLE I. - IN GENERAL

Sec. 90-1. - Cleaning of vehicles or equipment; discharge of water containing concrete or other building materials.

It shall be unlawful for any person to clean any truck or other vehicle, or any other equipment containing cement, concrete or other building material, upon any public street in the city, or to cast water containing any such materials into or upon any street, right-of-way, ditch, curb, sewer, culvert, gutter or drain or other public property in the city.

(Code 1982, § 28-1; Ord. No. 944, § 15, 2-24-1976)

Sec. 90-2. - Mixing concrete on paved street.

It shall be unlawful for any person to mix or cause the mixing of concrete on any paved street in the city, except on a platform, or in a box or other receptacle so constructed as to prevent such concrete from falling on the pavement.

(Code 1982, § 28-2; Ord. No. 944, § 14, 2-24-1976)

Sec. 90-3. - Defacing or destroying survey reference markers.

It shall be unlawful for any person to remove any permanent reference marker or any benchmark and control point marker belonging to the city.

(Code 1982, § 28-4; Ord. No. 944, § 18, 2-24-1976)

Sec. 90-4. - Removal of turf, gravel, paving material, etc.; obstruction or alteration of street, sidewalk, etc.

It shall be unlawful for any person to dig up, remove or carry away any turf, gravel, dirt, sand or paving material from any street or other public property in the city or to construct, alter, obstruct or destroy any street, alley, sidewalk, curb or gutter in the city, except under authority granted by the city council.

(Code 1982, § 28-5; Ord. No. 52, § 1, 9-10-1914; Ord. No. 944, § 16, 2-24-1976)

Sec. 90-5. - Display of permit information at excavation and construction sites.

At the time a permit is issued under this chapter, the city shall provide each permittee a suitable placard plainly written or printed in English letters at least one inch high with the following notice:

City of McKinney Permit No. _____ Expires _____ .

In the first blank space there shall be inserted the number of said permit and after the word "expires" shall be stated the date when said permit expires. It shall be the duty of any permittee hereunder to keep the placard posted in a conspicuous place at the site of the work. It shall be unlawful for any person to exhibit such placard at or about any excavation or construction not covered by such permit, or to misrepresent the number of the permit or the date of expiration of the permit.

(Code 1982, § 28-6; Ord. No. 944, § 11, 2-24-1976)

Sec. 90-6. - Removal of barricades, etc.

It shall be unlawful for any person or their agent to remove any guardrails or barricades where the same have been placed to guard excavations or to guard newly laid pavements, or partially laid pavements.

(Code 1982, § 28-7; Ord. No. 56, § 1, 10-13-1914)

Sec. 90-7. - City's right to restore surface.

If a permittee under this chapter shall have failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by his permit or shall otherwise have failed to complete the excavation work covered by such permit, the city, if it deems it advisable, shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and 25 percent of such cost in addition 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 enforce its rights under the permittee's surety bond provided pursuant to this chapter.

(Code 1982, § 28-8; Ord. No. 944, § 12, 2-24-1976)

Sec. 90-8. - Bond and liability insurance exemptions.

Property owners performing the construction as defined in sections 90-69 and 90-159 shall be exempt from the requirements of furnishing a bond and liability insurance providing the following conditions are met; all work shall be performed exclusively by the property owner or members of his immediate family; all work performed shall be adjacent to property owned by the person performing the work. The board of adjustment may, at its discretion, exempt other such persons from bonding and insurance requirements after such persons have presented facts which show that enforcement of sections 90-40 and 90-130 and division 3 of article II of this chapter and division 3 of article III of this chapter would cause undue hardship.

(Code 1982, § 28-9; Ord. No. 944, § 20, 2-24-1976)

Sec. 90-9. - Fee exemption for utility companies.

All utility companies which have a franchise with the city shall be exempt from all fees required under this chapter.

(Code 1982, § 28-10; Ord. No. 944, § 19, 2-24-1976)

Secs. 90-10—90-36. - Reserved.

ARTICLE II. - CONSTRUCTION AND REPAIR²¹

Footnotes:

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Charter reference— Duties of director of public works, § 74.

State Law reference— Street construction by city, Vernon's Ann. Civ. St. art. 1175(4).

DIVISION 1. - GENERALLY

Sec. 90-37. - Improvement fund—Created.

There is hereby created the street improvement revolving fund into which fund shall be paid all monies received by the city, both principal and interest, from paving certificates and assessments for street improvements. It is further provided that the city council shall, from time to time, as in its sole discretion it determines best, appropriate funds into the street improvement revolving fund from the city general fund.

(Code 1982, § 28-21; Ord. No. 569, § 1, 3-29-1962)

Sec. 90-38. - Same—Use.

The street improvement revolving fund shall be used only for the permanent improvement of streets in the city and shall be subject to appropriation by the city council by special appropriation ordinances only, and no funds shall ever be appropriated from the street improvement revolving fund by the general appropriation ordinance of the city.

(Code 1982, § 28-22; Ord. No. 569, § 2, 3-29-1962)

Sec. 90-39. - Specifications.

It shall be unlawful for any person to construct, reconstruct or repair any sidewalk, curb, curb and gutter, driveway, retaining wall or any other temporary or permanent structure within any street, alley or right-of-way of the city, except in strict compliance with the city specifications for construction, on file with the director of engineering.

(Code 1982, § 28-23; Ord. No. 944, § 10, 2-24-1976)

Sec. 90-40. - Liability insurance.

It shall be unlawful for any person, except as exempted in section 90-8, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the city without having first executed and delivered to the city a current policy of liability insurance in an amount determined by the city, and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the city harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work.

(Code 1982, § 28-24; Ord. No. 944, § 9, 2-24-1976)

Secs. 90-41—90-68. - Reserved.

DIVISION 2. - PERMIT

Sec. 90-69. - Required.

It shall be unlawful for any person to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the city without first obtaining a permit from the inspections division for such work.

(Code 1982, § 28-31; Ord. No. 944, § 6, 2-24-1976)

Sec. 90-70. - Plan.

Before a permit can be issued under this division, the applicant shall submit a plan showing the proposed location of construction and the scope of the work. The director of engineering shall determine if the proposed construction is of such a nature that it may adversely affect the public in any manner and if so the director of engineering may require a plan to be submitted that has been prepared by a registered professional engineer licensed to practice engineering in the state. Such plan shall bear the seal and signature of the engineer responsible for the design. The plan shall be approved prior to the issuance of a permit.

(Code 1982, § 28-32; Ord. No. 944, § 7, 2-24-1976)

Secs. 90-71—90-98. - Reserved.

DIVISION 3. - BOND

Sec. 90-99. - Required.

It shall be unlawful for any person, except as exempted in section 90-8, to construct, reconstruct or repair any sidewalk, curb or gutter or driveway in any street, alley, easement or right-of-way in the city without having first executed and delivered to the director of engineering a current approved corporate surety bond in an amount determined by the city, and such bond shall be conditioned as provided in this division.

(Code 1982, § 28-36; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-100. - Quality of work generally.

All work done by the principal in the construction, reconstruction or repair of any sidewalk, driveway, curb or curb and gutter shall be performed in a good and workmanlike manner and in faithful and strict compliance with all ordinances, rules and regulations approved by the city council governing the construction, reconstruction or repair of sidewalks, curbs, curbs and gutters and driveways.

(Code 1982, § 28-37; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-101. - Maintenance of work.

The principal in construction or repair under this division shall, without additional cost to the person for whom the work was done, maintain all sidewalks, driveways, curbs or curbs and gutters constructed,

reconstructed or repaired by the principal for a period of one year from the date of such work and within ten days after notice from the director of engineering that maintenance is necessary. The opinion of the director of engineering as to the necessity for maintenance at any time within said one year shall be conclusive.

(Code 1982, § 28-38; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-102. - Duration.

The bond provided for in this division shall be in force for a continuous period of one year after any sidewalk, driveway, curb or curb and gutter is constructed, reconstructed or repaired by the principal; one recovery shall not exhaust such bond, but such bond shall be a continuing obligation against the sureties thereon until the entire amount therein provided for shall have been exhausted.

(Code 1982, § 28-39; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-103. - Additional bond.

The principal in construction or repair under this division shall upon notice from the director of engineering post an additional bond in the amount of any decrease in the original bond by reason of recovery thereunder.

(Code 1982, § 28-40; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-104. - Action for damages.

The city may for itself, or for the use and benefit of any person injured or damaged by reason of any defective construction, reconstruction or repair of any sidewalk, curb or curb and gutter and driveways by the principal, maintain suit on the bond required in this division in any court of competent jurisdiction, or any such injured or damaged person may sue and recover thereunder in his own behalf.

(Code 1982, § 28-41; Ord. No. 944, § 8, 2-24-1976)

Sec. 90-105. - Increase by council.

The city council may increase the amount of a bond under this division of any person at any time such action is deemed necessary to protect the interests of the city.

(Code 1982, § 28-42; Ord. No. 944, § 8, 2-24-1976)

Secs. 90-106—90-123. - Reserved.

ARTICLE III. - EXCAVATIONS AND ALTERATIONS³¹

Footnotes:

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State Law reference— Stopping or parking vehicle near street excavation, Vernon's Ann. Civ. St. art. 6701d, § 95(a)(1)(F).

DIVISION 1. - GENERALLY

Sec. 90-124. - Specifications.

All construction under this article shall be done in accordance with the current city standards and specifications for construction and related appurtenance sheets, on file with the director of engineering.

(Code 1982, § 28-51; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-125. - Removal of spoil material on roadway.

Any spoil material on the traveled section of the roadway which creates a dust nuisance, in the opinion of the director of engineering, shall be removed.

(Code 1982, § 28-52; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-126. - Boring or tunneling under street when excavation impractical.

When, in the judgment of the director of engineering, it is impractical to excavate within a street, all pipelines, conduits or other crossings shall be bored, tunneled or drilled under the paved section, and, where the city deems it necessary, such crossings shall be encased in a manner approved by the city.

(Code 1982, § 28-53; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-127. - Safety requirements; barricades, etc.

All safety requirements and provisions for barricades, traffic cones, lights, flares, signs and flaggers shall be as directed by the city.

(Code 1982, § 28-54; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-128. - Street pads.

When any equipment is used on city streets which requires the use of stabilizing devices, such devices shall be equipped with street pads. The minimum size of the street pads shall be determined by the director of engineering.

(Code 1982, § 28-55; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-129. - Inspections.

The director of engineering shall cause to be made such inspections as are necessary to ensure compliance with the provisions of this article.

(Code 1982, § 28-56; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-130. - Liability insurance.

It shall be unlawful for any person, except as exempted in section 90-8, to excavate or fill or to construct, install, alter or maintain any pipe, conduit, cable or any other facility within any street, alley or

right-of-way in the city without having first executed and delivered to the city a current policy of liability insurance in an amount determined by the city, and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the city harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work.

(Code 1982, § 28-57; Ord. No. 944, § 4, 2-24-1976)

Secs. 90-131—90-158. - Reserved.

DIVISION 2. - PERMIT

Sec. 90-159. - Required.

It shall be unlawful for any person to excavate or fill or to construct, install, alter or maintain any pipe, conduit, cable or any other facility within any street, alley, easement or right-of-way of the city without first obtaining a permit from the city, except as provided in the following section for emergencies.

(Code 1982, § 28-66; Ord. No. 944, § 1, 2-24-1976)

Sec. 90-160. - Emergencies.

For emergency repairs to any existing facility at night or on weekends and holidays, a permit under this division shall be applied for during the next business day following such emergency repair. Unless a major alteration is necessitated by the repairs, no plan will be required with the permit application.

(Code 1982, § 28-67; Ord. No. 944, § 5, 2-24-1976)

Sec. 90-161. - Plan.

Before a permit can be issued under this division, the applicant shall submit a plan showing the proposed location of the excavation or fill and the final location of all pipe, conduit or other facilities located within the street, alley or right-of-way. The director of engineering shall determine if the proposed construction is of such a nature that it may adversely affect the public in any manner, and if so the director of engineering may require that a plan be submitted that has been prepared by a registered professional engineer licensed to practice engineering in the state. Such plan shall bear the seal and signature of the engineer responsible for the design. The plan shall be approved prior to the issuance of a permit.

(Code 1982, § 28-68; Ord. No. 944, § 2, 2-24-1976)

Sec. 90-162. - Pavement cut permit fee.

A fee as determined from time to time by city council shall be paid before the initiation of any project to excavate or fill or to construct, alter or maintain any pipe, cable or conduit or any other facility within any street, alley, easement or right-of-way of the city, except as provided in the following section for emergencies.

(Code 1982, § 28-69; Ord. No. 2002-09-095, § 4, 9-17-2002; Ord. No. 2008-08-078, 8-19-2008)

Secs. 90-163—90-192. - Reserved.

DIVISION 3. - BOND

Sec. 90-193. - Required.

It shall be unlawful for any person, except as exempted in section 90-8, to excavate or fill or to construct, install, alter or maintain any pipe, conduit, cable or any other facility within any street, alley or right-of-way in the city without having first executed and delivered to the city a current corporate surety bond approved by the city attorney in a sum as determined from time to time by city council, such amount to be determined by the director of engineering, and such bond shall be conditioned as provided in this division.

(Code 1982, § 28-76; Ord. No. 944, § 3, 2-24-1976; Ord. No. 2008-08-078, 8-19-2008)

Sec. 90-194. - Quality of work generally.

All work done by the principal in the excavation or filling or in the construction, installation, alteration or maintenance of any pipe, conduit, cable or any other facility shall be performed in a good and workmanlike manner and in faithful and strict compliance with this chapter and with all other ordinances, rules and regulations of the city.

(Code 1982, § 28-77; Ord. No. 944, § 3, 2-24-1976)

Sec. 90-195. - Maintenance of work.

The principal in a project under this division shall, without additional cost to the person for whom the work was done, maintain all excavation or filling or the construction, installation or maintenance of any pipe, conduit, cable or any other facility constructed by the principal for a period of one year from the date of such work and within ten days after notice from the director of engineering that maintenance is necessary, and the opinion of the director of engineering as to the necessity for maintenance at any time within said one-year period shall be conclusive.

(Code 1982, § 28-78; Ord. No. 944, § 3, 2-24-1976)

Sec. 90-196. - Duration.

The bond provided for in this division shall be in force for a continuous period of one year after any excavation or filling or the construction, installation, alteration or maintenance of any pipe, conduit, cable or any other facility is constructed or repaired by the principal; one recovery shall not exhaust such bond, but such bond shall be a continuing obligation against the sureties thereon until the entire amount provided for shall have been exhausted.

(Code 1982, § 28-79; Ord. No. 944, § 3, 2-24-1976)

Sec. 90-197. - Additional bond.

The principal in a project under this division shall, upon notice from the director of engineering, post an additional bond in the amount of any decrease in the original bond by reason of recovery thereunder.

(Code 1982, § 28-80; Ord. No. 944, § 3, 2-24-1976)

Sec. 90-198. - Action for damages.

The city may, for itself, or for the use and benefit of any person injured or damaged by reason of any defective excavation, filling or defective construction, installation, alteration or maintenance of any pipe, conduit, cable or any other facility by the principal, maintain suit on said bond in any court of competent jurisdiction, or any such injured or damaged person may sue and recover thereunder in his own behalf.

(Code 1982, § 28-81; Ord. No. 944, § 3, 2-24-1976)

Secs. 90-199—90-219. - Reserved.

ARTICLE IV. - RIGHTS-OF-WAY USE AND MANAGEMENT⁴

Footnotes:

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Editor's note— Ord. No. 2008-08-080, § 2, adopted August 19, 2008, amended the Code by repealing former art. IV, §§ 90-220—90-226, 90-246—90-258, and 90-280—90-285, and adding a new art. IV. Former art. IV pertained to similar subject matter, and derived from the Code of 1982, §§ 28-111—28-117, 28-131—28-143, 28-151 and 28-153—28-156; and Ord. No. 2000-06-46, adopted June 20, 2000.

Sec. 90-220. - Title.

This article shall be known and cited as the "Rights-of-Way Use and Management Ordinance for the City of McKinney, Texas."

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-221. - Construction; governing law; and venue.

This article shall be construed under and in accordance with the laws of the state, the City Charter and City Code to the extent that such Charter and City Code are not in conflict with or in violation of the constitution and laws of the United States or the state. All obligations of the parties hereunder are performable in Collin County, Texas.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-222. - Scope.

This article shall be effective within the geographical limits of the city, including any areas subsequently annexed by the city.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-223. - Purposes and findings.

The purposes and findings of this article are as follows:

- (1) To protect the health, safety, and welfare of the public during the installation, operation, and maintenance of facilities by public service providers;
- (2) To govern and monitor the orderly use of the public right-of-way;

- (3) To provide for enforcement;
- (4) To provide a penalty for violation of any provisions of this article;
- (5) To provide for the registration of public service providers with facilities in the public right-of-way;
- (6) To provide insurance requirements for construction in the public right-of-way;
- (7) To provide permit requirements and procedures for construction in the public right-of-way;
- (8) To provide for maintenance and repair of the public right-of-way and of facilities located in the public right-of-way;
- (9) To provide for emergency activities in the public right-of-way;
- (10) To provide for coordination with public improvements; and
- (11) To regulate the installation of utility structures.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-224. - Definitions.

Whenever used in this article, the following terms, as well as their singular, plural, and possessive forms, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

Certificated telecommunications provider or *CTP* means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public Utility Commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by Texas Local Government Code Chapter 283 or "the Act."

City means the City of McKinney and the city's officers and employees.

Conform means to remove, alter, change, relocate, or adapt the underground or overhead facilities of a public service provider in the public right-of-way in advance of proposed public improvements financed by the city.

Construction means any of the following activities performed by any person within a public right-of-way:

- (1) Installation, excavation, laying, placement, repair, upgrade, maintenance, or relocation of facilities or other improvements, whether temporary or permanent;
- (2) Modification or alteration to any surface, subsurface, or aerial space within the public right-of-way; and
- (3) Performance, restoration, or repair of pavement cuts or excavations.

Director means the director of the city department of public works or the city department of engineering, or his or her respective designated representative.

Emergency activity means circumstances requiring immediate construction or operations by a public service provider to:

- (1) Prevent imminent damage or injury to the health or safety of any person or to the public right-of-way;
- (2) Restore service; or
- (3) Prevent the immediate loss of service.

Excavation means the removal of dirt, fill, or other material in the public right-of-way including, but not limited to, the methods of open trenching, boring, tunneling, or jacking.

Facilities includes, but is not limited to, the plant, equipment, buildings, structures, poles, wires, cables, lines, conduit, mains, pipes, vaults, and appurtenances of a public service provider located within the public right-of way and includes property owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public service provider.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

Network provider means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

Pavement cut means a cut made into the paved surface of the public right-of-way.

Permittee means the person applying for or receiving a permit to perform construction within the city's right-of-way under the terms and conditions of this article. The term includes any officer, director, partner, manager, superintendent, or other authorized person exercising control over or on behalf of the public service provider.

Person means a natural person, a corporation, a company, a public service provider, a public infrastructure contractor or its representative, a permittee, a governmental entity, a limited liability company, a joint venture, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

Public infrastructure contractor means a person hired or retained to do construction of facilities that will be maintained by the city. The term includes all contractors and subcontractors hired or retained to do construction for a public infrastructure contractor.

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the city has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

Public service provider means any energy delivery or transport company, telecommunications company, cable company, water utility, storm water utility, or wastewater utility. The city or any person working under contract with the city is not included in this definition. The term includes all contractors and subcontractors hired or retained to do construction for a public service provider.

Right-of-way construction and permitting procedures manual (attached to Ord. No. 2008-08-080) means the manual published by the city that contains engineering, technical, and other special criteria and standards established by the director for permitting and construction within the public right-of-way.

Spoils or excavated material means construction waste, construction supplies, or excavated dirt, fill, or other similar material that is stored or placed upon the surface of a public right-of-way.

Transport facility means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Utility structure means any above or below ground manhole, hand hole, vault, cabinet, or any other appurtenance other than a pole or device attached to a pole which is owned or used by a public service provider. The phrase does not include devices or structures used to control or direct pedestrian or vehicular traffic on an adjacent roadway.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless services to the public.

(Ord. No. 2008-08-080, § 2, 8-19-2008; Ord. No. 2017-09-085, § 2, 9-19-2017)

Sec. 90-225. - Authority.

- (a) The director is authorized to administer and enforce the provisions of this article, and the right-of-way construction and permitting procedures manual.
- (b) The director is authorized to enter a construction site for which a permit is granted under this article, or where necessary, upon private property adjacent to the construction site for purposes of inspection to determine compliance with the permit and this article.
- (c) The director is authorized to request from the public service provider plans of record that show its facilities existing in the public right-of-way as of the date of the request. The public service provider shall provide to the director plans of record within 30 days of the request, or alternate schedule as agreed to by both parties, to the extent such records are available. Public release of such records shall be in accordance with the Public Information Act, Chapter 552 of the Texas Government Code, as amended. If the release of the location of any utility, including water and sewer, or of plans of record submitted under this subsection would jeopardize public safety, the information shall be considered confidential. In addition, if plans of record submitted under this subsection include information expressly designated by the public service provider as a trade secret or other confidential information protected from disclosure by state law, the director may not disclose that information to the public without the consent of the public service provider, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a public service provider to designate all matters in its plans of record as confidential or as trade secrets.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-226. - Current franchise holders.

To the extent that any provision of this article might be inconsistent or in conflict with the specific provisions of any public service provider's current franchise or license, the franchise or license shall control with regard to the conflict. The franchisee or licensee shall comply with all other provisions of this article not inconsistent or in conflict with the current franchise or license.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-227. - Certificated telecommunication providers.

- (a) *Certificated telecommunications providers' authority required/nonexclusive use.* A CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use public right-of-way. The CTP's right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on the Act and all other state or federal laws.
- (b) *Transfer and notice.* A CTP shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the CTP uses the right-of-way.
- (c) *Exemption from fees.* CTPs are exempted from the following fees provided for in this article:
 - (1) Permit application fee, including expedited application fee and permit expiration fee;
 - (2) Additional permit fee;
 - (3) Saturday inspection fee; and
 - (4) Registration fee.

- (d) *Waiver bonds.* Unless determined otherwise by the right-of-way manager a CTP will be exempt from the bonding requirements of this chapter, however, in the event that the right-of-way manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the right-of-way manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the right-of-way manager requires a bond of a CTP and it has not been necessary for the city to seek performance under the bond, then a bond will no longer be required pursuant to this section.
- (e) *CTP indemnity.* A CTP shall indemnify the City as specified by Texas Local Government Code Section 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with Texas Local Government Code Section 283.057, as amended.

(Ord. No. 2017-09-085, § 4, 9-19-2017)

Editor's note— Ord. No. 2017-09-085, § 3, adopted September 19, 2017, renumbered § 90-227 as § 90-229.

Sec. 90-228. - Network providers.

- (a) *Network provider's authority required/nonexclusive use.* A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public right-of-way. The network provider's right to use and occupy the public right-of-way shall not be exclusive, and the city shall have the right to exercise its police powers and manage its public right-of-way, based on the Texas Local Gov't Code Chapter 284 and all other state or federal laws.
- (b) *Transfer and notice.* A network provider shall notify the right-of-way manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the right-of-way manager at all times during which the network uses the right-of-way.
- (c) *Network provider indemnity.* A network provider shall indemnify the city as specified by the Texas Local Government Code, as may be amended.
- (d) *Compliance with design manual.* A network provider shall comply with the City of McKinney, Texas, Public Right-of-Way Wireless Communication Facilities Design Manual, as amended, for the installation of network nodes and node support poles, as amended by the public works director.

(Ord. No. 2017-09-085, § 5, 9-19-2017)

Sec. 90-229. - Penalties, enforcement, and culpable mental state.

- (a) A person commits an offense if they:
 - (1) Perform, authorize, direct, or supervise construction without a valid permit issued under this article;
 - (2) Fail to comply with restrictions or requirements of a permit issued under this article;
 - (3) Fail to comply with a lawful order or regulation of the director issued pursuant to this article; or
 - (4) Violate any other provision of this article.

- (b) A person commits an offense if, in connection with the performance of construction in the public right-of-way they:
 - (1) Damage the public right-of-way beyond what is incidental or necessary to the performance of the construction;
 - (2) Damage public or private facilities within the public right-of-way;
 - (3) Fail to immediately clear debris associated with the construction from a public right-of-way after construction is completed; or
 - (4) Fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the director.
- (c) A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, authorized or directed. An offense under this article is punishable by a fine of \$1.00 to \$2,000.00.
- (d) This article may be enforced by a civil court action in accordance with state or federal law, in addition to any other remedies, civil or criminal, the city has for a violation of this article.
- (e) Prior to initiation of civil enforcement litigation, the public service provider, or any person, who has violated a provision of this article, shall be given the opportunity to correct the violation within a timeframe specified by the director. This subsection does not prohibit the director or the city from taking enforcement action as to past or present violations of this article, notwithstanding their correction.
- (f) If a public service provider or permittee is in violation of this article, no additional permits will be granted to the public service provider and/or the permittee until the offense has been corrected and any direct or indirect costs incurred by the city have been reimbursed.

(Ord. No. 2008-08-080, § 2, 8-19-2008; Ord. No. 2017-09-085, § 3, 9-19-2017)

Editor's note— See editor's note, § 90-227.

Sec. 90-230. - Reserved.

Sec. 90-231. - Registration requirements.

- (a) In order to protect the public health, safety, and welfare, all public service providers, and contractors, or subcontractors working on behalf of a public service provider with existing facilities within the public right-of-way must register with the city within 60 days of the effective date of this article. Any public service provider, and contractors, or subcontractors working on behalf of a public service provider who does not have existing facilities within the public right-of-way and who wishes to install new facilities must first register with the city. Registration shall be in accordance with the following requirements:
 - (1) Prior to registration, a public service provider must be either a certificated telecommunications provider under Chapter 283 of the Texas Local Government Code, as amended, or have a franchise or license agreement with the city.
 - (2) The registration must be on file with the right of way manager in the public works department, and made in the name of the public service provider that owns the facilities. The form must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the registration at the city's discretion.
 - (3) Registration must be renewed every five years. It is the public service provider's responsibility to keep track of the status of the registration. The city shall cease to issue permits until the registration is renewed. If the public service provider fails to renew registration within 180 days

of expiration, the facilities of the public service provider may be deemed to have been legally abandoned. The public service provider shall apply for registration renewal within 30 days of the date of the notice of abandonment. The city and any person working under contract with the city will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, subsequent to the 30-day period.

- (4) If information provided as part of the registration changes, the public service provider must inform the right of way manager in writing not more than 30 days after the date the change occurs.
- (5) The public service provider shall include the following with the registration:
 - a. The name, address, and telephone number(s) of the public service provider using the public right-of-way, including any business name, assumed name, or trade name the public service provider operates under, or has operated under within the past five years. In the case of a public infrastructure contractor, the name, address, and telephone number(s) of the public infrastructure contractor and the name, address, and telephone number(s) of the developer for whom the public infrastructure contractor is working.
 - b. The name(s), address(es), and telephone number(s) of any contractor(s) or subcontractor(s) who will be working in the public rights-of-way on behalf of the public service provider.
 - c. The name(s), and telephone number(s) of an emergency contact for the public service provider who shall be available 24 hours a day.
 - d. If the public service provider is a certificated telecommunications provider, a copy of the certification issued by the state public utility commission to provide local exchange telephone service.
 - e. A copy of any franchise or license issued by the city, or ordinance number of any franchise or license issued by the city, authorizing the public service provider to use the public right-of-way.
 - f. The name, mailing address, and emergency contact information of the officer or agent designated as the person authorized to receive service of process on behalf of the public service provider.
 - g. Must provide proof of insurance and appropriate bonds. The requirements for insurance and bonds are provided in sections 90-232 and 90-233 of this article.
- (b) *Registration shall be a prerequisite to issuance of a permit.* Registration shall be a prerequisite to issuance of a construction permit. Each public service provider, and contractors, or subcontractors working on behalf of a public service provider shall update and keep current its registration with the city at all times.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-232. - Insurance requirements.

- (a) Each public service provider shall at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state and acceptable to the city. Each public service provider shall, naming the city as an additional insured, secure and maintain the following liability insurance policies:
 - (1) General liability insurance with limits not less than:
 - a. \$1,000,000.00 primary; plus
 - b. \$5,000,000.00 umbrella or other securities as acceptable to the director of financial services or his designee;

- (2) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
- (b) The liability insurance policies required by this section shall be maintained by the public service provider throughout the term of this article and any such other period of time during which the public service provider is otherwise operating within public rights-of-way, or is engaged in the removal of its facilities. Each insurance policy shall contain the following endorsement:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after the receipt by the city, by registered mail, of a written notice addressed to the city manager of such intent to cancel or not to renew."
- (c) Within 60 days after receipt by city of said notice, and in no event later than 30 days prior to said cancellation, the public service provider shall obtain and furnish to city replacement insurance policies meeting the requirements of this section.
- (d) Unless otherwise precluded by law, the public service provider may satisfy one or more of the insurance requirements specified in this section through self-insurance. In no event shall a self-insurance proposal be approved absent the city's satisfaction that the public service provider is in a sound financial condition, which shall be evidenced by a letter of self-insurance to be provided to the city.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-233. - Bonding requirements.

- (a) *Bonds.* Each year, the public service provider shall, without cost to the city, provide performance, payment and maintenance bonds for the construction work anticipated to be performed in the public rights-of-way in the upcoming year. Each bond shall be in the amount of the estimated costs to restore the public rights-of-way for the work anticipated to be done in that year. The performance bond shall be conditioned upon the faithful performance of the work in the public rights-of-way. The payment bond shall be conditioned upon payment of all persons supplying labor or furnishing materials for said work. The maintenance bond shall guarantee the work for two years from the date of its completion. Each bond shall be executed by a surety company authorized to do business in the state and acceptable to the city.
- (b) *Request for annual waiver.* A public service provider that has assets in excess of \$20,000,000.00 may annually submit a written request for a waiver from the above-referenced bonding requirements.
- (1) The request shall set forth in detail the basis for the request including but not limited to:
- a. The public service provider's performance history in the city;
 - b. Documentation, in a form acceptable to the city, that demonstrates that the public service provider has assets in excess of \$20,000,000; and
 - c. Documentation, in a form acceptable to the city, that demonstrates that the public service provider has assets or reserves sufficient to cover the amount of the bonds.
- (2) Within 30 calendar days of receipt of a written request for a waiver, the director, with sole discretion, may grant a waiver to the bonding requirements for good cause. In making this decision, the director shall take into account among other things:
- a. The public service provider's record of performance in the city's rights-of-way;
 - b. The public service provider's record of compliance with this article;
 - c. A showing of financial responsibility by the public service provider to complete the proposed project; and
 - d. Any other factors deemed relevant to management of the city's rights-of-way.

- (3) A public service provider shall make an annual application for a waiver for work to be performed in the city's rights-of-way within that calendar year.
- (c) Each public service provider must comply with the bond requirements in this section, unless the public service provider's current franchise or license agreement with the city specifically addresses bond requirements, in which case the franchise or license agreement shall control.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-234. - Indemnity.

- (a) Public service provider shall indemnify and hold the municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the public service provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the public service provider, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality, its officers, employees, contractors, or subcontractors. If a public service provider and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the municipality and the public service provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- (b) Public service provider or city shall promptly advise the other in writing of any known claim or demand against the public service provider or the city related to or arising out of the public service provider activities in a public right-of-way.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-235. - Notice.

- (a) All notices to the city shall be in writing via certified mail, return receipt requested, to:

City		Manager
City	of	McKinney
222	N.	Street
McKinney,	Texas	Tennessee
Fax 972/542-0436		75069
- (b) Notices to a public service provider may be in writing via certified mail, return receipt requested, to the contact person and address provided by the public service provider to the city. Notice shall be deemed effective when mailed to the most recent address provided by the public service provider to the city.
- (c) Any change in the address, telephone number or fax number of public service provider or the city shall be furnished to the other within a reasonable time.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Secs. 90-236—90-240. - Reserved.

Sec. 90-241. - Construction permit.

- (a) After registration has been completed, a separate construction permit for each work location must be obtained from the public works department. Nothing in this article relieves a public service provider from obtaining a construction permit under this article to perform work in the public right-of-way.
- (b) A person shall not perform any construction, except for an emergency activity, within a public right-of-way without first obtaining a permit from the public works department prior to the start of construction. A person who undertakes any work outside of the public right-of-way that will cut, break, or otherwise damage the public right-of-way shall also obtain a permit.
- (c) A construction permit is not required under this section if the activity in the public right-of-way consists exclusively of:
 - (1) Routine maintenance or repair of facilities that does not involve any of the following: the cutting or breaking of pavement; the closure of a traffic lane for longer than 24 hours; boring; or excavation greater than 100 cubic feet;
 - (2) A connection of real property to a utility service on the same side of the public right-of-way, if the connection does not require a pavement cut in the right-of-way;
 - (3) The replacement of a single damaged pole within a ten-foot radius of the damaged pole; or
 - (4) Installation of aerial lines on existing poles, or installation of aerial lines on not more than ten new poles.
- (d) If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public right-of-way. An extension to a permit may be granted by the director only before the permit expires.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-242. - Construction permit procedures.

- (a) *Generally.* The following procedures and requirements govern the application for and issuance of a construction permit to perform construction within the public right-of-way:
 - (1) A permit application must be submitted by the permittee on behalf of the owner of the facility for which the permit is requested. The application for permit must be filled out completely and accurately. Any omissions or inaccuracies on the form may be cause for denial of the permit at the city's discretion.
 - (2) A permit application must be submitted to the director in accordance with the timeframes specified in the right-of-way construction and permitting procedures manual.
 - (3) The director shall state on the permit any reasonable additional restrictions or requirements determined necessary. These additional restrictions or requirements shall be considered a part of the permitted activity.
 - (4) A separate utility structure permit in accordance with this article shall be required for utility structures greater than 20 cubic feet proposed within the public right-of-way. This additional permit shall be considered a part of the construction permit.
 - (5) The permittee shall, as an express condition of the permit, comply in all respects with the requirements prescribed for the permitted activity in the right-of-way construction and permitting

procedures manual and with all other city ordinances and state or federal laws or regulations affecting the permitted activity.

- (b) *Construction plan.* The permit application on any project must include submittal of construction plans to the public works department. The plans must conform to the standards set forth in the right-of-way construction and permitting procedures manual. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.
- (c) *Storm water pollution prevention plan.* The permittee shall submit with the permit application two sets of a storm water pollution prevention plan to the public works department in cases where stream crossings are open cut. The permittee shall contain all sediment within the work area using erosion control measures and erosion-limiting construction techniques as specified in other city ordinances, including but not limited to the stormwater management ordinance contained in chapter 37 of the Code of Ordinances, and state or federal laws.
- (d) *Traffic control plan.* Any work that may impact traffic flow or result in lane closures in any street will require an approved site specific traffic control plan and the closures shall comply with the most current edition of *The Texas Manual on Uniform Traffic Control Devices*. The permittee shall submit a site specific traffic control plan, when applicable, to the public works department, and obtain approval prior to the lane closure.
- (e) *Work zone safety.* Any work that result in lane closures shall require that anyone working within or near the work site shall have completed a certified work zone safety course and is able to produce said certificate when prompted.
- (f) *Trench safety plan.* Any work requiring trench safety systems shall meet U.S. Occupational Safety and Health Administration standards.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-243. - Construction permit denial.

The director may refuse to issue a permit if:

- (1) The public service provider does not have a valid registration on file with the public works department;
- (2) The proposed construction will substantially interfere with vehicles or pedestrians and no procedures, or procedures inconsistent with this article, have been identified to minimize the interference;
- (3) The proposed construction will substantially interfere with another activity for which a permit has been issued, or will conflict or interfere with existing facilities already in the public right-of-way, or will conflict with proposed public facilities;
- (4) The proposed barricading, channelizing, signing, warning, or other traffic control procedures or equipment do not comply with the requirements of the most current edition of *The Texas Manual on Uniform Traffic Control Devices* ;
- (5) The proposed construction, incidental traffic control, or other permitted activity, or the manner in which it is to be performed, will violate a city ordinance or regulation or a state or federal statute or regulation; or
- (6) The permittee:
 - a. Fails to furnish all the information required by this article;
 - b. Knowingly or intentionally furnishes false or incorrect information;
 - c. Fails, except for good cause shown, to file the application on the approved form within the time limits prescribed by the right-of-way construction and permitting procedures manual;

- d. Has violated a provision of this article twice within the two-year period immediately preceding the date of application and has failed to cure the violation in accordance with this article; or
- e. Is not in compliance with applicable requirements of an existing permit issued under this article.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-244. - Construction permit revocation.

The director may suspend construction or revoke an issued permit on the same grounds on which a permit may be denied under section 90-243 of this article or if the permittee:

- (1) Commences or performs construction in violation of an applicable requirement of this article or the permit;
- (2) Creates or is likely to create a public health or safety hazard by performance of the construction in question;
- (3) Fails to comply with an order or regulation of the director applicable to the construction;
- (4) Fails to comply with the restrictions or requirements of other city ordinances or state or federal laws or regulations applicable to the construction; or
- (5) Commences or performs work without having prior knowledge and understanding of the applicable repair standards as specified in the right-of-way construction and permitting procedures manual.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-245. - Construction permit notice of suspension or revocation.

The director shall provide immediate notice of a suspension or revocation to the permittee. Notice of a suspension or revocation shall be provided within one business day of the verbal notice. Construction that is suspended may not resume until the director determines that the permittee has corrected the violation, noncompliance, or hazard that caused the suspension. A permit that has been revoked may be reinstated by the director if the director determines that:

- (1) The permittee has corrected the violation, noncompliance, or hazard that caused the revocation; and
- (2) The health or safety of the public is not jeopardized by reinstating the permit.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-246. - Construction standards.

- (a) *In general.* All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this article, other city ordinances, and current city standards and specifications (including the North Central Texas Council of Governments specifications, where applicable) relating to construction within the public right-of-way. The public service provider shall maintain the construction area in a manner that avoids health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way are permanently restored. Specific construction requirements are contained in the right-of-way construction and permitting procedures manual, as amended.

- (b) *Abandonment.* Facilities of a public service provider that are not conformed within the 120-day notice period or within the approved schedule will be deemed abandoned, and the city, and any person working under contract with the city, will not be liable for any damage to or destruction or removal of the facilities, or for any interruption or termination of service through the facilities, caused by the activity of the city, or its contractors, described in this article.
- (c) *Alteration to landscape material.* Any alteration to landscape material located within any public right-of-way requires prior notification to the adjacent property owner. No person shall cut, deface or in any way injure any landscape material located within a public median without prior approval from the parks and recreation department. Landscape material shall include, but is not limited to, canopy and ornamental trees, shrubs, ground cover, lawn, earthwork, and irrigation systems. Proper trimming of trees for overhead utility service is excluded from this subsection.
- (d) *Alternate access.* If a street or alley must be totally closed for any duration, the public service provider shall provide for reasonable alternative access to the adjacent properties at all times. If a sidewalk is to be closed or blocked for longer than one (1) day, the public service provider shall provide a reasonable alternative for pedestrian access. Sidewalks designated as school routes shall be open at all times, or a reasonable alternative shall be provided before work commences. Reasonable alternatives for sidewalks shall provide thirty-six (36) inches minimum surface width.
- (e) *Barricades and warning signs.* When making a pavement cut or excavation, or placing soils or excavated material in or along a public right-of-way, the public service provider shall place barricades, warning signs, and warning lights at the location sufficient to warn the public of the hazard of the open cut, excavation, spoils, or excavated material.
- (f) *Contractor's agent on site.* The contractor will maintain at all times on the job site a responsible person authorized to receive and relay instructions from the city.
- (g) *Coordination.* The public service provider has the exclusive responsibility to coordinate with other public service providers to protect all existing facilities in the public right-of-way in which the construction occurs. Acceptance of the plans and issuance of a permit does not constitute liability on the city's part for any damage to existing facilities.
- (h) *Coverage area.* All damage caused directly or indirectly to the public right-of-way surface or subsurface outside the construction area will be regarded as part of the construction and must be included in the total area repaired.
- (i) *Emergency activity.* Construction in the public right-of-way may commence prior to obtaining a permit if the public service provider determines a valid need to perform emergency activity. Immediate notice, including the reasons for the emergency activity, must be given to the director. The public service provider shall provide a written description of the emergency activity required not later than the second business day following commencement of the emergency activity, and application for a permit must be made as soon as possible.
- (j) *Emergency repair during construction.* If the director determines during construction that an emergency repair to a public right-of-way is necessary to correct a situation that is hazardous to the public, the director shall immediately notify the public service provider. If the public service provider does not commence the emergency repair within 24 hours, the director may, (with sole discretion) cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the city for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The public service provider shall maintain the emergency repair until the public service provider completes construction and final repairs.
- (k) *Emergency repair for existing facility.* If the director determines that a problem with a public service provider's existing facility in a public right-of-way requires an emergency repair to correct a situation that is hazardous to the public, the director shall immediately notify the public service provider. If the public service provider does not commence the emergency repair within 24 hours, the director may, with sole discretion, cause performance of such emergency repair work as is necessary to correct the hazardous situation. The public service provider shall reimburse the city for the actual direct and indirect cost of the work necessary to correct the hazardous situation. The public service provider

shall maintain the emergency repair until the public service provider completes construction and final repairs.

- (l) *Excavated materials.* The public service provider and any person responsible for construction shall protect the public right-of-way surface, and all existing facilities and improvements both above and below ground from excavated materials, equipment operations, and other construction activities. Particular attention must be paid to ensure that no excavated material or contamination of any type is allowed to enter or remain in a water or wastewater main or access structure, drainage facility, or natural drainage feature.
- (m) *Excavation safety.* On construction projects in which excavation will exceed a depth of five feet, the public service provider must have detailed plans and specifications for excavation safety systems. The term "excavation" includes trenches, structural or any construction that has earthen excavation subject to collapse. The excavation safety plan shall be designed in conformance with state law and Occupational Safety and Health Administration (OSHA) standards and regulations.
- (n) *Locate extent of right-of-way.* The public service provider has the exclusive responsibility to locate the extent of the public right-of-way. Acceptance of the plans and issuance of a permit does not constitute liability on the city's part for any facilities placed on private property. If facilities are placed on private property, it is the public service provider's responsibility to contact property owners and acquire easements.
- (o) *Location flags.* All locate flags shall be removed during the clean up progress by the public service provider or his/her contractor, or subcontractor at the completion of the work.
- (p) *Location of facilities.* All facilities shall be constructed, installed and located in accordance with the following terms and conditions:
 - (1) The public service provider shall use best efforts to install its facilities within its existing underground duct or conduit whenever excess capacity exists within such facility.
 - (2) If installing overhead facilities, the public service provider shall use best efforts to utilize existing utility poles to the extent surplus space is reasonably available. If the installation of a new pole or poles is necessary, the number, location and installation of same shall be as designated by city.
 - (3) Whenever any new or existing electric utilities, cable facilities, or telecommunications facilities are located or relocated underground within a public right-of-way, and the public service provider currently occupies overhead facilities in the same public right-of-way, the public service provider shall use best efforts to determine the feasibility of relocating its facilities underground concurrently.
 - (4) In determining whether any requirement under this section is unreasonable or unfeasible, the city manager or his designee shall consider, among other things, whether the requirement would subject the public service provider or other affected provider to an unreasonably increased risk of service interruption, to an unreasonably increased liability for accidents, to an unreasonable delay in construction or in the availability of its services, or to any other unreasonable technical or economic burden.
- (q) *Newly constructed or overlaid streets.*
 - (1) No pavement cuts in newly constructed, reconstructed, or resurfaced (greater than one inch) asphalt streets may be made for 36 months after the substantial completion of the street work. With sole discretion, the director may grant an exception based on the public service provider's written demonstration that the following criteria have been met:
 - a. Boring or jacking without disturbing the pavement is not practical due to physical characteristics of the street or alley or other utility conflicts;
 - b. Alternative utility alignments that do not involve excavating the street or alley are found to be impracticable; and

- c. The proposed excavation cannot reasonably be delayed after the three-year deferment period has lapsed.
- (2) *Exemptions for emergency operations.* Emergency maintenance operations shall be limited to circumstances involving the preservation of life, property, or the restoration of customer service. Public service provider with prior authorization from the director to perform emergency maintenance operations within the public rights-of-way shall be exempted from this section. Any public service provider commencing operations under this section shall submit detailed engineering plans, construction methods, and remediation plans no later than the next business day after initiating the emergency maintenance operation.
- (r) *Protection of trees and landscaping.* Each public service provider shall protect trees, landscape, and landscape features as required by the city and shall be responsible for supplemental maintenance and watering during construction and until restoration is complete. All protective measures shall be provided at the expense of the public service provider.
- (s) *Protection of property.* Each public service provider shall protect from injury any public rights-of-way and adjoining property by providing adequate support and taking other necessary measures. Public service provider shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the work and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out work in the public rights-of-way.
- (t) *Responsibilities.* A public service provider shall:
- (1) Properly construct, install, repair, relocate, and/or upgrade its existing facilities within the public right-of-way; and
 - (2) Repair or restore any damage to other facilities, the public right-of-way, or private property that occurs as a result of improper construction, installation, repair, relocation, or upgrade of the public service provider's facilities.
- (u) *Restoration of right-of-way.* A public service provider performing construction in the public right-of-way shall restore the public right-of-way to a condition that is equal to or better than the condition prescribed by the right-of-way construction and permitting procedures manual, as amended, and consistent with this article.
- (v) *Settling of backfill.* The director shall notify the public service provider in writing if the backfill on a permitted pavement cut or excavation settles at any time during the two-year maintenance period, causing subsidence in the pavement of one-half inch or more, vertically measured in any three-foot horizontal direction. Upon notification, the public service provider shall commence repair work within ten days and notify the director 24 hours in advance of commencement of the repair work. If the repair work is not commenced within ten days, the repair work may be performed by the city, and billed to the public service provider for compensation.
- (w) *Signage.* Three feet by three feet information signs stating the identity of the public service provider doing the work, telephone number a public service provider's identity and telephone number shall be placed at the location where construction is to occur 48 hours prior to the beginning of work in the right-of-way and shall continue to be posted at the location during the entire time the work is occurring. An informational sign will be posted on public right-of-way 100 feet before the construction location commences and each 100 feet thereafter, unless other posting arrangements are approved or required by the director.
- (x) *Time limit for open trenches, open pits or street cuts.* Permanent repairs of utility cuts, open trenches, open pits, or street cuts in existing streets, alleys or easements will be completed by the public service provider within 30 calendar days of beginning the work. If a public service provider does not believe that it will be able to meet this schedule, the public service provider must contact the director concerning an alternative schedule for the repairs. Any alternative schedule must be approved by the director prior to the beginning of the work. The public service provider will be responsible for any maintenance of the repair for a period of two years after the repair is complete.

Erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades must be in place before work begins.

(y) *Trenchless technology or boring.*

(1) The director may require the use of trenchless technology or boring based on the following criteria:

- a. It is in the best interest of the city;
- b. It is technically, commercially, and economically feasible; and
- c. It is not in violation of federal or state regulations or industry safety standards.

(2) All concrete driveways and streets shall be bored rather than open cut. The length of the bore must be sufficient for meeting the fully improved (ultimate) roadway width as specified in the thoroughfare development plan if sufficient right-of-way exists. If the concrete street is subject to reconstruction within two years, or for other good cause, the director may grant an exception upon request.

(3) All boring by a public service provider along or across any right-of-way which contains an existing storm sewer or sanitary sewer must be checked with a camera upon completion of the boring activity. The camera recording must sufficiently record the storm sewer or sanitary sewer, and must demonstrate no damage has occurred to the existing storm sewer or sanitary sewer as a result of the boring activity. The camera recording of the existing storm sewer or sanitary sewer must be completed the same day the public service provider completes the boring activity. A copy of the camera recording must be delivered to the city's street department within 24 hours of completion of the boring activity.

(z) *Two-year maintenance period.* All construction performed under any permit granted to a public service provider by the city under this article must be maintained to the satisfaction of the director for two years after substantial completion of construction or repair.

(aa) *Variances.* Any variance from the requirements of this article must be approved in advance by the director. The director may grant a variance only if an extreme hardship exists and the public health, safety, welfare, and convenience are not adversely affected by granting the variance. The director may not approve any variance that would give a competitive advantage to one public service provider over another public service provider providing the same or similar service. The director may not grant a variance from the indemnity requirements.

(bb) *Weekend work notification.* Except in an emergency, the public service provider shall notify the director 48 hours prior to any work requiring a permit proposed for a weekend.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-247. - Traffic control.

(a) No public service provider may close a public street without first obtaining a permit from the director. An application for a permit and a traffic control plan shall be submitted to the public works department no less than seven working days prior to the date of the proposed closure unless an emergency exists, in which case immediate notice must be given to the director. If a proposed construction project is to be made in the public right-of-way dedicated to the state, a city permit shall be required in addition to any and all permits required by the state.

(b) When it is necessary to obstruct traffic, an application for a permit and a traffic control plan shall be submitted to the public works department prior to starting construction. No permit will be issued until the traffic control plan is approved by the director. No public service provider shall block access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment

unless the public service provider provides the city with written verification of written notice delivered to the owner or occupant of the facility, equipment, or property at least 48 hours in advance.

- (c) When necessary for public safety, the public service provider shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the director.
- (d) Unless approved by the director, the public service provider shall not impede rush hour traffic on major thoroughfares during the morning or evening rush hours. No construction shall be performed nor shall any traffic lane be closed to traffic during the hours of 6:00 a.m. to 9:00 a.m. or 4:00 p.m. to 6:00 p.m., Monday through Friday, without the written approval of the director.
- (e) Lane closures on major thoroughfares will be limited to no more than two hours at any time outside of the morning and evening rush hours unless approved by the director.
- (f) Traffic control devices and barricades, as defined in *The Texas Manual on Uniform Traffic Control Devices*, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices and barricades are to be supplied by the public service provider. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.
- (g) *The Texas Manual on Uniform Traffic Control Devices*, or any successor publication thereto, shall be used as a guide for all maintenance and construction signing. The public service provider shall illustrate on the permit the warning and control devices proposed for use. At the direction of the director, such warning and control devices shall be modified.
- (h) The director may refuse to issue a permit if proposed construction activity will substantially interfere with vehicular traffic flow on major thoroughfares or is inconsistent with procedures of this article.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-248. - Plans of record.

- (a) Within 60 days of completion of each new permitted section of the public service provider's facilities, the public service provider shall supply the city with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business of the public service provider's business, to the extent they are prepared in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by city, and as allowed by law. Location information is not a trade secret or proprietary/confidential information, and this subsection may not be construed to authorize a public service provider to fail to provide location information. The city may, at its discretion, accept any reasonable alternative to "as built" plans of record which provides adequate information as to the location of facilities in the public rights-of-way.
- (b) The public service provider shall maintain maps of all of the public service provider's facilities located on city property or within the public rights-of-way and shall promptly locate its facilities at city's request.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Sec. 90-249. - Duty to provide information.

Within 20 days of a written request from city manager or his representatives, the public service provider shall furnish city with information sufficient to demonstrate that all access line fees due city in connection with the telecommunications services and facilities provided by the public service provider have been properly calculated and paid by the public service provider in accordance with V.T.C.A., Local Government Code § 283.055(j), or other records directly related to the public service provider's use of a public right-of-way and otherwise required by state law to be furnished to the city.

(Ord. No. 2008-08-080, § 2, 8-19-2008)

Secs. 90-250—90-303. - Reserved.

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