

CHAPTER 78

STREETS, SIDEWALKS AND OTHER PUBLIC PROPERTY*

ARTICLE I. IN GENERAL

Sec. 78-1 Thoroughfare and circulation design standards

Ordinances concerning the establishment of engineering design standards and construction design requirements in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

Sec. 78-2 Construction standards for paving and drainage facilities

Ordinances concerning general construction standards for paving and drainage facilities, in effect at the time of adoption of this Code, as amended, are incorporated by reference as if set forth herein.

Sec. 78-3 Exclusive control of streets

No entity, including other political subdivisions of the state, may extend a street into the city's corporate limits or connect a street to an existing city street without the prior written approval of the city council. This section shall not apply to any state or federal designated roadways or the city's construction of or improvements to the city's own roadways. This section also shall not apply to existing roads being rebuilt, expanded or realigned by another city with city financial participation as defined in a council approved interlocal agreement with that other city.

(a) Application to extend street or connect to existing city street. To be eligible for city council approval for the extension of a street into the city's corporate limits or connection to an existing city street (the "proposed street(s) and/or connection(s)") an application must first be filed with the director of engineering services on a form supplied by the city. The following shall be attached to or incorporated within the application:

- (1) A schematic showing the proposed street(s) and/or connection(s);
- (2) A schematic showing at least one alternative route for the proposed street(s) and/or connection(s);
- (3) A summary explaining why the proposed street(s) and/or connection(s) is needed and will benefit the city and the region;
- (4) A statement of the method by which the applicant shall:
 - a. Coordinate public and private investment in the proposed street(s) and/or connection(s);

- b. Minimize conflicts between land uses;
- c. Influence and manage the development of property that would foreseeably use the proposed street(s) and/or connection(s);
- d. Increase the benefits and cost-effectiveness of the public investments;
- e. Predict infrastructure and service needs in advance of demand; and
- f. Ensure that adequate community facilities and public infrastructure are available and located to best serve the needs of the city and the region.

(5) Complete engineering plans for the design and construction of the proposed street(s) and/or connection(s), in accordance with the requirements of all city ordinances;

(6) A study, which demonstrates, to city council's satisfaction, that the proposed street(s) and/or connection(s) will not adversely affect the health, safety and general welfare of the citizens of the city and will provide reasonable protection to properties within the city that will be impacted by the additional traffic projected to come into the city by virtue of the proposed street(s) and/or connection(s). This study shall consider and discuss the impact of the proposed street(s) and/or connection(s) at the date of application, through the construction phases, up until the ultimate build-out of both private and public development in the area;

(7) A traffic impact study proposed, prepared by a licensed professional engineer in the State of Texas, which shall determine the effect that the of street(s) and/or connection(s) into the city's transportation system will have on the city's existing and planned streets, including, but not limited to, the projected level of service that will occur on city streets and intersections, the mobility and access of traffic on the city streets, any bottleneck considerations, whether the projected traffic is consistent with adjacent land uses through which traffic will pass, and whether the projected traffic is consistent with the city's comprehensive plan. These impacts must be quantified. The traffic impact study shall also include an arterial and intersection analysis and must use the city's most current transportation computer model;

(8) Payment of the application fee, which shall be the same as the amount required for a planned development zoning change. The applicant shall also deposit with the city \$10,000.00 to be used for direct and indirect expenses in reviewing the application. Any of those deposited funds not expended for review shall be refunded to the applicant after city council has made a final decision relating to the application;

(9) Any other information that the director of engineering services deems necessary.

(b) Incomplete applications. Any application that does not provide all of the required information or documents as set forth in this section, shall be deemed incomplete and returned to the applicant. Rights under V.T.C.A., Local Government Code sec. 245 shall not vest for any incomplete application that is returned. If the applicant resubmits the

application with/without additional information, that resubmitted application shall be treated as a completely new application.

(c) Staff review. Within 30 business days of receiving a complete application and before the application may be placed on any planning and zoning commission or city council agenda for consideration, the director of engineering services or his/her designee shall hold a staff review conference with the applicant, where the city may ask for additional information from the applicant regarding the proposed street(s) or connection(s). Within 30 additional business days of receiving all of the additional information requested at the staff review conference, the director of engineering services shall place the application on an agenda for the next planning and zoning commission meeting. The director of engineering services shall also prepare a written report that advises planning and zoning commission and city council about any concerns he/she may have regarding the application and the proposed street(s) and/or connection(s).

(d) Public hearing. The planning and zoning commission and the city council shall consider the application in a public hearing after publishing notice as required for zoning cases. The planning and zoning commission will recommend and the city council will determine whether the proposed street(s) and/or connection(s) promote the general health, safety, and welfare of the citizens of the City of Frisco. In making this determination, the planning and zoning commission and the city council may consider all of the information incorporated in or attached to the application as well as the impact that the proposed street (s) and/or connection(s) would have on traffic, mobility, land uses, property values, the city's transportation system, the city's budget, the comprehensive plan, the thoroughfare plan, and any other information the planning and zoning commission and/or the city council deems relevant. City council may approve or reject the application as submitted. The city shall not approve a proposed street or connection until sufficient remedial measures have been provided for by the applicant to address the impacts that the proposed street(s) and/or connection(s) will have on the city's transportation system. Such remedial measures are listed in subsection (e)(3). Remedial measures shall not be required for city-sponsored or city-initiated projects relating to the construction or improvement of the city's own roads.

(e) Remedial payments and mitigation.

(1) Pursuant to the city's police powers existing under its [charter](#) and consistent with the Texas Constitution, Article XI, sec. 5, the applicant shall provide sufficient funds or contributions to offset the impact directly attributable and roughly proportional to the proposed street(s) and/or connection(s).

(2) The city may require the execution of a development agreement setting forth any and all remedial measures by the city.

(3) Remedial measures may include, but are not limited to:

a. The applicant's payment of funds necessary for the city to upgrade its existing city streets to handle the adverse impacts caused by the proposed street (s) and/or connection(s) on the city's transportation system. This may include capacity improvements to existing roadways located within the city; and

- b. The applicant's acquisition of right-of-way (at their own cost) on streets already existing in the city in order to accommodate the additional traffic generated by the proposed street(s) and/or connection(s); and
 - c. The applicant's installation (at their own cost) of traffic signals, signs, and other traffic control devices for movement and safety of traffic when such signals, signs, and traffic control devices are necessitated by and attributable to the proposed street(s) and/or connection(s).
- (4) The applicant shall be required to reimburse the city for any and all costs and expenses relating to required dedications, capacity improvements, roadway improvements such as turn lanes and signal timings, when such costs and expenses are necessitated by and attributable to the proposed street(s) and/or connection(s).
 - (5) The applicant shall be responsible for the construction of any extension, modification, and/or completion of city streets shown on the thoroughfare plan, when such extension, modification, and/or completion are necessitated by and attributable to the proposed street(s) and/or connection(s). If such construction is deemed impractical by the city, then the applicant shall provide sufficient escrow funds to the city in lieu of the construction, modification, and/or completion of such city streets.
- (f) Engineering and permitting after approval. If city council approves the application, no proposed street(s) and/or connection(s) may be constructed unless the applicant gets approval of their engineering plans by the director of engineering services. The applicant shall schedule a preconstruction meeting with the director of engineering services. The director of engineering services shall approve the engineering plans if:
- (1) The applicant submits to the city plans and schematics that show that the proposed street(s) and/or connection(s) shall be constructed in accordance with the general design standards of the city, and all other applicable codes and ordinances of the city, from the point of touching the existing roadway to the city limits or the end of the radius of the curb return outside the city, whichever is further; and
 - (2) The applicant submits to the city plans and schematics that show that the proposed street(s) and/or connection(s) will include the required paving, curbs, and gutters, for the entire length and width of the proposed street(s) and/or connection(s); and
 - (3) The applicant pays a \$1,500.00 inspection deposit to pay for the city's cost of inspecting the construction of the proposed street(s) and/or connection(s). Inspection of construction shall be at an hourly rate of \$50.00. The inspection deposit shall be used to pay for inspection of construction. Any funds not expended shall be refunded to the applicant after the street and/or connection is approved and accepted by the city. Any additional fees shall be the responsibility of the applicant. Streets and connections that will have to be maintained by the city upon completion shall be subject to the same inspection fees as defined in the subdivision ordinance; and
 - (4) The applicant submits to the city a good and sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the city, to indemnify the city against any repairs, which may become necessary to

any part of the construction work performed in connection with the proposed street (s) and connection(s), arising from defective workmanship or materials used therein. The maintenance bond shall cover a full period of two years from the date of final acceptance of the entire project relating to the proposed street(s) and/or connection (s). The bond shall cover 100 percent of the value of the work to be done in constructing the proposed street(s) and/or connection(s). Final acceptance by the city will be withheld until said maintenance bond is furnished to the city attorney for approval.

(g) Final approval rights. Upon completion of construction of the proposed street(s) and/or connection(s) (“the project”), the applicant shall submit as-built drawings to the city. The city shall then inspect the project, and shall have the right to reject the project if the construction fails to meet the requirements set forth in this section and any related development agreements adopted pursuant to this section. The city shall not unreasonably withhold approval and acceptance of the project.

(h) Penalty. Any person, firm, corporation or entity violating this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding \$500.00. Each continuing day’s violation under this section shall constitute a separate offense. The penal provisions imposed under this section shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

(Ordinance 08-08-77, sec. 2, 3, adopted 8/19/08)

Secs. 78-4–78-22 Reserved

ARTICLE II. RIGHT-OF-WAY MANAGEMENT*

Sec. 78-23 Administration

The city manager shall appoint a right-of-way manager, who is the principal city official responsible for the administration of the right-of-way, right-of-way permits, the regulation of same and ordinances related thereto. The right-of-way manager may delegate any or all of the duties hereunder. The right-of-way manager shall have the duties, responsibilities and authority as specified for the right-of-way manager stated herein. (Ordinance 02-05-65, sec. 3(1.1), adopted 5/7/02)

Sec. 78-24 Definitions

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word “shall” is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee charged by the city to recover its costs incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing,

processing, and verifying right-of-way permit applications; inspecting job sites and restoration improvements; determining the adequacy of the right-of-way restoration; revoking right-of-way permits and other costs the city may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means that area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means the following:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certified 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 as defined by V.T.C.A., Local Government Code ch. 283 or "the Act".

City means the City of Frisco, Texas and the city's officers and employees.

City project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the city, or its designee, in the public right-of-way or on any city utilities or city facilities.

City utilities means any water, sewer or drainage line owned and operated by the city or the North Texas Municipal Water District.

Collector street means any roadway or street classified on the city's comprehensive plan, as it exists or may be amended, as a collector.

Compaction refers to consolidating backfill material in a trench to prevent future settlement.

Comprehensive plan means the city's comprehensive plan, as it exists or may be amended.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the right-of-way. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the right-of-way.

Contractor means any public or private person, subcontractor or organization, other than the city.

Day means business day unless otherwise specified.

Department means the city department of public works or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent

an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the right-of-way and does not include landscaping activity unless the activity removes or disturbs the paved portion of the right-of-way.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, handholes and wires located under, on, or above the surface of the ground within the right-of-way, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the mayor and the city council of the City of Frisco, Texas.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday shall refer to days in which city offices are closed in observance of a holiday.

Local street means any roadway or street not classified on the city's comprehensive plan, as it exists or may be amended, as a highway/tollway, major thoroughfare, minor thoroughfare or collector.

Main line shall refer to lines other than service connections used to convey the right-of-way user's product.

Major project means any project, which includes 300 or more linear feet of excavation or any excavation under pavement.

Pavement shall refer to streets containing Portland cement, asphalt, brick or other rigid or semi-rigid material that covers the surface of a street and their underlying subgrade and base.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the city.

Public inconvenience penalty shall refer to a penalty assessed to the right-of-way user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means the Public Utility Commission of Texas.

Registration means the annual application process of the right-of-way user to use any portion of the right-of-way.

Registration certificate shall refer to the document provided by the city, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, tollway, lane, path, drainageway, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the city or over which the city exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the city, but shall specifically excludes private property.

Right-of-way manager means the right-of-way manager of the city, or his designee.

Right-of-way user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, construction, or installing, constructing, maintaining, or repairing facilities in the right-of-way, including, but not limited to, landowners, service providers, utilities and contractors.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, Internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection shall refer to the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the right-of-way that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface mounted markers refers to any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Thoroughfare means any roadway or street classified on the city's comprehensive plan, as it exists or may be amended, as a highway, tollway, major thoroughfare or minor thoroughfare.

TMUTCD means the Texas Manual on Uniform Traffic Control Devices, as it exists or may be amended.

Traffic control representative shall refer to the designated representative of the right-of-way user who is responsible for work zone safety and compliance with TMUTCD. The right-of-way user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Trench shall refer to excavation deeper than 24 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act shall refer to the V.T.C.A., Utilities Code sec. 251.001 et seq. as it exists or may be amended.

Utility means any privately or publicly owned entity which uses right-of-way to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility location in order to further identify the site.

(Ordinance 02-05-65, sec. 3(1.2), adopted 5/7/02; Ordinance 06-08-86, sec. 2, adopted 8/2/06; Ordinance 16-09-70, sec. 2, adopted 9/6/16)

Sec. 78-25 Utility coordination committee

Each utility shall name a utility coordinator who shall participate in the utility coordination committee. All right-of-way users with open permits shall send one representative to the monthly utility coordination committee meetings at the time and location established by the city. The city shall notify, by any means, the right-of-way users of the monthly meetings. (Ordinance 02-05-65, sec. 3 (1.3), adopted 5/7/02)

Sec. 78-26 Field utility coordination

(a) The right-of-way user shall notify the department at each of the following times during a project:

- (1) Forty-eight hours before the start of construction;
- (2) Upon completion of the initial backfill; and
- (3) Upon completion of the project.

(b) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. A person shall only use a water-based paint in the public right-of-way to mark the location of existing underground utilities. A person commits an offense if the

person makes a marking in the public right-of-way for the purpose of identifying the location of existing underground utility facilities and such marking remains visible longer than sixty (60) days after being applied.

(c) Compliance with the Texas Utilities Code, as amended, is required at all times.

(d) All barricades, plates, cones, traffic directional equipment and all other traffic control devices owned, leased or used by the right-of-way user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or right-of-way user or subcontractor, as applicable, at all times such equipment is used on or near the right-of-way. An exception to the marking requirement may be made in the sole discretion of the right-of-way manager in the event the traffic control equipment is not owned by the permittee or right-of-way user.

(e) Location of facilities.

(1) A permit does not relieve a right-of-way user of the responsibility to coordinate with other utilities and to protect existing facilities. A right-of-way user working in the right-of-way shall obtain line locates from all affected utilities or others with facilities in the right-of-way prior to any excavation. Use of the geographic information system or the plans of record does not satisfy this requirement.

(2) In performing location of facilities in the public rights-of-way in preparation for construction under a permit, the right-of-way user is responsible for compiling all information obtained regarding its or any other facilities in the public rights-of-way related to a particular permit and shall make that information available to the city in a written and verified format acceptable to the right-of-way manager.

(f) Protection of facilities.

(1) Before beginning excavation in any public right-of-way, a right-of-way user shall:

a. Make a request with the Texas One-Call System for facility locates and any possible conflicts in compliance with the Underground Facility Damage Prevention and Safety Act (chapter 251 of the Texas Utilities Code, as amended, and 16 Tex. Admin. Code chapter 18, as amended);

b. Make a request with the department for facility locates and any possible conflicts; and

c. Make inquiries of all utility companies, districts, other local government entities and all other agencies that might have facilities in the area of work to determine the location of such facilities and any possible conflicts.

(2) Facility locations shall be marked prior to commencing work. The right-of-way user shall support and protect all pipes, conduits, poles, wires or other apparatus that may be affected by the work from damage during construction or settlement of trenches subsequent to construction.

(3) It shall be unlawful for a right-of-way user to work in the public right-of-way without having a valid and unexpired line locate confirmation number issued by the department. Information provided by the department regarding facility locations shall be

valid for 14 business days or the expiration date that the department's assigned line locator indicates on the department-issued line locate request form, whichever period is greater.

(4) No facility may be placed within four feet (4') horizontally, of or within any distance above, an existing or proposed city facility without a city-approved encroachment agreement, unless otherwise approved by the director of the department.

(g) Work in the public right-of-way shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents.

(Ordinance 02-05-65, sec. 3(1.4), adopted 5/7/02; Ordinance 16-09-70, sec. 2, adopted 9/6/16)

Sec. 78-27 Maps and records of registrants

(a) Within 30 days of passage of this article, each right-of-way user shall provide the city an accurate map of their service area. The map shall be in electronic format overlaid over the North Central Texas Council of Government base digital map. In dual coverage areas, the city may request additional information to enable identification of right-of-way users.

(b) Each right-of-way user must maintain accurate maps and records of its facilities. The city's road network may be provided in digital format upon request. The right-of-way user is encouraged to maintain their system maps geo-referenced to the city's street network, which is on the North Central Texas Council of Government base digital map. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The right-of-way user will provide the city with digital information within 90 days of a request for maps from the city for any user with less than 50 miles of utilities within the city. All other right-of-way users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the city on an annual basis by January 1.

(c) If the maps and records submitted in response to any request by or requirement of the city include information expressly designated by the right-of-way user as a trade secret or other confidential information protected from disclosure by state law, the city and its agents, employees, or other representatives may not disclose that information to the public without the consent of the right-of-way user, 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 right-of-way user to designate all matters in its maps and records as confidential or as trade secrets.

(Ordinance 02-05-65, sec. 3(1.5), adopted 5/7/02)

Sec. 78-28 Notice

Notice for purposes of this article shall be made to the city via electronic message (e-mail), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the department or United States mail return receipt required. (Ordinance 02-05-65, sec. 3(1.6), adopted 5/7/02)

Sec. 78-29 Registration

(a) Nothing in this section relieves a person from obtaining a permit under this article to perform work in the right-of-way.

(b) In order to protect the public health, safety, and welfare, each right-of-way user must register with the right-of-way manager in accordance with the following requirements:

(1) The right-of-way user must apply for registration on a form furnished by the right-of-way manager; the application must be made in the name of the right-of-way user.

(2) The registrations of right-of-way users that are utilities shall expire on December 31st of each year. The registrations of all other right-of-way users shall expire one year from the date of registration. For utilities that fail to renew registration within 30 calendar days after the date the city sends the utility a notice of noncompliance, the utility's facilities will be deemed to have been legally abandoned.

(3) If information provided by the right-of-way user as part of the registration application changes, then the right-of-way user must inform the right-of-way manager, in writing, within 30 days of the change.

(4) Each right-of-way user shall submit the following to the right-of-way manager at the time it submits its registration application:

a. The complete name, mailing address and telephone number of the person making the application; if the applicant is a firm, corporation or business entity, the applicant must provide the name and private mailing address of a principal of the firm, corporation or business entity who is authorized to bind the firm, corporation or business entity in legal agreements. Each applicant must also provide the names of all employees authorized to obtain permits to work in the right-of-way;

b. The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the right-of-way user. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area;

c. The name and mailing address of the person(s) authorized to receive service of process on behalf of the right-of-way user;

d. The names and telephone numbers of at least two persons serving as emergency contacts for the right-of-way user who can be reached by telephone 24 hours a day, seven days a week. The telephone numbers should be accessible without the city having to pay long-distance telephone or toll charge;

e. Proof of existing insurance that complies with [article V](#) (indemnification, insurance, bonding and liability) of this chapter; and

f. Any other information deemed necessary by the right-of-way manager.

g. Each right-of-way user that is a utility also shall submit the following to the right-of-way manager at the time it submits its registration application:

i. The name of the utility using the right-of-way, including any business name, assumed name, or trade name the utility operates under or has operated under in the city within the past five years;

- ii. If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission;
- iii. The ordinance number of any franchise or license issued by the city that authorizes the utility to use the right-of-way; and
- iv. The name, address and telephone number of any contractor or subcontractor who will be working in the right-of-way on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the right-of-way by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.

(c) In extending the rights and privileges of such registration, the city makes no statement regarding the competency of those so registered, and no manner of license is proffered.

(d) No permit to perform work in the right-of-way shall be issued to any right-of-way user unless the right-of-way user holds a valid registration with the city under this article.

(e) No right-of-way user who obtains registration from the city under this article shall permit the use of such registration by any person, other than the right-of-way user's employees, for the purpose of doing any work within the right-of-way, nor shall the right-of-way user subcontract to any other person any work for which a registration is issued to such right-of-way user.

(Ordinance 02-05-65, sec. 3(1.17), adopted 5/7/02; Ordinance 16-09-70, sec. 2, adopted 9/6/16)

Sec. 78-30 Traffic handling training

The right-of-way user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic control representative. The representative is responsible for compliance with the TMUTCD and the traffic control plan (if required) at all work zone sites. The traffic control representative shall ensure employees on the job site have adequate training. (Ordinance 02-05-65, sec. 3(1.8), adopted 5/7/02)

Sec. 78-31 Reporting obligations

All right-of-way users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the city, state, or federal government, or railroad or pipeline company, including a description of the right-of-way user's intended use of the right-of-way, information sufficient to determine whether the right-of-way user is subject to franchising or licensing by the city, and information to determine whether the right-of-way user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the right-of-way user has applied for and received any permit or other approvals required by the FCC. Right-of-way user shall provide all such other information as may be reasonably required by the city to complete the registration statement. (Ordinance 02-05-65, sec. 3(1.9), adopted 5/7/02)

Sec. 78-32 Surface mounted markers

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible. (Ordinance 02-05-65, sec. 3(1.10), adopted 5/7/02)

Sec. 78-33 Relocation of facilities for city projects and public improvements

(a) In the exercise of governmental functions, the city has first priority over all uses of the right-of-way. The city reserves the right to, among other things, lay water, sewer, drainage, and other pipelines or cables and conduits, and to do underground and overhead work, and attachments, restructuring, or changes in street facilities in across, along, over, or under a public street, alley or right-of-way occupied by an agency or right-of-way user, and to change the curb, sidewalks, or the grade of streets.

(b) The right-of-way user must relocate its facilities, at its own expense and in accordance with [section 78-89](#), prior to the start of construction of a city project. Failure to comply with this provision shall subject the right-of-way user to the enforcement provisions contained herein.

(c) A permit will be required when making facility adjustments in preparation for city projects.

(Ordinance 02-05-65, sec. 3(1.11), adopted 5/7/02; Ordinance 06-08-86, sec. 3, adopted 8/2/06)

Sec. 78-34 Permit required

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate or close lanes on a thoroughfare or collector without first having made application and obtained a permit therefor except for as allowed by this section. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any right-of-way for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the right-of-way manager a permit in compliance with this article.

(1) Before issuing a permit, the right-of-way manager shall have been provided a written application, on a form furnished by the right-of-way manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with city specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text. 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.

(2) At the time the permit issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in [article IV](#).

(3) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the right-of-way manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.

(4) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with

facilities installed in any right-of-way to relocate the facilities, at no cost to the city, subject to state law, if applicable, in the event that relocation is required by the city to accommodate a proper governmental use of the right-of-way.

(5) Combinations of permits shall be permitted at the sole discretion of the right-of-way manager. Fees shall be assessed based on the excavations permitted.

(6) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.

(Ordinance 02-05-65, sec. 3(1.12), adopted 5/7/02)

Sec. 78-35 Exceptions to required permit

(a) The right-of-way manager reserves the right in his discretion to require a right-of-way permit on service connections. Unless otherwise required by the right-of-way manager, service connections do not require a permit if all of the following conditions are met:

(1) The service connection excavation shall not exceed four feet inside the right-of-way to property line;

(2) All excavation shall be in accordance with service connection drawings;

(3) The address for the service connection is on the city provided form, which is submitted to the right-of-way manager via e-mail. Work shall not begin until the electronic form is transmitted to the right-of-way manager;

(4) The excavation required is less than 24 inches in depth;

(5) The excavation is no wider than two inches or is hand dug; and

(6) The service connection does not require boring.

(b) Irrigation system installation does not require a permit if all of the following conditions are met:

(1) The work is performed with an existing valid permit issued by the city for the installation of irrigation;

(2) The excavation shall not exceed 12 inches in depth and no wider than a one inch;

(3) The address for the service connection is on the city provided form, which is submitted to the right-of-way manager via e-mail and is approved. All requests, which are not approved within 48 hours, are denied;

(4) Line locates from the city are requested.

(Ordinance 02-05-65, sec. 3(1.12.1), adopted 5/7/02)

Sec. 78-36 Permit application

(a) Application for a permit shall be addressed to the right-of-way manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or

excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavating, which will exceed five feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.

(b) A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new right-of-way permit.

(c) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The city will recognize only one point of contact.

(d) Permits will be issued or denied within five business days of the city receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The city may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city prior to the permit end date. Applicants are encouraged to request a pre-submission meeting for large projects.

(e) An expedited permit may be requested, and shall be issued or denied within two days of application upon a showing of good cause, as solely determined by the right-of-way manager.

(Ordinance 02-05-65, sec. 3(1.13), adopted 5/7/02)

Sec. 78-37 Issuance of permit

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the right-of-way manager, it shall be his duty to issue the permit, when the provisions of this article have been complied with.

(1) Upon receiving a written application for a permit and a plan prepared in accordance with the city specifications, the right-of-way manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Excepting only emergency excavations, at least one working day prior to the start of work, the applicant shall notify the right-of-way manager the date the work will commence when traffic control devices are necessary on a thoroughfare.

(2) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.

(3) Each permit shall state a time period for completion of all the work to be done hereunder. The right-of-way manager may in his sole discretion, grant extensions of time.

(4) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation is/are corrected or a plan for correction is approved by the right-of-way manager. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity.

(5) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the right-of-way user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

(Ordinance 02-05-65, sec. 3(1.14), adopted 5/7/02)

Sec. 78-38 Posting of signs

The right-of-way user and contractor (if used) shall be identified by three feet by three feet information signs on all work requiring a permit. The signs shall state the name and phone number of the right-of-way user and contractor (if used). The signs shall be placed in the right-of-way on each approach to the location where construction is occurring from the time of 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. (Ordinance 02-05-65, sec. 3(1.15), adopted 5/7/02)

Sec. 78-39 Excavation to be under supervision of the right-of-way manager

(a) Any right-of-way user engaged in making or backfilling any excavation in any right-of-way shall, at all times while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide of the same, when requested by any authorized city employee. At all times while the work is in progress, the right-of-way user shall also maintain, at the job location, a sign, barricade or other device bearing the right-of-way user's name.

(b) The right-of-way user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The right-of-way user shall determine the boundary of the right-of-way.

(c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of right-of-way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the city pursuant to the policy and regulatory powers of the city necessary to provide for public convenience. The right-of-way user shall not trespass upon private property. The right-of-way user shall determine the boundary between right-of-way and private property.

(d) The city reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the city, in, across, along, over or under any right-of-way or public place occupied by a right-of-way user and to change any curb or sidewalk or the grade of any street and to maintain all of the city's facilities. In allowing

such work to be performed by others, the city shall not be liable to a right-of-way user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a right-of-way user by such third party.

(e) All transmission and distribution structures, lines, equipment and facilities erected by a right-of-way user within the city shall be so located as to cause minimum interference with the proper use of the right-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article.

(f) If the city requires a right-of-way user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the city, to use, or to use with greater convenience, any right-of-way or public place, the right-of-way user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a right-of-way user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a right-of-way user's facilities; provided, however, that the city shall never be liable for such reimbursement.

(Ordinance 02-05-65, sec. 3(1.16), adopted 5/7/02)

Sec. 78-40 Registration certificate required; suspension or revocation of registration

(a) It is unlawful for any right-of-way user to perform construction in the right-of-way unless the right-of-way user is the holder of a valid registration under [section 78-29](#) (registration) of this article.

(b) The right-of-way manager is entitled to suspend or revoke, temporarily or permanently, a right-of-way user's privilege to work in the right-of-way on any of the following grounds: providing false or misleading information; failing to provide updated information to the right-of-way manager within 30 days of the date such information changes as required by [section 78-29\(b\)\(3\)](#) of this article; allowing another person, other than the right-of-way user's employees, to use the right-of-way user's registration for the purpose of doing any work within the right-of-way; subcontracting to any person any work for which a registration is issued to the right-of-way user; failing to maintain insurance that complies with [article V](#) (indemnification, insurance, bonding and liability) of this chapter; failing to make a request for or an inquiry regarding facilities located in compliance with [section 78-26](#) of this article and/or working in the public right-of-way without having a valid and unexpired line locate confirmation number issued by the department; or being convicted of, or acknowledging, three or more violations of this chapter 78 [article II] (right-of-way management) or any other ordinance of the city within a 12-month period.

(Ordinance 02-05-65, sec. 3(1.16.1), adopted 5/7/02; Ordinance 16-09-70, sec. 2, adopted 9/6/16)

Sec. 78-41 Hours of operation for nonemergency work

(a) Excavation and boring shall be conducted between the hours of 7:00 a.m. to 4:00 p.m. on Monday through Friday, except on holidays. No excavation or boring shall be performed on holidays.

(b) All other work requiring an inspection shall be done between the hours of 7:00 a.m. to 4:00 p.m. on Monday through Friday, except on holidays. No work shall be performed on holidays. A right-of-way user may work on Saturday subject to the approval of the right-of-way manager and a

notification no later than noon on Thursday before the Saturday in which the work is to be performed. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed.

(Ordinance 02-05-65, sec. 3(1.17), adopted 5/7/02)

Sec. 78-42 Denial of permit

A permit may be denied or suspended for any of the following reasons:

- (1) Failure to provide proof of a surety bond or liability insurance acceptable to the city or notice of termination of the same.
- (2) Failure to secure a contractor's license or other required license.
- (3) Failure to perform in accordance with the requirements of this article.
- (4) The excavation would be in a street and not otherwise permitted by this article.
- (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the right-of-way manager.
- (6) The proposed activity would violate any city ordinance or state or federal law, rule, regulation or statute.
- (7) The permit application contains false or misleading information.
- (8) The activity would cause a public health or safety hazard.
- (9) The right-of-way user is not authorized within the city.
- (10) The right-of-way user is in violation of this article relative to work in progress.
- (11) The right-of-way user has not compensated the city, or is not legally obligated to compensate the city by contract, by agreement or by law, for using the public property; or the right-of-way user has failed to timely make required payments.

(Ordinance 02-05-65, sec. 3(1.18), adopted 5/7/02; Ordinance 06-08-86, sec. 4, adopted 8/2/06)

Sec. 78-43 Appeal

A right-of-way user that (i) has been denied registration or a permit; (ii) has had its registration or a permit suspended or revoked; or (iii) believes that fees imposed are invalid, may appeal such denial, suspension, revocation or fee imposition as follows:

- (1) The right-of-way user shall file a written notice of appeal with the right-of-way manager within five business days of the date the decision was rendered or the action occurred. The notice must state the grounds for the appeal and, if applicable, the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The right-of-way manager

shall provide a written decision on the appeal within five business days. Failure to render a decision within five business days shall constitute a denial.

(2) If the right-of-way user's appeal to the right-of-way manager is denied, the right-of-way user may file a written notice of appeal to the director of public works within five business days of receipt of the right-of-way manager's written decision. The director of public works shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial.

(3) If the right-of-way user's appeal to the director of public works is denied, the right-of-way user may file a written notice of appeal to the office of the city manager within five business days of receipt of the director of public works' written decision. The city manager shall provide a written decision within five business days of receipt of an appeal in accordance with this section. Failure to render a decision within five business days shall constitute a denial. The city manager's decision shall be final.

(Ordinance 02-05-65, sec. 3(1.19), adopted 5/7/02; Ordinance 16-09-70, sec. 2, adopted 9/6/16)

Secs. 78-44–78-74 Reserved

ARTICLE III. TECHNICAL SPECIFICATIONS

Sec. 78-75 Lawful use of right-of-way

(a) The use of the right-of-way in any manner which violates federal, state, or local laws, or city codes, ordinances and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the city.

(b) The permittee shall dispose of all material removed from the right-of-way and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches.

(c) If a permittee excavates any contaminated, regulated or hazardous materials in the right-of-way, such permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the city, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the right-of-way, and within eight hours provide the aforementioned information to the city in writing. The permittee must consult with and receive written authorization from the city before undertaking any of the steps/actions set forth in this subsection.

(Ordinance 02-05-65, sec. 3(2.1), adopted 5/7/02)

Sec. 78-76 Compliance with safety regulations

The permittee and right-of-way user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry. (Ordinance 02-05-65, sec. 3(2.2), adopted 5/7/02)

Sec. 78-77 Conformance with the thoroughfare plan

A right-of-way user should consult the city's thoroughfare plan (TP) prior to the acquisition of any interest in real property in the city for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, right-of-way, thoroughfare, highway, or any proposed street, right-of-way, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All right-of-way users are charged at all times with constructive notice of the TP subsequent to the effective date of the ordinance from which this article is derived. The city shall, at a minimum, have no liability for the value of or loss by a right-of-way user of any improvements constructed in the area shown on the TP, except as provided herein. Typical locations of city facilities are depicted in Figure 1 of the thoroughfare plan. (Ordinance 02-05-65, sec. 3(2.3), adopted 5/7/02)

Sec. 78-78 Tree trimming and graffiti abatement

Permission is granted to a right-of-way user, subject to the requirements of the city's tree preservation article, as it exists or may be amended from time to time, to trim trees upon and overhanging the right-of-way, so as to prevent the branches of such trees from coming in contact with a right-of-way user's facilities. When so directed by the city, the tree trimming shall be done under the supervision and direction of the city. The city shall report damage or vandalism to the right-of-way user's facilities as soon as practicable after the city discovers or learns of such event. The right-of-way user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed seven days after the right-of-way user discovers or learns of any misuse, destruction, damage or vandalism to its facilities. (Ordinance 02-05-65, sec. 3(2.4), adopted 5/7/02)

Sec. 78-79 Employee communication

The right-of-way user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently. (Ordinance 02-05-65, sec. 3(2.5), adopted 5/7/02)

Sec. 78-80 Routing and spatial assignment

The city reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the right-of-way. The city reserves the right to reserve space for future utilities. (Ordinance 02-05-65, sec. 3(2.6), adopted 5/7/02)

Sec. 78-81 Commencement and completion

After obtaining the permit and prior to commencing the work, the permittee shall notify the right-of-way manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the right-of-way manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place. (Ordinance 02-05-65, sec. 3(2.7), adopted 5/7/02)

Sec. 78-82 Notification of affected property owners

Except in the case of an emergency, whenever excavation is required in the right-of-way adjacent to an occupied property, the right-of-way user shall notify the property owner of the activity through use of a door hanger, which shall include the following information:

- (1) Permit number;
- (2) Identify of the contractor and the right-of-way user, including a contact name and phone number by which more information regarding the project could be obtained and a 24-hour a day emergency phone number; and
- (3) The anticipated duration of the construction work.

(Ordinance 02-05-65, sec. 3(2.8), adopted 5/7/02)

Sec. 78-83 Safe conduct of work

Every permittee and right-of-way user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or right-of-way where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and nonhazardous manner. (Ordinance 02-05-65, sec. 3(2.9), adopted 5/7/02)

Sec. 78-84 Revocation or suspension of permit

The city reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other city ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (1) The violation of any provision of the permit.
- (2) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens.
- (3) Any material misrepresentation of any fact in the permit application.
- (4) The failure to meet insurance, surety bond or indemnification requirements.
- (5) The failure to complete the work as specified in the permit.
- (6) The failure to correct a condition indicated on an order issued pursuant to this article.
- (7) Repeated traffic control violation.
- (8) Failure to protect facilities or repair facilities damaged in the right-of-way.
- (9) Violation of any part of this article.
- (10) Recognition by the right-of-way manager that a permit was issued in error.
- (11) Failing to comply with an order of the right-of-way manager on the permit and any other valid permit held by the right-of-way user.
- (12) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the right-of-way manager.

If the right-of-way manager determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the right-of-way manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The right-of-way manager may, in his discretion, revoke the permit, provide specifications to cure the breach, or both. Within five days of receiving notification of the breach, permittee shall contact the right-of-way manager with a plan, acceptable to the right-of-way manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.

(Ordinance 02-05-65, sec. 3(2.10), adopted 5/7/02)

Sec. 78-85 Work not in accordance with permit declared unlawful

(a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the right-of-way manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the right-of-way manager may, in his sole discretion, grant a waiver to take the circumstances into account.

(b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the right-of-way manager has approved alternative requirements.

(Ordinance 02-05-65, sec. 3(2.11), adopted 5/7/02)

Sec. 78-86 Work done without a permit

No cut, excavation, grading or disturbing of the right-of-way, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. No person or right-of-way user shall, at any time, open or encumber more of the right-of-way than shall be reasonably necessary to complete a project in the most expeditious manner. (Ordinance 02-05-65, sec. 3(2.12), adopted 5/7/02)

Sec. 78-87 Cessation of work

At any time, the right-of-way manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The right-of-way manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or well being of the public. (Ordinance 02-05-65, sec. 3(2.13), adopted 5/7/02)

Sec. 78-88 Violations of standards; notice

The right-of-way manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within ten days after issuance of written notice, the permittee shall present proof to the right-of-way manager that the violation has been corrected. If such proof has not been presented within the required time, the right-of-way manager may revoke the permit. (Ordinance 02-05-65, sec. 3(2.14), adopted 5/7/02)

Sec. 78-89 Location and relocation of facilities

Subject to applicable federal, state, and local laws, the right-of-way user shall, upon the request of the city, which shall be in writing, locate and/or relocate its facilities situated within any right-of-way, at no expense to the city, where reasonable and necessary to accommodate any city project. The written request provided by the city shall state the date by which the relocation by the right-of-way user shall be completed and a reasonable amount of time shall be provided by the city. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the city will reimburse applicant for its proportionate share from funds provided to the city in such reimbursements. (Ordinance 02-05-65, sec. 3(2.16), adopted 5/7/02; Ordinance 06-08-86, sec. 5, adopted 8/2/06)

Sec. 78-90 Relocation facilities for the city

In the event the city finds it necessary to move a right-of-way user's facilities to protect the right-of-way, any city utilities and/or street, the city shall notify the local representative of the right-of-way user. Right-of-way user shall promptly move or facilitate the relocation of the subject facilities at right-of-way user's sole expense. (Ordinance 02-05-65, sec. 3(2.17), adopted 5/7/02; Ordinance 06-08-86, sec. 6, adopted 8/2/06)

Sec. 78-91 Abandoned facilities

(a) A right-of-way user owning abandoned facilities in the right-of-way shall:

- (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The right-of-way manager may allow some or all facilities to remain if the right-of-way manager determines same is in the best interest of the public to do so; or
- (2) Provide information satisfactory to the city that the right-of-way user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized right-of-way user.

(b) The facilities of the right-of-way user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the city receives written confirmation and reasonable evidence, as solely determined by city, that the right-of-way user intends to use the facilities. The city may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the right-of-way user at the right-of-way user's sole expense.

(Ordinance 02-05-65, sec. 3(2.18), adopted 5/7/02)

Sec. 78-92 Underground service requirements

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by an existing franchise agreement between the right-of-way user and the city or a PUCT tariff. (This does not prohibit replacing existing poles for maintenance purposes.) (Ordinance 02-05-65, sec. 3(2.21), adopted 5/7/02)

Sec. 78-93 Location of poles and conduits

All poles in the right-of-way shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with vehicular and pedestrian travel. All poles in the right-of-way shall be located within three feet of the right-of-way line. Poles with bases greater than 36 inches in diameter shall not be placed within the right-of-way. Poles shall not be placed within the center median of any street. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a right-of-way user in the construction and maintenance of its system in the city shall be subject to the reasonable and proper control, direction and approval of the city. Replacement of existing poles does not require a permit. The specifications in this article modify the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code and such other codes and standards that are generally accepted by the industry to the extent of any conflict. (Ordinance 02-05-65, sec. 3(2.22), adopted 5/7/02; Ordinance 15-07-47, sec. 3, adopted 7/20/15)

Sec. 78-94 Size and location of aboveground facilities

Longitudinal lines in the right-of-way shall be limited to single pole construction. Except for poles, the maximum dimensions for utility structures above the ground in the right-of-way adjacent to streets are seven feet long (parallel to the road), two feet wide (perpendicular to the road) and six feet in height. For such structures three feet or less in height, the width may be 44 inches. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the right-of-way adjacent to streets, unless otherwise approved in writing by the right-of-way manager. All aboveground facilities, including poles and appurtenances thereto, shall be located outside of the corner visibility triangle at all intersections, planned intersections and driveways. No aboveground facilities may be placed in a parkway that is across from a median opening. (Ordinance 02-05-65, sec. 3(2.23), adopted 5/7/02; Ordinance 15-07-47, sec. 3, adopted 7/20/15)

Sec. 78-95 Height of overhead line

The minimum vertical clearance above the street shall be 22 feet for overhead electric lines, and 18 feet for overhead communication and cable television lines. Clearances for such lines shall be greater if required by the National Electrical Safety Code and governing laws. Right-of-way users shall ensure that all overhead lines are constructed and maintained in compliance with the National Electrical Safety Code, except where generally accepted industry standards require greater protections for the city to safely maintain, operate, construct, reconstruct and repair any existing or planned street lighting facility, traffic signal pole, mast arm, luminaire or other aboveground city facility, in which case such industry standards shall apply. (Ordinance 02-05-65, sec. 3(2.24), adopted 5/7/02; Ordinance 15-07-47, sec. 3, adopted 7/20/15)

Sec. 78-96 Attachments to poles

(a) Nothing shall obligate or restrict a right-of-way user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the city.

(b) A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.

(Ordinance 02-05-65, sec. 3(2.25), adopted 5/7/02)

Sec. 78-97 Temporary rearrangement of aerial wires

The right-of-way user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall, pay the reasonable and necessary expense of such temporary rearrangements. The right-of-way user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the city. The right-of-way user may invoice the requesting parties for the cost of this work, where applicable. (Ordinance 02-05-65, sec. 3(2.26), adopted 5/7/02)

Sec. 78-98 Street closures

(a) All lane closures on any thoroughfare or collectors shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the right-of-way manager. The right-of-way manager may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares and collectors.

(b) Except in an emergency, no thoroughfare or collector street shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. Everyday of the week, all roadways shall be open to traffic by sunset on the same day as the construction.

(c) All lane closures require 24-hour notification of the police and fire departments prior to closing (Ordinance 02-05-65, sec. 3(2.26.1), adopted 5/7/02)

Sec. 78-99 Site maintenance during construction and prior to full restoration

(a) Erosion control and stormwater management. The right-of-way user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with city, state and federal guidelines. Requirements shall include, but not limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, and high erosion areas will require wire backed silt fencing. Upon request of right-of-way manager, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.

(b) Dust control. The right-of-way user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.

(c) Traffic control safety. In the event of noncompliance with the TMUTCD, the right-of-way user shall be notified of the violation. In the event of continued noncompliance, the right-of-way manager may revoke the permit, in addition to any other remedies available to the city. At any time the right-of-way manager determines the work threatens public safety, he may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.

(d) Responsibility for signs, barricades and warning devices. The right-of-way user working in any right-of-way is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The right-of-way user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.

(1) Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic control devices in a construction area.

(2) The right-of-way user must either: (i) subcontract the barricading to a firm specializing in traffic control; or (ii) submit the qualifications and name of employees to the right-of-way user manager for approval prior to the work commencing. The right-of-way user must also submit a traffic control plan for review when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.

(3) All barricades, plates, and other traffic control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic control representative.

(4) All barricades, plates and other traffic control equipment must display accurate and sufficient information including without limitation, the name of the right-of-way user.

(5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the right-of-way manager may place the necessary devices as required, and the right-of-way user shall reimburse the city for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.

(6) All traffic control devices must be removed immediately upon completion of work.

(e) Duty to barricade. At all times during construction activity, the contractor and/or right-of-way user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

(Ordinance 02-05-65, sec. 3(2.27), adopted 5/7/02)

Sec. 78-100 Inspection

The permittee shall make the work site accessible to the city, and others as authorized by law, for inspection at all reasonable times during performance of the work. (Ordinance 02-05-65, sec. 3(2.28), adopted 5/7/02)

Sec. 78-101 Materials testing

The department will require testing of materials used in construction in or near the right-of-way to determine conformance with city construction specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the department. The right-of-way user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the

laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required. (Ordinance 02-05-65, sec. 3(2.29), adopted 5/7/02)

Sec. 78-102 Duties of persons making excavations or creating obstructions

Any person who shall cause to be made any excavation or obstruction in any street or right-of-way shall not allow the same to remain there beyond a time reasonably sufficient for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or right-of-way so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or right-of-way in as good condition as before the excavation. (Ordinance 02-05-65, sec. 3(2.30), adopted 5/7/02)

Sec. 78-103 Emergency excavations

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or right-of-way by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the right-of-way manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article. (Ordinance 02-05-65, sec. 3(2.31), adopted 5/7/02)

Sec. 78-104 Excavation in streets

Except in case of an emergency there shall be no excavation in any street without the prior written approval of the right-of-way manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence is provided to the right-of-way manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the right-of-way manager.

- (1) Excavation in Portland cement concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full the thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 3 of the thoroughfare plan.
- (2) Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 4 of the thoroughfare plan.
- (3) Jacking and boring. Refer to specifications shown in Figure 5 of the thoroughfare plan.

- (4) Responsibility of excavated area maintenance. A permittee or right-of-way user shall maintain its repairs in the right-of-way for two years from the completion date of any repair.

(Ordinance 02-05-65, sec. 3(2.32), adopted 5/7/02)

Sec. 78-105 Backfill of excavated area

(a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily as shown in Figure 6 for pavement areas. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the right-of-way manager of the time the backfill will begin.

(b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of zero percent to plus four percent of optimum moisture content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by right-of-way manager. Outside of pavement surfaces, compaction of all backfill shall be 90 percent of maximum density with a moisture content of minus two percent to plus four percent of optimum moisture content as determined by ASTM D698.

(Ordinance 02-05-65, sec. 3(2.33), adopted 5/7/02)

Sec. 78-106 Right-of-way restoration requirements

(a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the right-of-way must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the right-of-way manager may, in his sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.

(b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the city, and damaged, disturbed, or removed by a right-of-way user shall be fully repaired promptly by the right-of-way user, at its sole expense, to the reasonable satisfaction of the right-of-way manager.

(c) After any excavation, the right-of-way user shall, at its expense, restore the right-of-way, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall endure without failure for two years from the completion date of any repair.

(d) In the event the right-of-way user fails to restore the right-of-way in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the city may, at its option, serve written notice upon the right-of-way user that, unless within five days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the right-of-way

by the right-of-way user, the city may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the right-of-way user, and right-of-way user, and its surety, shall be liable to the city for any and all cost incurred by the city by reason of such prosecution an completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the city.

(e) If any excavation cannot be backfilled immediately, the right-of-way user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(f) In all right-of-way restoration, the right-of-way user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the right-of-way user shall, in the event of any failure of the restoration, and upon notification from the right-of-way manager, reimburse the city for pavement restoration costs as provided for in this article. Additionally, the right-of-way user, in the event of such failure, shall within 48 hours of notice from the city, repair the subject trench envelope.

(g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the city, the right-of-way user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more right-of-way users have made repairs in the exact same location, the last right-of-way user to excavate shall be responsible for the two-year guarantee in that location, unless the right-of-way manager determines, in his sole discretion, that a failure was most likely a result of work performed by another right-of-way user. That right-of-way user shall be responsible for the two-year maintenance period.

(h) All street excavations shall be perpendicular excavations, unless otherwise approved by the right-of-way manager. Excavations in streets, which are not perpendicular excavations require block-to-block and curb-to-curb pavement reconstruction, or other method of repair approved by the right-of-way manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

(i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same workday before sunset. Any variance from this requirement must be granted in writing from the right-of-way manager prior to work beginning.

(Ordinance 02-05-65, sec. 3(2.34), adopted 5/7/02)

Sec. 78-107 Restoration of pavement

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, right-of-way or other public place shall be performed by the permittee.

(1) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the right-of-way manager.

(2) All excavations shall comply with the city construction standards, as amended, and requirements of this article. Unless otherwise required by city standards, as amended, or if

unusual conditions are encountered, the right-of-way manager may require new standards for compaction, backfill and pavement restoration.

(3) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the right-of-way user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the right-of-way manager.

(4) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

(Ordinance 02-05-65, sec. 3(2.35), adopted 5/7/02)

Sec. 78-108 Permanent pavement repairs

The right-of-way user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The right-of-way user shall make the final repairs within seven days on thoroughfares and collector streets and within 30 days on residential, local and alley streets after the right-of-way manager makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user. (Ordinance 02-05-65, sec. 3(2.36), adopted 5/7/02)

Sec. 78-109 Substandard repair of pavement of right-of-way

In case the pavement or the surface of the street, alley, or right-of-way in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the right-of-way user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the city of the cost to restore the street and/or right-of-way. (Ordinance 02-05-65, sec. 3(2.37), adopted 5/7/02)

Sec. 78-110 Failure to complete work within specified time

In the event any work governed by this article is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the right-of-way manager, the right-of-way manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The right-of-way user shall reimburse the city for the costs of securing the site. (Ordinance 02-05-65, sec. 3(2.38), adopted 5/7/02)

Sec. 78-111 Removal and reconstruction where work is defective

All construction work in the streets, right-of-ways, sidewalks and public places of the city is declared to be subject to the exclusive control of the city, and whenever, in the sole opinion of the right-of-way manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the right-of-way manager, then upon written demand or notice from the right-of-way manager, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the right-of-way manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or right-of-way user shall fail or refuse to do so within a reasonable time to be specified by the right-of-way manager, then, if required by the right-of-way

manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the city, in such a manner as in the opinion of the right-of-way manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the right-of-way manager, and the contractor or right-of-way user shall reimburse city for any and all cost incurred by the city performing the work described in this subsection. (Ordinance 02-05-65, sec. 3(2.39), adopted 5/7/02)

Sec. 78-112 Cleanup of right-of-way

In every case, and at all times, the work of removing from the right-of-way all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the right-of-way user. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. The right-of-way user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the right-of-way manager, sufficient reason therefor having been given to his satisfaction, grants a written extension of time. (Ordinance 02-05-65, sec. 3(2.40), adopted 5/7/02)

Sec. 78-113 Reporting

When the work under permit hereunder is completed, the permittee shall notify the city in accordance with the requirements placed on the permit. (Ordinance 02-05-65, sec. 3(2.41), adopted 5/7/02)

Sec. 78-114 Effect of article on persons engaged in construction

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of city ordinances and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article. (Ordinance 02-05-65, sec. 3(2.42), adopted 5/7/02)

Secs. 78-115–78-141 Reserved

ARTICLE IV. FEES, ENFORCEMENT AND PENALTIES

Sec. 78-142 Fees shall apply to all right-of-way users, unless governed by an existing agreement

(a) Permit application fee. There is a permit application fee of \$25.00. Permits shall be issued or denied within five days from the city's receipt of the application. There is an expedited application fee of \$250.00 for permits, which shall be issued or denied within two days. An applicant shall pay the fees when a permit is issued. The fees are charged for administration and input of permit data. An expedited permit may be requested upon a showing of good cause, including but not limited to, a pending order for service that cannot be met by means of existing facilities of the right-of-way user.

(b) Saturday inspection fee. The Saturday inspection fee shall be \$150.00 per Saturday.

(c) Permit expiration fee. A fee of \$30.00 will be charged for any permit that has not been extended before its expiration date and for any permit wherein work has not been completed by the expiration date provided for in the permit.

(d) Electronic maps submittal fee. A fee of \$40.00 per hour will be charged for each hour of labor necessitated by information submitted to the city in hard copy format in lieu of submittals to the city in electronic format. There is a minimum of two hours.

(e) Registration fee. There is a fee of \$35.00 per right-of-way user per year for processing registration information fee, which will be collected by city upon registration.

(Ordinance 02-05-65, sec. 3(3.1), adopted 5/7/02)

Sec. 78-143 Public inconvenience penalty

Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the department for repair. This penalty shall not exceed and is capped by statutory limits. Public inconvenience penalties are charged per day as follows:

Type of Facility	Unit of Cost	Penalty (Per day)			
		31-75 days	79-90 days	90-100 days	>>100 days
Sidewalk	Per square foot	\$0.0026	\$0.0052	\$0.0078	\$0.0104
Driveway	Per each	\$39.00	\$78.00	\$117.00	\$156.00
Metered traffic lane		*In addition to traffic lane fee			

(Ordinance 02-05-65, sec. 3(3.2), adopted 5/7/02)

Sec. 78-144 Clean up costs

The right-of-way user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work. (Ordinance 02-05-65, sec. 3(3.3), adopted 5/7/02)

Secs. 78-145–78-171 Reserved

ARTICLE V. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 78-172 Liability of right-of-way user

To the extent allowed by law, the right-of-way user shall be liable to the city for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the right-of-way user shall fully indemnify, hold harmless and defend the city, its councilmembers, officers, employees, agents, representatives and volunteers from and against any and

all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the city, its councilmembers, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The city shall promptly notify a permittee, or right-of-way user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the city and alleging negligent or wrongful conduct by the permittee or right-of-way user in connection with an excavation. (Ordinance 02-05-65, sec. 3(4.1), adopted 5/7/02)

Sec. 78-173 Insurance

(a) Right-of-way users shall furnish an original completed certificate of insurance to the department which shall be completed by an agent authorized to bind the named underwriter and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the city. The city shall have no duty to perform under this article until such certificate has been delivered to the department.

(b) The city reserves the right to review the insurance requirements of this section to modify insurance coverage and limits when deemed necessary and prudent by the city based upon changes in statutory law, court decisions, or circumstances surrounding this article, but in no instance will the city allow modification whereupon the city may incur increased risk.

(c) Subject to the right-of-way user's right to maintain reasonable deductibles in such amounts as are approved by the city, right-of-way users shall obtain and maintain in full force and effect for the duration of the permit, and any extension thereof, and/or duration of time it maintains facilities in the public right-of-way, at the right-of-way user's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state and rated A- or better by A.M. Best Company and/or otherwise acceptable to the city, in the following types and amounts:

Type		Amount
1.	Worker's compensation employer's liability	Statutory \$500,000.00/\$500,000.00/ \$500,000.00
2.	Commercial general (public) liability insurance to include coverage for the following:	
	a. Premises/operations	Bodily injury and property damage of

		\$2,000,000.00 per occurrence, \$5,000,000.00 general, aggregate or its equivalent in umbrella or excess liability coverage
	b. Independent contractors	
	c. Products/completed operations	
	d. Contractual liability	
	e. Personal injury	
	f. Explosion, collapse, underground	
	g. Broad form property damage, to include fire legal liability	
*3.	Business automobile liability:	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence or its equivalent
	a. Owned/leased vehicle	
	b. Nonowned vehicles	
	c. Hired vehicles	
*4.	Professional liability (claims made from)	\$1,000,000.00 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services

*5.	Contractor's pollution liability coverage	\$1,000,000.00 written on a claims made form with a two year extended reporting period
*6.	Pollution liability motor carrier and trucker coverage endorsing the upset, overturn and remediation of a load in transport	Combined single limit for bodily injury and property damage of \$1,000,000.00 per occurrence written or an occurrence form

*If applicable.

(d) The city shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the city, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the city, the right-of-way user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.

(e) Right-of-way users shall ensure that all insurance contracts and certificate of insurance contain the following required provisions:

(1) Name the city and its councilmembers, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the right-of-way under provision of this article, with the exception of the professional liability, workers' compensation and liability policy;

(2) Right-of-way user's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the city;

(3) Provide for an endorsement that the "other insurance" clause shall not apply to the city of the city where the city is an additional insured shown on the policy;

(4) Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the city.

(f) Right-of-way user shall notify the city in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or ten days notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the city at the following address:

Right-of-Way Manager

Department of Public Works

City of Frisco

6726 Walnut

Frisco, Texas 75034

(g) Nothing herein contained shall be construed as limiting in any way the extent to which the right-of-way user may be held responsible for payments of damages to persons (including death) or property resulting from the right-of-way user's, or its subcontractors', performance of the work performed in the public right-of-way.

(h) The city owned utilities shall not be required to provide the insurance specified herein.

(i) With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage to include pollution coverage, the city may allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to the city. With respect to the right-of-way user's obligation to comply with the requirements for automobile liability insurance and for worker's compensation insurance, a right-of-way user may self-insure, provided the right-of-way user tenders satisfactory evidence of self-insurance as contemplated by the State Motor Vehicle Financial Responsibility Law, V.T.C.A., Transportation Code sec. 601.124, and the Texas Workers' Compensation Act, V.T.C.A., Labor Code sec. 407.001 et seq., as amended.

(Ordinance 02-05-65, sec. 3(4.2), adopted 5/7/02)

Sec. 78-174 Performance/assurance bond

Before a permit shall be issued, the applicant shall execute and deliver to the city, to be kept on file with the city, a good and sufficient bond of performance or assurance, in the sum of \$10,000.00 to be approved by the city and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the city, its councilmembers, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the city. With respect to the right-of-way user's obligation to comply with the requirements for a performance/assurance bond, the city may, in the city's sole discretion, allow the right-of-way user to self-insure such obligation upon production of evidence that is satisfactory to the city. (Ordinance 02-05-65, sec. 3(4.3), adopted 5/7/02)

Sec. 78-175 Optional continuing bond and deposit

In lieu of a bond of performance or assurance required for each permit issued under the performance/assurance bond section of this article, the applicant may maintain a one-time bond of performance or assurance with the right-of-way manager in the sum of \$100,000.00 for the purposes specified in [section 78-174](#), and shall have on file, with the city, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than \$100,000.00; provided, further, that [section 78-174](#) shall not apply to applications for permits to make cuts, openings or excavations in any street, plaza or other public place paved under contract with the city, unless the contract of maintenance and the maintenance

bond therefor shall have expired. The bond shall be maintained until the applicant is no longer working in or on the right-of-ways. (Ordinance 02-05-65, sec. 3(4.4), adopted 5/7/02)

Sec. 78-176 Liability of contractor and sureties for maintenance and repair work

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the right-of-way user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the city retains the right and option to terminate the right-of-way user's guaranty, upon written notice to the right-of-way user. In such event, the right-of-way user shall reimburse the city for its direct costs associated with the repair of the failure of the restoration work. (Ordinance 02-05-65, sec. 3(4.5), adopted 5/7/02)

Sec. 78-177 When additional security required

In the event the right-of-way manager reasonably believes the contractor's or right-of-way user's solvency is threatened, the right-of-way manager may, at any time, make written demand on a contractor and/or right-of-way user for bonds, and the contractor and/or right-of-way user shall immediately furnish such additional bond or bonds to the city. (Ordinance 02-05-65, sec. 3(4.6), adopted 5/7/02)

Sec. 78-178 Decision of right-of-way manager binding on contractor, row user and sureties

If any question arises as to when any work was actually begun or other specific dates, the decision of the right-of-way manager shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds. (Ordinance 02-05-65, sec. 3(4.7), adopted 5/7/02)

Secs. 78-179–78-209 Reserved

ARTICLE VI. VARIANCES AND EXEMPTIONS

Sec. 78-210 Variance/exemptions

A permittee or right-of-way user may request a variance from any of the requirements of this article by filing a written request with the right-of-way manager stating the requirement and the basis for the variance. The right-of-way manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

(1) Any request for a variance from any right-of-way restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.

(2) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefor.

(3) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.

(4) The department shall grant or deny an application for a variance and/or exemption within ten days of receipt of the application for variance and/or exemption.

(5) Denial of the variance may be appealed in accordance with [section 78-43](#).

(Ordinance 02-05-65, sec. 3(5.1), adopted 5/7/02)

Secs. 78-211–78-228 Reserved

ARTICLE VII. CERTIFIED TELECOMM PROVIDERS

Sec. 78-229 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.

(Ordinance 02-05-65, sec. 3(6.1), adopted 5/7/02)

Sec. 78-230 Additional authority required

The CTP, and any of its affiliates, are not authorized to provide cable television service as a cable operator or to operate an open video system in the city, but must first obtain a separate franchise agreement from the city for that purpose, under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate city authorization, nothing herein shall authorize the CTP to license, sublicense, lease, sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or facilities of the CTP.

(Ordinance 02-05-65, sec. 3(6.2), adopted 5/7/02)

Sec. 78-231 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. (Ordinance 02-05-65, sec. 3(6.3), adopted 5/7/02)

Sec. 78-232 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;

(4) Registration fee.

(Ordinance 02-05-65, sec. 3(6.4), adopted 5/7/02)

Sec. 78-233 Waiver bonds

Unless determined otherwise by the right-of-way manager a CTP will be exempt from the bonding requirements of this article, including [sections 78-174](#) and [78-175](#), 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. (Ordinance 02-05-65, sec. 3(6.5), adopted 5/7/02)

Sec. 78-234 CTP indemnity

A CTP shall indemnify the city as specified by V.T.C.A., Local Government Code sec. 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A., Local Government Code sec. 283.057, as amended. (Ordinance 02-05-65, sec. 3(6.6), adopted 5/7/02)

Secs. 78-235–78-261 Reserved**ARTICLE VIII. MISCELLANEOUS****Sec. 78-262 Bridge weight limit violation**

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load bearing wheels travel on the bridge. (Ordinance 02-05-65, sec. 3(7.1), adopted 5/7/02)

Sec. 78-263 Penalty provision

This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provision hereunder. Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law. (Ordinance 02-05-65, sec. 3(7.3), adopted 5/7/02)

Secs. 78-264–78-289 Reserved**ARTICLE IX REGULATIONS CONCERNING MUNICIPAL FACILITIES**

Sec. 78-290 Council authority to prescribe regulations; nonliability for lost property

(a) The city council shall have the right, power and authority by resolution or otherwise to prescribe additional reasonable rules and regulations or appeal regulations for the maintenance and operation of park and recreation areas.

(b) The city shall not be liable or bound for any loss or damage claimed by reason of the lost or damaged personal property taken nor in any way on account of any personal injury of or death to any person entering the premises.

(Ordinance 90-10-01, sec. 6, adopted 10/2/90)

ARTICLE X. MEDIANS WITHIN PUBLIC RIGHTS-OF-WAY**Sec. 78-321 Definitions**

Emergency as used herein shall mean a serious unexpected and dangerous situation that poses an immediate risk to health, life, property or environment, which a reasonable person would determine requires immediate action and/or urgent intervention to prevent a worsening of the situation.

Emergency personnel as used herein shall mean all persons who are trained emergency medical service providers, police, fire or other public safety persons or a physician responding to a situation whereby such individual's training and professional experience could mitigate a situation which, in the individual's reasonable opinion, rises to the level of an emergency.

Median as used herein shall mean the strip of land between the lanes of apposing traffic on a divided public right-of-way.

Motor vehicle as used herein shall mean a self-propelled vehicle and/or device for transporting persons or property designed for use on a public right-of-way.

Public right(s)-of-way as used herein shall mean any public street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or however otherwise designated, as an access way for vehicular traffic and other public uses, located in the city.

(Ordinance 14-03-20, sec. 2, adopted 3/18/14)

Sec. 78-322 Purpose and intent

This article provides regulations relating to prohibiting the stopping, standing, walking, running and/or otherwise entering in and/or upon, in any other way whatsoever, medians within public right-of-way so as to promote the health, safety and welfare of pedestrians, motorists and other persons located in the city by, among other things:

- (1) Assisting in avoiding the creation of traffic hazards and distraction of pedestrians, motorists and other persons using public rights-of-way;
- (2) Alleviating possible nuisances to pedestrians, motorists and other persons using public rights-of-way; and

- (3) Alleviating potential dangers to pedestrians, motorists and other persons using public rights-of-way.

(Ordinance 14-03-20, sec. 2, adopted 3/18/14)

Sec. 78-323 Prohibition of stopping, standing, walking, running and/or otherwise entering in and/or upon a median within public rights-of-way

(a) A person commits an offense in violation of this article and section if he stops, stands, walks, runs and/or otherwise enters in and/or upon, in any other way whatsoever, regardless of his intent to remain, any median within a public right-of-way.

(b) It shall be a defense to prosecution under this article and section if:

(1) The person was stopping, standing, walking, running and/or otherwise in and/or upon the median within a public right-of-way in response to or as a result of an emergency;

(2) The person stopping, standing, walking, running and/or otherwise in and/or upon the median was emergency personnel;

(3) The person was crossing a public right-of-way, at a location authorized by law and in accordance with all applicable rules of the road, and is required to pause in and/or upon the median so as to avoid traffic;

(4) The person is in and/or upon the median performing duties delegated to him by a governmental entity, or its authorized designee or agent, responsible for, among other things, maintenance of the median;

(5) The person in and/or upon the median was performing duties and/or work associated with franchise utilities and/or under the authority of city's right-of-way management Ordinance No. 08-08-77 ([section 78-3](#) of this code), as amended, or any other applicable ordinance, as they exist, may be amended or in the future arising, of city pertaining to authority to enter in and/or upon the median for a particular purpose; or

(6) The person is in and/or upon the median pursuant to a lawful order of a peace officer.

(Ordinance 14-03-20, sec. 2, adopted 3/18/14)

Sec. 78-324 Penalty

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not to exceed five hundred and no/100 dollars (\$500.00). Each continuing day's violation under this article shall constitute a separate offense.

(Ordinance 14-03-20, sec. 2, adopted 3/18/14)

Sec. 78-325 Injunctive relief

In addition to and accumulative of all other penalties, the city shall have the right to seek injunctive relief for any and all violations of this article. (Ordinance 14-03-20, sec. 2, adopted 3/18/14)

