

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE REPEALING AND REPLACING THE CODE OF ORDINANCES OF THE CITY OF PFLUGERVILLE, TEXAS, CHAPTER 96, "STREETS AND SIDEWALKS", AND RENAMING CHAPTER 96 TO "RIGHT-OF-WAY MANAGEMENT", IN ORDER TO ADMINISTER AND REGULATE THE USE OF PUBLIC RIGHTS-OF-WAY FOR THE PUBLIC INTEREST, HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE ISSUANCE AND REGULATION OF PERMITS; ESTABLISHING FEES; PROVIDING FOR A PENALTY IN AN AMOUNT IN ACCORDANCE WITH CODE OF ORDINANCES, SECTION 10.99 GENERAL PENALTY, FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City of Pflugerville, Texas is a home-rule City acting under its charter adopted by the electorate pursuant to Article IX, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

WHEREAS, the state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety and welfare of the public, subject to state law; and

WHEREAS, pursuant to its home rule charter, the City of Pflugerville has the control and jurisdiction of the public streets and other right-of-way of the City, with the right to regulate or prohibit the location of pipes, cables, lines, wires, or other facilities in the right-of-way; and,

WHEREAS, without proper regulation the placement of such facilities within the right-of-way will conflict with the primary uses of the right-of-way and will reduce the efficient use of limited space for facilities; and

WHEREAS, the City Council of Pflugerville has determined that excavation in the public streets and other right-of-way may significantly interfere with public use and result in a negative impact to public safety, air quality, level of service on streets and sidewalks, and aesthetics of the community; and

WHEREAS, the City Council finds excavations in paved public streets significantly degrades and shortens the life of surface of the streets, and increase the frequency and cost to the public of requisite resurfacing, maintenance, and repair; and

WHEREAS, the City Council has determined the substantial public funds have been invested to build, maintain and repair public streets and utilities and the City holds these streets and utilities as an asset in trust for its citizens; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of public streets and other right-of-way and safeguard the value to the public investment of the benefit of

the City residents by providing incentives to reduce the number of excavations, which will also reduce the number of service disruptions and excavations; and

WHEREAS, the City Council has determined that the adoption of a right-of-way ordinance will comply with and promote the regulations in Chapter 283 of the Texas Local Government Code pertaining to Certified Telecommunications Providers as well as the Texas Utilities Code; and

WHEREAS, in accordance with applicable federal and state laws, including Texas Government Code, the City seeks to exercise its historical rights to control and manage its rights-of-way; and amend its existing police power regulations for the use of those rights-of-way, all in accordance with Texas Local Government Code 283.056; and

WHEREAS, the Texas State Legislature has enacted S.B. No. 1004 relating to the deployment of network nodes in the public right-of-way and has amended Subtitle A, Title 9, Texas Local Government Code by adding Chapter 284; and

WHEREAS, municipalities retain the authority to manage the public right-of-way to ensure health, safety, and welfare of the public; and

WHEREAS, it is desirable to adopt regulations to protect the structural integrity of City streets and other right-of-way and safeguard the value of the public infrastructure; and

WHEREAS, as expressly allowed by Section 284.108 by Chapter 284 and pursuant to its police power authority reserved in Sec. 284.301 of Chapter 284, the City has drafted Wireless Services Design standards as part of the Engineering Design Manual to give assistance and guidance to wireless telecommunications network providers to assist such companies in the timely, efficient, safe and compliant installation of technologically competitive equipment; and

WHEREAS, the City Council desires to regulate the installation of network nodes, network support poles and transfer facilities pursuant to Chapter 284 in a way that is fair, reasonable and nondiscriminatory; and

WHEREAS, the City Council having reviewed the regulations contained herein has determined that the adoption of this ordinance serves the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:**

**SECTION I.     Incorporation of Recitals**

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

**SECTION 11.    Adoption**

Chapter 96 is hereby repealed and replaced as set forth in **Exhibit “A,”** which is attached

**SECTION III. Ongoing Projects**

Any project for which a complete development application and/or a right-of-way permit application has been accepted and permitted by the City before the effective date of this Ordinance may proceed pursuant to the 2014 Engineering Design Manual and Construction Standards adopted as Ordinance No. 1206-15-02-24, and the revision of the Engineering Design Manual and Construction Standards adopted as Ordinance No. 1290-16-11-22 unless the permit expires or the applicant elects to subject the project to requirements of this Ordinance. Any project for which a permit has not been issued by the City before the effective date of this ordinance shall adhere to the standards set forth in this Ordinance.

**SECTION IV. Conflicts and Savings**

That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and that the Code of Ordinances of the City of Pflugerville, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**SECTION V. Severability**

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

**SECTION VI. Effective Date.**

This Ordinance will become effective on its adoption and passage by the City Council in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Victor Gonzales, Mayor

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

APPROVED AS TO FORM:

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Charles E. Zech, City Attorney  
DENTON, NAVARRO, ROCHA, BERNAL & ZECH, P.C.

## EXHIBIT A

### GENERAL PROVISIONS

#### ~~§ 96.01 — OBSTRUCTING STREETS AND SIDEWALKS.~~

~~(A) — A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:~~

~~(1) — Obstructs or injures, or causes to be obstructed or injured in any manner whatsoever, any public sidewalk, median, curb, shoulder, improved shoulder, street, highway, roadway or public right-of-way in the city; provided, however, that the parking of motor vehicles in compliance with the ordinances of the city shall not be construed to be an obstruction; or~~

~~(2) — Disobeys a reasonable request or order to move the cause of an obstruction issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:~~

~~(a) — To prevent obstruction of any area mentioned in subsection (1); or~~

~~(b) — To maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.~~

~~(B) — For purposes of this section, “obstruct” means to render impassable or to render passage unreasonably inconvenient or hazardous and “obstruction” means the causative effect of such rendering.~~

~~(C) — Any person convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor and be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense. Each day of violation shall be cumulative and the foregoing penalty shall not be exclusive of any other rights and remedies which the city may have.~~

~~(Ord. 24 69 4 21, passed 4 21 69; Ord. 1274 16 07 26, passed 7 26 16) Penalty, see § 10.99~~

#### ~~§ 96.02 — OPEN CELLAR OR TRAP DOORS; PERMITTING SIDEWALK TO REMAIN IN DISREPAIR.~~

~~No person shall keep, leave open or allow to be left open any cellar door, trap door, sidewalk lifts or the grating of any vault in or upon any sidewalk, street, thoroughfare or passageway, make, keep or maintain any uncovered opening in any sidewalk or footwalk or footway or allow any sidewalk or footway, which it is his duty to maintain or repair, to become broken or continue so broken, uneven or out of repair as to endanger life or limb, shall be deemed guilty of maintaining a nuisance and a misdemeanor.~~

~~(Ord. 24 69 4 21, passed 4 21 69) Penalty, see § 10.99~~

#### ~~§ 96.03 — PERMIT REQUIRED FOR ALTERATIONS, OBSTRUCTIONS.~~

~~No person, under any pretext whatever, shall interfere with, obstruct, injure or alter in any manner any sidewalk in the city without a written permit from the Board of Commissioners. Each day such interference, obstruction, alteration or injury shall be permitted to remain after a notification by the Board of Commissioners to remove the same shall constitute a separate offense.~~

~~(Ord. 24 69 4 21, passed 4 21 69) Penalty, see § 10.99~~

#### ~~§ 96.04 — LIABILITY OF ABUTTING PROPERTY OWNERS.~~

~~The abutting property owner or person enjoying the use of any property abutting on a sidewalk or curb that has become defective and has resulted in causing damage or injury as a result of such defective condition shall be primarily liable in damages for any loss or damage sustained as a result of such defective condition. The city shall not be held as assuming any such liability by reason of inspection or reinspection authorized herein or by reason of the approval or disapproval of any access, facilities, surfacing or appurtenance not made in accordance with standards or specifications of this subchapter.~~

~~(Ord. 24 69 4 21, passed 4 21 69) Penalty, see § 10.99~~

**~~§ 96.05 — LIABILITY OF PERSONS MAKING SPECIAL USE OF SIDEWALKS OR CURBS.~~**

~~It shall be the duty of any property owner, landlord, tenant, lessee, sublessee, person, firm or corporation making special use of any sidewalk or curb for the purpose of ingress or egress, for loading elevators, downspout drains or any other special use of whatsoever kind or character, whether recited herein or not, to keep such sidewalk, parkway, curb and driveway abutting such property in a good and safe condition and free from any defects and hazards of whatsoever kind and character. Such special user shall be liable in damages for any loss or damage sustained as a result of any defective condition of the sidewalk, driveway, curb, loading elevator, downspout drain or any other special use or facility of whatsoever kind or character.~~

~~(Ord. 24 69 4 21, passed 4 21 69) Penalty, see § 10.99~~

**~~§ 96.06 — RESPONSIBILITY FOR DAMAGES.~~**

~~This subchapter shall not be construed to relieve from or to lessen the responsibility or liability for damages of any person owning, controlling or installing any surfaces to persons or property caused by any defect therein.~~

~~(Ord. 24 69 4 21, passed 4 21 69)~~

**~~§ 96.07 — CONSTRUCTION PERMIT.~~**

~~No person shall construct, reconstruct, alter, repair, remove, replace, pave, repave, surface or resurface any walk, drive, curb, gutter, paved area or appurtenance on public property in the city without first obtaining a permit so to do.~~

~~(Ord. 24 69 4 21, passed 4 21 69) Penalty, see § 10.99~~

**~~§ 96.08 — REPAIR OF DEFECTIVE SIDEWALKS.~~**

~~When a sidewalk, driveway, curb, gutter or appurtenance becomes defective, unsafe or hazardous, it shall be the duty of the owner of the abutting property to reconstruct or repair same and the expense of such work shall be borne by the abutting property owner. When a sidewalk, driveway, curb, gutter, or appurtenance is found to be defective, unsafe or hazardous, the City Council shall notify the owner of the abutting property to reconstruct or repair same. Any owner who fails to reconstruct or repair such defective, unsafe or hazardous condition within 30 days from the date of the written notice from the City Council to do so shall be guilty of a misdemeanor.~~

~~(Ord. 24 69 4 21, passed 4 21 69)~~

**~~§ 96.09 — BRAKING DEVICES PROHIBITED.~~**

~~(A) — No person shall operate or permit the operation of the engine of a motor vehicle so as to assist in braking or slowing the vehicle through the use of gears or through the use of any engine brake or engine retarding device on any public right-of-way, including, but not limited to, state-maintained roadways FM 685 and FM 1825, within the corporate limits of the city.~~

~~(Ord. 794 05 07 26, passed 7 26 05)~~

## **EXCAVATIONS**

**~~§ 96.20 — SHORT TITLE.~~**

~~This chapter shall be known, and may be cited, as the Utility Construction Ordinance of the City of Pflugerville, Texas.~~

~~(Ord. 331 91 01 22, passed 1 22 91)~~

**~~§ 96.21 — DEFINITIONS.~~**

~~For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms defined herein shall be construed in accordance with customary usage.~~

~~**PERSON.** A natural person, partnership, cooperative association or corporation, corporation whether or not organized for profit, and governmental entity, and specifically includes the contractor and subcontractor performing work for a public utility.~~

~~**PLANT MATERIAL.** Grass, trees, shrubs, flowers, vines, and other ground cover.~~

~~**PUBLIC RIGHT OF WAY.** A public street, highway, alley, and public easement in the corporate limits of the city.~~

~~**PUBLIC UTILITY.** Any person, not an agent or representative of the city, who installs, constructs, or maintains facilities in the corporate limits of the city to provide electric, gas, water, sewer, telecommunication, or cable television service to members of the public, whether residing in or out of the corporate limits; provided that it includes any person who constructs, installs, or maintains facilities in the city for intrastate or interstate telecommunication services.~~

~~**WORK.** Digging, excavating, tunneling, or boring in or under any public right of way, or cutting or breaking the paved surface in any public right of way, in connection with the Construction, repair, or maintenance of utility facilities; provided that work directly and specifically required for the Construction, repair, or maintenance of overhead utilities and service line connections to individual customers is not included in this definition.~~

~~(Ord. 331-91-01-22, passed 1-22-91)~~

#### **§ 96.22 — COMPLIANCE RESPONSIBILITY.**

The public utility and its contractors and subcontractors are individually and jointly responsible, both civilly and criminally, for compliance with this subchapter and with any work permit issued pursuant to this subchapter.

~~(Ord. 331-91-01-22, passed 1-22-91)~~

#### **§ 96.23 — PERMITS.**

(A) — A work permit issued by the City Manager is required as a condition to performance of work by a public utility in the public right of way, except in the case of emergency work. There is no fee for a work permit.

(B) — A public utility requiring a permit shall file a written, dated application with the City Manager on a form provided by the city. The application shall include the following:

(1) — The nature and location of the work being proposed;

(2) — The dates and hours the work is proposed to be performed;

(3) — The nature of the surface of the right of way;

(4) — An erosion control plan;

(5) — A restoration plan, including designation of the time within which the applicant plans to complete the restoration in accordance with the requirements of [§ 96.25](#) of this chapter; and

(6) — Such other information as may be required by the City Manager.

(C) — If the work proposed by the applicant entails the traversing of a paved roadway, boring under the street shall be required rather than cutting the pavement, provided that the City Manager may authorize pavement cuts in lieu of boring, upon review and recommendation of the City Engineer, where boring is found not to be feasible.

~~(D) — The City Manager shall issue the work permit if, based upon all information made available to him, he is satisfied that:~~

~~(1) — Appropriate safeguards will be taken to protect the public interest; and~~

~~(2) — The plans and specifications are consistent with the requirements of all city chapters, rules, and regulations.~~

~~(E) — In the event a public utility does work as an emergency, it shall, as soon as practicable, notify the City Manager of the work, and make an application for such work. The emergency work may be performed subject to issuance of a permit therefor, and must comply with all provisions of this subchapter.~~

~~(F) — A work permit granted by the City Manager may vary from the application and may be modified by the City Manager at any time while the work is in progress.~~

~~(G) — A work permit shall be issued for a specified period of time. Work authorized thereunder may be performed only during such specified period. The City Manager may, upon application by the public utility or contractor, grant an extension of the work permit period.~~

~~(Ord. 331-91-01-22, passed 1-22-91)~~

~~**§ 96.24 — REGULATIONS FOR WORK.**~~

~~(A) — The following regulations apply to public utilities performing work in the public right-of-way:~~

~~(1) — Not more than one traffic lane of a public right-of-way shall be closed at any time.~~

~~(2) — No public right-of-way shall be completely closed to traffic.~~

~~(3) — Work shall not be performed during hours of darkness.~~

~~(4) — Divisions (1), (2), and (3), above, shall not apply to emergency repairs necessary to restore public utility service or to prevent harm to persons or property.~~

~~(5) — All unnecessary equipment and debris shall be kept off the public right-of-way and the work shall be performed so as to facilitate the normal flow of traffic.~~

~~(6) — Excavations and pavement cuts shall be maintained so as to avoid a hazard to vehicles and pedestrian traffic until permanent repairs are completed.~~

~~(7) — Barricades, signs, lights, warnings, and traffic-control procedures shall be utilized in accordance with the current requirements of the Texas Manual on Uniform Traffic Control Devices, adopted by the State Department of Highways and Public Transportation.~~

~~(8) — All applicable state and municipal trench safety standards shall be met.~~

~~(9) — All work in the public right-of-way shall be diligently conducted and completed as~~



~~soon as practicable.~~

~~(B) — The City Manager may exempt the public utility from any of the above regulations for good cause, and, where alternate arrangements are required to protect the public interest, such alternate arrangements are noted on the face of the permit.~~

~~(Ord. 331-91-01-22, passed 1-22-91)~~

~~§ 96.25 — REPAIR AND RESTORATION.~~

~~(A) — Upon completion of work, each public utility shall remove all debris and excess spoil, permanently repair any paving in the public right-of-way that has been cut, broken, or damaged, and restore the public right-of-way and any plant material that has been disturbed to the condition existing prior to the work in accordance with the requirements set out in division (B), below.~~

~~(B) — Plant material shall be considered to be restored when at least two inches of growth covers at least 85% of the area disturbed by the work; provided that no barren areas larger than ten square feet remain. Trees, shrubs, and larger plants shall be replaced. If grass is used in the restoration, its seeding shall be consistent with the standards set out in the following table:~~

~~- RESEEDING STANDARDS~~

<u>Time of Year</u>	<u>Seed Type</u>
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October — February	Mixture of Unhulled Bermuda and Winter Rye
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March — September	Hulled Bermuda
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~~(C) — The city shall, within ten days from receipt of a written request to inspect from a public utility, perform an inspection. If all the requirements of this subchapter have been met, the City Manager shall issue a certificate of completion with the date of approval set forth thereon. If the city fails to start its inspection within such ten-day period, any certificate of completion issued shall bear the date of receipt of the written inspection request.~~

~~(D) — The public utility shall maintain such repairs and restoration, other than grass that subsequently dies, in good condition for a period of one year from the date of the certificate of completion. Nothing herein is intended to absolve the public utility from responsibility for the proper installation, repair, and maintenance of any work; the one-year maintenance period applies only to the repair and restoration.~~

~~(E) — The city shall notify the public utility in writing if, during the one-year maintenance period, the repairs or restoration are or become in need of maintenance, or if the plant~~

~~material replaced by the public utility, other than grass, dies. If such maintenance is not performed within a scheduled time period agreed upon by the public utility and the city, or if no agreement is reached as to a schedule within 60 days after notice from the city, or if no response is received by the city within two weeks after such notification, the city may have such maintenance performed and bill the costs to the public utility which shall be liable for such costs.~~

~~(Ord. 331-91-01-22, passed 1-22-91)~~

~~§ 96.26 — CORRECTION OF HAZARDOUS CONDITIONS.~~

~~(A) — If repairs to the public right-of-way are deemed necessary by the city in order to correct a hazardous condition and the need for such repairs is caused by work (including defective repairs or failure to repair) by a public utility, the city shall notify the public utility. If the public utility does not provide an acceptable schedule for making the repairs within 24 hours after receipt of such notice, the city may have such repairs done.~~

~~(B) — Pending repair of a hazardous condition as set out in division (A), above, the city may take necessary action to mitigate the hazard.~~

~~(C) — The city may bill the costs of repair or mitigation, as set out in divisions (A) and (B), above, to the public utility which shall be liable for such costs.~~

~~(Ord. 331-91-01-22, passed 1-22-91)~~

## **CHAPTER 96: RIGHT-OF-WAY MANAGEMENT**

### **DIVISION I. GENERAL PROVISIONS**

#### **§ 96.01 ADMINISTRATION; ORDINANCE CONSTRUCTION; PURPOSE; OBJECTIVES**

- (A) Administration. This chapter shall be known and cited as the Right-of-Way Management Ordinance for the City of Pflugerville, Texas. The City Manager appoints the City Engineer, or his/her designee, as 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 City Engineer may delegate any or all of the duties hereunder. The City Engineer shall have the duties, responsibilities and authority as specified herein.
- (B) Construction. This chapter shall be construed under and in accordance with the laws of the State of Texas and the City Charter and Code of Ordinances to the extent that such Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Travis County.
- (C) Purpose. This chapter provides principles and procedures for the placement of structures and facilities, construction, excavation, encroachments, and work activities within or upon any public right-of-way and to protect the integrity of the road and City utility system. To achieve these purposes, it is necessary to require permits of private users of the public rights-of-way, except as prohibited by law, and to establish permit procedures, rules, and regulations for work done within or upon the public rights-of-way.
- (D) Objectives. Public and private uses of public rights-of-way for location of facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City must insure that the primary purpose of the rights-of-way, safe passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, roadways, the City utility system, facilities and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the public right-of-way by persons, agencies, network providers, and public infrastructure contractor(s) is secondary to these public objectives and the movement of traffic. This chapter is intended to strike a balance between the public need for efficient, safe transportation routes and the use of public rights-of-way for location of facilities by public and private entities. The chapter thus has several objectives:
1. To insure the public safety is maintained and that public inconvenience is minimized.
  2. To protect the City's infrastructure investment by establishing repair standards for the pavement, facilities, and property in the public rights-of-way when work is accomplished.
  3. To facilitate work within the public rights-of-way through the standardization of regulations.
  4. To maintain an efficient and applicable permitting process.
  5. To conserve and fairly apportion the limited physical capacity of the public rights-of-way held in public trust by the City.
  6. To preserve the substantial effort on the part of the City to enhance the aesthetic appearance of the public right-of-way.
  7. To establish a public policy for enabling the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.
  8. To promote cooperation among the agencies, network providers, and public infrastructure contractors (as defined herein) and the City in the occupation of the public rights-of-way, and work therein, in order to: (i) eliminate duplication that is wasteful, unnecessary or unsightly; (ii) lower the agencies, network provider's, public infrastructure contractors', if possible, and the City's costs of providing services to the public; and (iii) preserve the physical integrity of the streets and highways by minimizing street cuts.
  9. To assure that the City can continue to fairly and responsibly protect the public health, safety and welfare.

#### **§ 96.02 AUTHORITY AND APPLICABILITY**

(A) Authority. This Chapter applies to all utility companies, persons or entities that are authorized by law or agreement with the city to place facilities in, on, under or over public rights-of-way, to the extent the application is authorized by state and federal law. Compensation for use of the public rights-of-way shall be paid in accordance with all applicable law, including but not limited to cable providers, in accordance with the Federal Cable Act, 47 USC 5241 et seq. and Texas Utilities Code, Chapter 66; for certificated telecommunication providers and network providers, Texas Local Government Code Chapters 283 and 284, respectively; for distributors of natural gas and electricity or as otherwise applicable, Texas Tax Code § 182.025 and Texas Utilities Code § 33.008; and in accordance with Texas Local Government Code Chapters 26 and 141, all as applicable and as amended.

(B) Applicability. A Person shall submit an application for a Right-Of-Way permit to perform work within the public rights-of-way in accordance with this Chapter, the City's Engineering Design Manual (EDM), and the Unified Development Code (UDC) Appendix A, as applicable. Except as provided by Section 96.15 below, a person must obtain a right-of-way permit prior to:

1. Commencing any work within the public right-of-way or public easement; or
2. Removing a tree within public right-of-way.

This Chapter also applies to any person or legal entity conducting work within the public right-of-way, which may be associated with another development permit such as a Site Development Permit or Public Infrastructure Construction Plan. Depending on the scope of work within the public right-of-way, the City may reclassify the work to be performed as a Public Infrastructure Construction Plan while still abiding by the provisions of this Chapter.

## **§ 96.03            DEFINITIONS**

The following definitions apply in this ordinance except as otherwise specifically noted. The words, terms and phrases, abbreviations and their derivations shall have the meaning ascribed to them except where the context clearly indicates a different meaning. 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 or 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 chapter.

Applicant means a Utility Company or their agents, contractors or subcontractors, and any Person as defined below or its agent, contractor or subcontractor that submits a Right-of-Way Permit application to secure authorization to conduct work within the public right-of-way.

Business day shall mean any day of the week, not including Saturday, Sunday or holiday observed by the city.

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.

Certificated telecommunications provider shall mean the same as the term is defined in Texas Local Government Code § 283.002(2).

City Council means the municipal governing body of the City of Pflugerville, Texas.

City Engineer the person appointed by the Administrator to perform general engineering functions for the City, or the duly authorized representative of such Person.

City property shall mean all buildings, infrastructure, bridges, parks, golf courses, parking lots and other real property owned by the city that is not for utility or street transportation purposes.

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

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 Engineering department or Development Engineering or Public Works Department and development services or a successor department that is responsible for management of the right-of-way and roadway infrastructure.

City Engineer shall mean the City Engineer, Assistant City Engineer, or Public Works City Engineer as appointed.

Engineering Design Manual and Construction Standards (EDM) shall mean the design and construction standards that have been adopted by the City Council as part of the city's Unified Development Code, as amended.

Emergency shall mean a customer service interruption or a condition that threatens imminent harm to persons or property or to the public health and safety.

Emergency operations means 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.

Facility or facilities shall mean any and all of the wires, cables, fibers, duct spaces, manholes, poles, conduits, pipes, underground and overhead passageways and other equipment, structures, plants and appurtenances and all associated physical equipment placed in, on, over or under the public rights-of-way.

FCC means the Federal Communications Commission.

Governing body means the Mayor and the City Council of the City of Pflugerville, Texas.

Governmental entity means any county, City, school district, library district, road district, drainage or 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 means days in which City offices are closed in observance of a holiday.

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

Pavement means 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 chapter 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 shall mean a natural person (an individual), cooperative association or corporation, company, association, partnership, firm, Limited Liability Company, joint venture, or association, partnership, corporation whether or not organized for profit, governmental entity, other legally recognized entity and specifically includes the contractor and subcontractor performing work for a public utility.

Plant material. Grass, trees, shrubs, flowers, vines, and other ground cover.

Public rights-of-way shall mean the same as defined in Texas Local Government Code § 283.002(6): the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or easement in which the city has an interest. The term does not include the airwaves above a public rights-of-way with regard to wireless telecommunications. The term does not include city property and rights-of-way owned by the State of Texas or agency thereof.

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.

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, sidewalk, 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 Permit shall mean a permit issued by the city in accordance with this Chapter and other applicable law authorizing a utility company or other person to complete work within public rights-of-way and/or use or occupy the public rights-of-way for facility purposes.

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 means the line that serves no more than two individual customers or two meter banks.

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

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

Thoroughfare means all roadways and streets classified on the City's Master Transportation Plan, including but not limited to as a toll road, principle arterial, minor arterial, major collector, minor collector and local.

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

Trench means any excavation deeper than 12inches. This shall include linear trenches, holes, pits and etc.

Utility Company/Fiber Company shall mean any person or entity that owns or operates facilities, not an agent or representative of the city, who installs, constructs, or maintains facilities in the corporate limits of the city to provide electric, gas, water, sewer, telecommunication or wireless service, or cable television service to members of the public, whether residing in or out of the corporate limits, including the utility company's contractors and sub-contractors or their sub-contractors performing work on behalf or for the benefit of the utility company.

Work shall mean digging, excavating, tunneling, or boring in or under any public right-of-way, or cutting or breaking the paved surface in any public right-of-way, in connection with the construction, repair, or maintenance of utility facilities; provided that work directly and specifically required for the construction, repair, or maintenance of overhead utilities and service line connections to individual customers is not included in this definition unless said maintenance will obstruct a traffic lane or pedestrian sidewalk/path.

#### **§ 96.04 POLICE POWERS**

A person's, utility's, right-of-way user's, network provider's, or public infrastructure contractor's rights hereunder are subject to the police power of the City of Pflugerville which includes the power to adopt and enforce ordinances, including amendments to this chapter, necessary for the safety, health, and welfare of the public. Agencies, network providers, and public infrastructure contractors shall comply with all applicable laws and ordinances enacted, or hereafter enacted, by the City of Pflugerville or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City of Pflugerville reserves the right to exercise its police powers, notwithstanding anything in this chapter or a permit to the contrary. Any conflict between the provisions of this chapter or a permit and any other present or future lawful exercise of the City of Pflugerville's police powers shall be resolved in favor of the latter.

#### **§ 96.05 FRANCHISE AGREEMENT**

Any utility company or person with a current and unexpired consent, franchise, agreement or other authorization from the city to use the public rights-of-way that is in effect at the time this Chapter is adopted shall continue to operate under and comply with that agreement, to the extent that the agreement conflicts with a provision of this Chapter, until the agreement expires or until it is terminated by mutual agreement of the city and the utility company, or is terminated as otherwise provided for in law, provided that a utility company or person shall be required to comply with any non-conflicting provision provided in this Chapter.

#### **§ 96.06 UTILITY COORDINATOR; FIELD UTILITY COORDINATION; FIELD STANDARDS; EXCAVATION STANDARDS**

- (A) Utility coordinator. Each utility and right-of-way user shall name a utility coordinator who shall be the representative and point of contact for all communications from the City and who shall meet with the City Engineer or designee when so requested.
- (B) Field utility coordination. The right-of-way user shall notify the Engineering department at each of the following times during a project:
1. Forty-eight (48) hours before the start of construction;
  2. Upon completion of the initial backfill; and
  3. Upon completion of the project.

(C) Field standards.

1. The right-of-way user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.
2. Markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of “non-washable” markers is prohibited.
3. Compliance with the Texas Utilities Code, as amended, is required at all times.
4. 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 City Engineer in the event the traffic control equipment is not owned by the permittee or right-of-way user.

(D) Excavation standards. When conducting street and sidewalk excavations, the following industry standards shall apply:

1. The plans by a permittee under this chapter for all trenches whose depth will equal or will exceed five feet shall include detailed plans and specifications showing a trench safety system which meets occupational safety and health administration standards.
2. The permittee and a registered professional engineer shall certify that the trench safety system set forth on the submitted plan meets and complies with all occupational safety and health administration standards.
3. The permittee and the engineer shall indemnify and hold the City harmless from any damages or injuries resulting from a failure of the plan or its implementation to meet occupational safety and health administration standards.
4. It shall be unlawful for the permittee under this chapter to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and be hazardous to their safety or health.

## **§ 96.07 MAPS; RECORDS OF REGISTRANTS**

(A) Maps. All utility companies and other applicants who have existing facilities in the public rights-of-way as of the adoption date of the ordinance from which this Chapter is derived shall provide the City an accurate map of their service area as a system map of their facilities to the City in a commercially available digital format, accessible by nonproprietary software within 30 days of the adoption of this Ordinance, (as allowed by law or any federal rules or regulations) unless the utility company or other applicant demonstrates a significant economic hardship in providing such system map in the above format, in which case the applicant shall provide its best available data in a physical format acceptable to the City. An updated system map shall be provided to the City on an annual basis thereafter, which will include all new facilities completed over the prior year. Coordination with the City of Pflugerville GIS Department will be required on the type of format needed to upload into the City of Pflugerville GIS maps (as allowed by law or any federal rules or regulations).

1. The map shall be in electronic format overlaid over the Travis County and City of Pflugerville digital map, as applicable.
2. In dual coverage areas, the City may request additional information to enable identification of right-of-way users.
3. If available, 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 geodetic network.
4. 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 a maximum of 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 or as agreed by both parties. Thereafter, the data is to be provided to the City on an annual basis by January 1.

(B) Records of registrants. 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.

## **§ 96.08 NOTICE**

Notice for purposes of this ordinance 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, or United States mail return receipt required.

## **§ 96.09 PERMIT REQUIRED; REGISTRATION OF UTILITY OR RIGHT-OF-WAY USER**

- (A) Permit required. Nothing in this section relieves a right-of-way user and/or utility from obtaining a permit under this chapter to perform work, including construction, in the right-of-way.
- (B) Registration. In order to protect the public health, safety, and welfare, a utility or right-of-way user maintaining or operating existing facilities in the right-of-way must register with the City Engineer in accordance with the following requirements:
1. The registration must be on a form furnished by the City Engineer and made in the name of the utility or right-of-way user that owns the facilities.
  2. Shall register with the City by January 31<sup>st</sup> of each successive year after the first registration occurs. If the utility or right-of-way user fails to renew registration by that date, the City will send by certified mail a notice of noncompliance to the address listed on the registration.
  3. Each utility company shall update and keep its registration current with the city at all times and shall inform the City of any changes no more than thirty (30) days after the date the change is made. For a utility company with a franchise agreement with the city, the franchise will constitute registration under this provision. Failure to maintain registration with the city shall be evidence of a utility company's intent to abandon its facilities, which may lead to removal by the city at the utility company's sole expense.
  4. The utility or right-of-way user shall also include the following registration:
    - i. The name of the utility or right-of-way user using the right-of-way, including any business name, assumed name, or trade name the entity operates under or has operated under in the City within the past five years.
    - ii. If the utility is a Certified Telecommunication Provider (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 or right-of-way user to use the right-of-way.
    - iv. The names, addresses, email addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility or right-of-way user. At least one person must possess decision-making authority for the utility company and at least one of the addresses must be within the City of Pflugerville area.
    - v. The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility or right-of-way user.
    - vi. 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 or right-of-way user. This list may be amended as needed; 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.
    - vii. The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, seven days a week.
    - viii. Proof of existing insurance that complies with this Ordinance.

Upon review and approval of City Engineer, the City will provide the utility or right-of-way user a registration letter valid until the end of the calendar year during which the registration was completed. The utility or right-of-way user may make as many photocopies of the registration letter as needed. The utility or right-of-way user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(vi) above have a copy of the registration letter on site when work is being conducted under the provisions of the registration letter.

It is unlawful for any person, its agents, servants or employees to perform construction in the right-of-way without first having made either application and obtained a permit therefor and have in possession a valid registration certificate.

#### **§ 96.10 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.

#### **§ 96.11 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.

#### **§ 96.12 SURFACE MOUNTED MARKERS**

Where surface mounted markers are needed, curb mounted medallions shall be used whenever possible.

#### **§ 96.13 RELOCATION OF FACILITIES FOR CITY PROJECTS AND PUBLIC IMPROVEMENTS (CAPITAL IMPROVEMENT PROJECTS)**

- (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 this Ordinance, 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.

#### **§ 96.14 RIGHT-OF-WAY PERMIT REQUIRED; SUBMITTAL REQUIREMENTS**

- (A) Right-of-Way permit required. It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunnel, excavate, install structures or close lanes on a thoroughfare without first having made application and obtained a permit thereof or in compliance with the City Construction Specifications, promulgated and amended by the City Engineer, 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 City Engineer a permit in compliance with this ordinance.

- 1. Before issuing a permit, the City shall have been provided:
  - a. a written application for a permit shall be addressed to the City, on a form furnished by the City, setting forth the name and residence or business address of the applicant;
  - b. 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;
  - c. the purpose of the excavation;

- d. the application form shall include plans prepared in accordance with City specifications;
  - e. plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work;
  - f. all proposed work must be shown in heavy or bold type lines and fonts;
  - g. 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;
  - h. if right-of-way user cannot show distinctive line weights, the plans shall clearly label the above information using text;
  - i. 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;
  - j. information provided stating the extent, dimensions, character and purpose of the cut or excavation to be made
  - k. 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;
  - l. the application form shall be accompanied by maps of the existing facilities in the area, to the extent available;
  - m. the location of the proposed facilities, methodology of construction, and proposed start and completion dates
  - n. when the work requires a road or lane closure includes excavating, which will exceed five feet in depth, a traffic control plan or trench safety design shall be sealed by a licensed professional engineer shall and accompany the application, unless otherwise provided by law.
2. At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in this Ordinance.
  3. The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the City Engineer, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this chapter.
  4. No fee or requirement authorized or imposed pursuant to this ordinance 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 City Engineer. 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, are subject to this chapter.
  7. Irrigation system installation requires a permit per existing City codes.

(B) Submittal requirements. The Applicant shall furnish the city accurate and complete information relating to the excavation, construction, installation, expansion, reconstruction, relocation, alteration, removal, maintenance or repair of facilities or improvements in the public rights-of-way, as set forth herein and in the Engineering Design Manual (EDM). An application for a Right-of-Way Permit shall be filed with the City by the applicant in accordance with the provisions of this Chapter and the Unified Development Code (UDC) Appendix A, as applicable.

## **§ 96.15 EXCEPTIONS TO REQUIRED PERMIT AND EMERGENCY WORK**

- (A) Exceptions to required permit. The City Engineer reserves the right in his/her discretion to require a right-of-way permit on service connections. Unless otherwise required by the City Engineer, service connections do not require a right-of-way 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 City Engineer via e-mail. Work shall not begin until the electronic form is transmitted to the City Engineer;
  4. The excavation required is less than 12 inches in depth;

5. The excavation is no wider than two inches or is hand dug;
6. The service connection does not require boring.
7. The proposed work is to be performed in accordance with an approved site plan or construction plan.
8. The proposed work will be performed as part of the construction of a new subdivision if the construction:
  - included on the subdivision's approved street and drainage construction plans, and
  - occurs at the time that construction of the street and drainage systems occurs, prior to City acceptance of public infrastructure; or
  - in accordance with TLGC 284.157 for network providers. See Section 96.40.
9. The installation of facilities necessary to provide primary or regular service to a customer's property or performing routine repair or maintenance of existing facilities, **UNLESS OTHERWISE SPECIFIED HEREIN, SHALL PROVIDE A PERMIT IF** the utility company's activities require:
  - i. The breaking of the asphalt, concrete, bare ground or similar surface of the public rights-of-way;
  - ii. The installation of a pole within the public rights-of-way;
  - iii. The installation of an appurtenance extending to or above the surface of the public rights-of-way;
  - iv. Work that will interfere with a public open travel lane;
  - v. Work that will interfere with a public pedestrian route; or
  - vi. Boring within the public rights-of-way.

(B) Emergency work. In the event a utility company does work as an emergency, it shall, as soon as practicable, notify the City of the work, and make an application for such work. If such emergency repair or maintenance requires breaking of the asphalt, concrete or similar surface of the public rights-of-way, the utility company performing such work shall notify the City immediately **and submit an application for such work** (or if after hours, notify the City Police). Any utility company performing emergency repair or maintenance in the public rights-of-way that does not require the breaking of the asphalt, concrete or similar surface of the rights-of-way shall provide the City with notice of any work performed by the next business day from the commencement of such work. By the following business day, a utility company shall provide the City with a written, reasonably detailed description of emergency repair or maintenance work performed in the public rights-of-way and an updated map of any facilities that were relocated. In addition, the utility company shall comply with the requirements of this Chapter for the restoration, replacement or repair of the public rights-of-way.

(C) Permit Non-transferable

A person may not transfer or assign a permit issued under this Chapter unless authorized in advance by the city.

## § 96.16 PERMIT APPLICATION; ISSUANCE OF PERMIT

(A) Permit application.

1. 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.
2. Fees shall apply to all right-of-way users unless governed by an existing agreement with the City. 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.
3. Except as otherwise provided by Division four (4) of this chapter, permits will typically be issued or denied within ten (10) 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.

4. The application is not complete unless it contains all information required by this Ordinance, requested on the application form, and required by any supplemental list of required documentation provided by the City with the application form.

5. Applicants are encouraged to request a pre-submission meeting for large projects.

(B) Issuance of permit

1. Every person making application for a permit in accordance with the provisions of this chapter, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the City Engineer, it shall be his or her duty to issue the permit, when the provisions of this chapter have been complied with.
2. Upon receiving a written application for a permit and a plan prepared in accordance with the City specifications, the Engineer's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Accepting only emergency excavations, at least forty-eight (48) hours prior to the start of work, the applicant shall notify the City Engineer the date the work will commence when traffic control devices are necessary on a thoroughfare.
3. No permit shall be transferable. A permit shall expire unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
4. Each permit shall state a time period for completion of all the work to be done hereunder. The City Engineer may, in his/her sole discretion, grant extensions of time.
5. No person in violation of any requirement of this chapter 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 City Engineer. 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.
6. No work shall be done under any permit issued under this chapter 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.

## **§ 96.17 POSTING OF SIGNS**

The right-of-way user and contractor (if used) shall be identified with 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.

## **§ 96.18 PERMIT AND IDENTIFICATION REQUIRED; PROTECTION OF PROPERTY INTERFERENCE; CITY INSTALLATIONS OR IMPROVEMENTS; CONFORM UTILITIES**

- (A) Permit and identification required. 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) Protection of property and interference. The right-of-way user shall be responsible for identifying both public and private utilities within their work area. Those utilities shall be clearly marked prior to any excavation. 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.

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 and place stakes/markers indicating the boundary to remain in place for the duration of the work.

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 chapter or which interferes with the public's unimpeded use of the right-of-way.

- (C) City installations or improvements. 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.
- (D) Conform facilities. 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.

## **§ 96.19 HOURS OF OPERATION FOR NONEMERGENCY WORK**

All work shall be performed during normal business hours. No work shall be performed on holidays. A right-of-way user may work outside of the normal business hours' subject to the approval of the City Engineer and a notification no later than 72 hours prior to which the work is to be performed.

## **§ 96.20 DENIAL OF PERMIT; APPEAL**

- (A) 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 chapter.
4. The excavation would be in a street and not otherwise permitted by this chapter.

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 City Engineer.
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 chapter relative to work in progress.
11. The right-of-way user has not compensated the City, unless the user 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.

(B) Appeal. A right-of-way user that: (i) has been denied registration; (ii) has been denied a permit; (iii) has had a permit revoked; or (iv) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

1. If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the City Engineer within five business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The City Engineer shall provide a written decision within fifteen (15) business days. Failure to render a decision within fifteen (15) business days shall constitute a denial.
2. If a denial is given by the City Engineer, the appellant may thereafter file a written notice of appeal to the City Manager within five business days of receipt of the City Engineer's written decision. The City Manager shall provide a written decision within fifteen (15) business days of receipt of an appeal in accordance with this section. Failure to render a decision within fifteen (15) business days shall constitute a denial.

## **§ 96.21 RESERVED (96.21 – 96.29)**

### **DIVISION II. TECHNICAL SPECIFICATIONS**

## **§ 96.30 LAWFUL USE OF RIGHT-OF-WAY; COMPLIANCE WITH SAFETY REGULATIONS**

(A) Lawful use of right-of-way.

1. 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.
2. 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.
3. 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.

(B) Compliance with safety regulations.

1. 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.

## **§ 96.31 CONFORMANCE WITH THE MASTER TRANSPORTATION PLAN**

A right-of-way user should consult the City's Master Transportation Plan (MTP) 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 MTP. 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 MTP, except as provided herein. Typical locations of City facilities are depicted in the City standard details.

## **§ 96.32 TREE TRIMMING AND GRAFFITI ABATEMENT**

(A) Tree trimming. The right-of-way user shall identify on the permit application any anticipated tree trimming resulting from the permit requested. Permission may be granted to a right-of-way user, subject to the requirements of this code, 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.

A person may trim trees in or over the public rights-of-way for the safe and reliable operation, use and maintenance of its facilities. All tree trimming shall be performed in accordance with standards promulgated by the National Arborist Association and International Society of Arboriculture, and should be done in such a manner to preserve as much vegetation and natural shape of trees as reasonably possible, and still accomplish a safe and effective tree trimming program. Reasonable efforts shall be made to contact affected property owners prior to necessary tree trimming operations. Should the person, its contractor or agent, fail to remove such trimmings within 24 hours (unless a longer period is required for extraordinary conditions and conditions beyond the control of the person), the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the person shall promptly reimburse the City for all costs incurred within 30 working days.

(B) Graffiti abatement. 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.

## **§ 96.33 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.

## **§ 96.34 COMMENCEMENT AND COMPLETION**

After obtaining the permit and prior to commencing the work, the permittee shall notify the City Engineer, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the City Engineer. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.

## **§ 96.35 NOTIFICATION TO AFFECTED PROPERTY OWNERS**

Notification to 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, at its sole cost and expense, which shall include the following information:



1. Permit number;
2. Identity 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.

## **§ 96.36            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, in accordance with TMUTCD. 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.

## **§ 96.37            REVOCATION OR SUSPENSION OF PERMIT; WORK NOT IN A ACCORDANCE WITH PERMIT DECLARED UNLAWFUL; WORK DONE WITHOUT A PERMIT**

(A) 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 chapter 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.
6. The failure to correct a condition indicated on an order issued pursuant to this chapter.
7. Repeated traffic control violation(s).
8. Failure to protect facilities or repair facilities damaged in the right-of-way.
9. Violation of any part of this chapter.
10. Recognition by the City Engineer that a permit was issued in error.
11. Failing to comply with an order of the City Engineer 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 City Engineer.

If the City Engineer determines that the permittee has committed a breach of any law or condition of the right-of-way permit, the City Engineer 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 City Engineer may, in his/her discretion, revoke the permit, provide specifications to cure the breach, or both. Within three business days of receiving notification of the breach, permittee shall contact the City Engineer with a plan, acceptable to the City Engineer, 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.

(B) Work not in accordance with permit declared unlawful. 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 City Engineer, 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 City Engineer may, in his/her sole discretion, grant a waiver to take the circumstances into account. Failure to comply with requirements set forth in this chapter 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 City Engineer has approved alternative requirements.

(C) Work done without a permit. No cut, excavation, grading or disturbing of the right-of-way or wires on poles, 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.

#### **§ 96.38 CESSATION OF WORK AND HAZARDOUS CONDITIONS**

At any time, the City Engineer may order the immediate cessation or revocation of any work that poses a threat to the health, safety or well-being of the public.

(A) If repairs to the public rights-of-way are deemed necessary by the city in order to correct an unsatisfactory or hazardous condition and the need for such repairs is caused by work (including defective repairs or failure to repair or maintain) by a utility company or person, the city shall notify the responsible party. If the responsible party does not provide an acceptable schedule for commencing the repairs within twenty-four (24) hours after receipt of such notice, or immediately if an emergency hazard exists, the city may have such repairs completed at the responsible party's sole expense.

(B) Pending repair of a hazardous condition as set out above, the city may take any necessary action to mitigate the hazard.

(C) The city may bill the costs of repair or mitigation, as set out above, to the responsible party who shall be liable for all such costs.

#### **§ 96.39 VIOLATIONS OF STANDARDS NOTICE**

The City Engineer 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 five days after issuance of written notice, the permittee shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City Engineer may revoke the permit.

#### **§ 96.40 LOCATION AND RELOCATION OF FACILITIES; RELOCATION OF FACILITIES**

(A) 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.

1. If the utility company fails to relocate facilities in the time required by the City in this Chapter, the utility company shall be subject to liability to the City for such delay. In addition, the City (**an approved contractor to remove said facilities**) may relocate the utility company's facilities after providing reasonable notice to the affected utility company. Upon receipt of an invoice from the City, the utility company shall reimburse the City for all costs incurred by the City for such relocation within thirty (30) calendar days from the date of the City invoice.
2. Notwithstanding anything in subsection (1) of this subsection, the City and the utility company may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

(B) Relocation of 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.

#### **§ 96.41 ABANDONED FACILITIES**

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 City Engineer may allow some or all facilities to remain if the City Engineer 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.

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.

## **§ 96.42 UNDERGROUNDING; UNDERGROUND SERVICE REQUIREMENTS**

- (A) Undergrounding. It is the intent of the City to require the undergrounding of utilities in certain areas to achieve more reliable service, improve aesthetics, reduce visual clutter in the built environment and provide for pedestrian amenities and landscaping. These requirements are in accordance with the franchise agreements set forth in the Code of Ordinance, the provisions of this Ordinance or otherwise agreed to in writing between the City and a utility. If a location is designated by the City to be an underground requirement area or Underground District, then a utility or right-of-way user shall place their facilities underground.
- (B) Undergrounding service requirements.
1. 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 other law or an existing franchise agreement between the right-of-way user and the City or a PUCT tariff.
  2. No new pole mounted infrastructure will be allowed in designated Underground Districts.

## **§ 96.43 LOCATION OF POLES AND CONDUIT**

In conjunction with the other provisions of this Ordinance, all poles in the right-of-way shall be metal, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to interfere with vehicular and pedestrian travel. 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. Placement of poles and anchor guys along curvilinear streets shall comply with the applicable provisions of all City ordinances and regulations.

## **§ 96.44 SIZE AND LOCATION OF ABOVEGROUND FACILITIES; HEIGHT OF OVERHEAD LINE**

(A) Size and location of aboveground facilities. The maximum dimensions for ground mounted 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 structures three feet or less in height, the width may be 44 inches. This does not include poles. 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 City Engineer. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening. Aboveground facilities cannot conflict with the existing or future pedestrian path of travel as identified on the Master Transportation Plan, including any ADA accessible path.

(B) Height of overhead line. The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code, as it exists or may be

amended.

## **§ 96.45 ATTACHMENTS TO POLES**

Attachments to poles. Except as otherwise required by this Ordinance, 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:

1. A right-of-way user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
2. Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation, unless the antenna is requested as part of a network node and subject to Chapter 284.
3. If the existing pole already has two or more existing risers/drops, the pole must be replaced with a metal pole and all wires and cables must be run in conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer risers/drops on the pole, the wires and cable may be installed as a riser/drop in conduit painted an approved color.

## **§ 96.46 STREET CLOSURES; TEMPORARY REARRANGEMENT OF WIRES**

### **(A) Street closures.**

1. All lane closures on any thoroughfare shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the City Engineer. The City Engineer may require a traffic control plan. Arrow boards and message boards may be required for lane closures on thoroughfares. In addition, the following steps shall be taken before any street or part thereof may be closed or restricted to traffic:
  - i. The permittee must receive the approval of the City Engineer and the police department;
  - ii. The permittee must notify the chief of the fire department (ESD No.2) of any street closed;
  - iii. Upon completion of construction work, the permittee shall notify the City Engineer, fire department (Emergency District No. 2 known as "ESD No.2") and the police department before traffic is moved back to its normal flow so that any necessary adjustments may be made; and
  - iv. Where flagmen are deemed necessary by the City Engineer, they shall be furnished by the permittee at its own expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the City Engineer will designate detours. The City shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are no existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the City Engineer. The permittee will be responsible for any unnecessary damage as may be determined in the City Engineer's sole discretion caused to any highways by the operation of its equipment.
2. Except in an emergency, no street shall be closed on weekdays during the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m. or outside normal working hours of the City.
3. All lane closures require 24-hour notification of the police and fire departments prior to closing.
4. Emergency closures may be permitted with the approval of the City Engineer. The permittee shall route and control traffic including its own vehicles as directed by the police department.

**(B) 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.

## **§ 96.47 EROSION CONTROL AND STORM WATER MANAGEMENT; MAINTAIN THE ACCESSIBLE PATH; DUST CONTROL; TRAFFIC CONTROL SAFETY; RESPONSIBILITY FOR SIGNS; BARRICADES AND WARNING DEVICES; DUTY TO BARRICADE**

- (A) Erosion control and storm water management. The right-of-way user shall be responsible for storm water management, erosion control and excavation safety measures that comply with City, state and federal guidelines. Requirements shall include, but not be 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. Sediment leaving the work site and entering the public storm water system must be cleaned prior to completion of the job. Upon request of City Engineer, the right-of-way user may be required to furnish documentation submitted or received from the federal or state government.
- (B) Maintain the accessible path. The right-of-way user shall be responsible for maintaining an approved accessible path of travel throughout the project. If maintaining an accessible path through the construction area is not feasible a suitable temporary path shall be created. Accessible path's shall be approved by the City Engineer and maintained for the duration of the project.
- (C) 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.
- (D) 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 City Engineer may revoke the permit, in addition to any other remedies available to the City. At any time the City Engineer 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.
- (E) 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 chapter. 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.
  6. All traffic control devices must be removed immediately upon completion of work.
- (F) 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 chapter, 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.

## **§ 96.48            INSPECTION; MATERIALS TESTING; BACKFILL MATERIAL**

- (A) 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.
- (B) Materials Testing. The City 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 City. 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.

- (C) Backfill Material. Whenever any excavation for the laying of pipe is made through rock, the pipe shall be laid six inches above the rock bottom of the trench and the space under, around and six inches above the pipe shall be backfilled with clean river sand, noncorrosive soil or one-quarter inch minus gravel or in accordance with manufacturer's specification if approved in writing by the public works City Engineer. Broken pavement, large stones, and debris shall not be used in the backfill.

#### **§ 96.49 DUTIES OF PERSONS MAKING EXCAVATIONS OR CREATING OBSTRUCTIONS; EMERGENCY EXCAVATIONS; URGENT WORK**

- (A) 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.
- (B) Emergency excavations. Nothing in this chapter 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, chapter 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 City Engineer within 24 hours. Except as specifically provided otherwise in this chapter for excavations authorized by this section, permittee shall be subject to all fees and requirements of this chapter.
- (C) Urgent Work. If in his/her judgment, traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the City Engineer with the consent of the city manager, if the excavation is within 300 feet of a residence, shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee 24 hours a day to the end that such excavation work may be completed as soon as possible.

#### **§ 96.50 EXCAVATION IN STREETS; BACKFILL OF EXCAVATED STREETS**

- (A) Excavation in streets. Except in case of an emergency there shall be no excavation in any street without the prior written approval of the City Engineer. 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 provided to the City Engineer 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 and restored to an as good or better condition. Any damage to pavement outside the removal area shall also be repaired at the discretion of the City Engineer and subject to the City Engineer's approval.
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 thickness of the concrete or 6", whichever is greater, and the full width of the trench, which shall also cut any 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 the City's standard details.
  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 pavement or 6", whichever is greater, and the full width of the trench, which shall also cut any reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the pavement and excavated to undisturbed soil. Further criteria is set forth in the City's standard details.
  3. Jacking and boring. A permittee or right-of-way user shall perform all work in conformance with methods approved by the City and in such a manner as to not interfere or disturb existing or

planned infrastructure.

4. Responsibility of excavated area maintenance. A permittee or right-of-way user shall warrant and be responsible for its repairs in the right-of-way for two years from the completion date of any repair.
5. Clearance for fire suppression equipment. The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or firefighting equipment shall be kept free of excavated material or other obstructions.
6. Access to public infrastructure. The excavation work shall be performed and conducted so as not to interfere with access to the City's public infrastructure such as water valves, water meters and backflow devices, sanitary sewer manholes, sanitary sewer cleanouts, storm water manholes, storm water drains and inlets, etc.

(B) Backfill of excavated area.

1. Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety. Traffic bearing plates can be used temporarily in conformance with City requirements. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the City Engineer of the time the backfill will begin.
2. 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 minus three 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 City Engineer. Outside of pavement surfaces, compaction of all backfill shall be 95 percent of maximum density with a moisture content of minus three percent to of optimum moisture content as determined by ASTM D698, and be smoothed, raked, and topsoil and grass or other landscaping installed to match the surrounding conditions.

**§ 96.51 RIGHT-OF-WAY RESTORATION REQUIREMENTS**

(A) Right-of-way restoration requirements

1. 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 City Engineer may, in her sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.
2. 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 City Engineer with material approved by the City.
3. 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 be covered by a maintenance bond for two years from the completion date of any repair.
4. 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 fourteen (14) 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 and completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the City.
5. 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.

6. 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 City Engineer, reimburse the City for pavement restoration costs as provided for in this chapter. 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.
7. 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 City Engineer determines, in her 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.
8. All street excavations shall be perpendicular excavations, if possible, unless otherwise approved by the City Engineer. 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 City Engineer. All repairs shall be equal or better than that which existed prior to the commencement of any work.
9. 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 City Engineer prior to work beginning.
10. The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until approved to do so by the City Engineer.

**§ 96.52            RESTORATION OF PAVEMENT; PERMANENT PAVEMENT REPAIRS;  
SUBSTANDARD REPAIR OF PAVEMENT OF RIGHT-OF-WAY**

- (A) 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 City Engineer.
  2. All excavations shall comply with the City construction standards, as amended, and requirements of this chapter. Unless otherwise required by City standards, as amended, or if unusual conditions are encountered, the City Engineer 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 City Engineer.
  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.
- (B) 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 that are classified as principal and within 14 days on residential, local and alley streets after the City Engineer makes final inspection. Backfill failures shall remain the responsibility of the right-of-way user.
- (C) 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 chapter, including, without limitation, reimbursement to the City of the cost to restore the street and/or right-of-way.

### **§ 96.53            FAILURE TO COMPLETE WORK WITHIN SPECIFIED TIME**

In the event any work governed by this chapter is not completed by the right-of-way user within the time required or in accordance with the specifications required herein or by the City Engineer, the City Engineer 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.

### **§ 96.54            REMOVAL AND RECONSTRUCTION WHERE WORK IS DEFECTIVE**

All construction work in the streets, right-of-way, 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 City Engineer, 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 City Engineer, then upon written demand or notice from the City Engineer, such right-of-way user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the City Engineer 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 City Engineer, then, if required by the City Engineer, 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 City Engineer 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 City Engineer, 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.

### **§ 96.55            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. 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. Streets shall be cleaned by use of a 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 City Engineer, sufficient reason therefore having been given to his satisfaction, grants a written extension of time.

### **§ 96.56            REPORTING COMPLETION OF WORK; EFFECT OF CHAPTER ON PERSONS ENGAGED IN CONSTRUCTION**

- (A) Reporting completion of work. When the work under permit hereunder is completed, the permittee shall notify the City in accordance with the requirements placed on the permit. The City will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.
- (B) Effect of chapter on persons engaged in construction. Any permit issued prior to the adoption of this chapter 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 chapter, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this chapter.

### **96.57 – 96.70    RESERVED**

## **DIVISION III.            INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY**

### **§ 96.71            INDEMNIFICATION**

To the extent allowed by law, the right-of-way user or permittee shall be required to indemnify the City for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation., and right-of-way user shall be required to 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, volunteers, agents, and representatives 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.

## **§ 96.72 INSURANCE AND BONDS**

### **(A) Insurance.**

1. It shall be unlawful for any person, unless exempt under this Chapter, to construct, reconstruct or repair any sidewalk, driveway, curb or curb and gutter in any street, alley, easement or right-of-way of the City without having first executed and delivered to the City a current policy(ies) of liability insurance in an amount determined by the City (including but not limited to general and/or commercial liability, worker's compensation and business auto liability), and such insurance must be conditioned as follows: that the principal shall fully indemnify and hold the City harmless from any and all cost, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of the work, or that may arise out of or be occasioned by the performance of such work by occurrence. The City shall have no duty to perform under this chapter until such certificate has been delivered to the department.
2. City shall be entitled, upon request and without expense before issuing a permit, 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.
3. 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 day notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance.
4. 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.
5. The City owned utilities shall not be required to provide the insurance specified herein.
6. With respect to the right-of-way user's obligation to comply with the requirements for commercial general (public) liability insurance coverage, the City Engineer, in collaboration with the City's Finance Director may, in their discretion, allow the right-of-way user to self-insure upon annual production of evidence that is satisfactory to show the user has sufficient assets and history of performance to justify the user to self-insure.

### **(B) Bonds.**

1. Unless otherwise provided for by a utility company's or other applicant's valid franchise or agreement, the City shall require reasonable bonding requirements of a utility company or other applicant. Such bonding amounts will be reasonably determined by the City depending on several factors based on public safety and risk of harm to persons and property. Such factors may include, but are not limited to:
  - i. The nature of the construction project;
  - ii. The type of facility; and
  - iii. Past construction history of the applicant in the City as to any damage claims, repairs and timeliness of construction.

2. The utility company or other applicant shall file an annual surety bond with the City, which will be valid each year prior to the commencement of any construction and will extend for a period of two (2) years after the end of the then current year for the construction completed in any given year. The surety bond shall be obtained from a surety company authorized to do business in the State of Texas. The terms of the bond shall be subject to city approval. Such surety bond will be in the amount of the estimated cost to restore the public rights-of-way for the work anticipated to be completed in that year. If the City determines that the annual surety bond on file is insufficient to restore the public rights-of-way related to a specific project for which a permit application has been filed, then the City, as a condition of right-of-way permit issuance may require the utility company or other applicant to file an additional surety bond for such project.
3. The City may either waive or reduce the amount of the surety bond in the event the utility company or other applicant has had a two-year history of no claims or damages to city property with the city, or has promptly paid such claims upon request. No surety bonds for aerial construction will be required of holders of a state-issued certificate of franchising authority to provide cable or video services, in accordance with Texas Utilities Code Chapter 66.

(C) Alternate compliance methods. The above requirements may be met by utility companies with a current franchise or agreement with the City if their current franchise or agreement adequately provides for insurance and bonds in favor of City.

### **§ 96.73            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 of two (2) 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 chapter.

### **§ 96.74            WHEN ADDITIONAL SECURITY REQUIRED; DECISION OF CITY ENGINEER BINDING ON CONTRACTOR, RIGHT-OF-WAY USER AND SURETIES**

- (A) When additional security required. In the event the City Engineer reasonably believes the contractor's or right-of-way user's solvency is threatened, the City Engineer may, at any time, make written requirement 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.
- (B) Decision as determined by the City binding on contractor, right-of-way user and sureties. If any question arises as to when any work was actually began or other specific dates, the decision of the City Engineer shall be conclusive on the contractor, right-of-way user, and the sureties on all such bonds.

## **DIVISION IV. CERTIFIED TELECOMMUNICATION PROVIDERS AND DEPLOYMENT OF NETWORK NODES N PUBLIC RIGHT-OF-WAY**

### **§ 96.75            CERTIFIED TELECOMMUNICATIONS PROVIDERS AUTHORITY REQUIRED/NONEXCLUSIVE USE**

Certified Telecommunications Provider (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.

### **§ 96.76            TRANSFER AND NOTICE; EXEMPTION FROM FEES; WAIVER BONDS**

Transfer and notice. A CTP shall notify the City Engineer 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 City Engineer at all times during which the CTP uses the right-of-way.

## **§ 96.77            PURPOSE**

The purpose of this Division is to set forth the standards for the City's regulation of the installation of network nodes and network support poles pursuant to Chapter 284 of the Texas Local Government Code ("Chapter 284") in a way that is fair, reasonable and nondiscriminatory in accordance with Chapter 284 while managing the public right-of-way and balancing the interests of network providers with the health, safety, and welfare of the public and while acting on behalf of the state of Texas as the fiduciary trustee of public property under Chapter 284. This Division shall be construed in accordance with Chapter 284, to the extent not in conflict with the Constitution and laws of the United States or of the State of Texas. Unless otherwise articulated by this Division, the City and network providers shall look to the other Divisions of this Ordinance to determine applicable requirements. Other purposes include:

1. Establish a competitively neutral and nondiscriminatory management system regarding the physical use, occupancy and maintenance of the City's public rights-of-way by wireless network providers
2. Secure compensation authorized by Chapter 284 for the physical use and occupancy of the public rights-of-way by wireless network providers; and
3. Assist the City in protecting the public health, safety, and welfare

## **§ 96.78            DEFINITIONS**

For the purpose of this Division, the definitions found in the City of Pflugerville Engineering Design Manual, Subsection 11 Wireless Services Design for Network Nodes, Node Support Poles and Transfer Facilities ("the Design Manual") are hereby incorporated into this Division and shall apply unless the context clearly indicates or requires a different meaning. The definitions contained above in this chapter, and as amended, (the "General Definitions") shall be applicable to this Division to the extent that there is no conflict between the General Definitions and the definitions contained herein or the Design Manual. In the event of a conflict between the definitions in this Division, the Design Manual and the General Definitions, the definitions contained in this Division and the Design Manual shall control. The following definitions are specifically applicable to this Division:

Applicable Codes means:

- (a) the City adopted uniform or international building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and
- (b) local amendments to those codes as adopted by the City to the extent not inconsistent with Chapter 284.

Chapter 284 means Texas Local Government Code, Chapter 284, as amended.

City Owned Utility Pole means a utility pole owned or operated by a City owned utility, as defined by Section 11.003, Texas Utilities Code, and located in a public right-of-way.

Collocate and collocation mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

Concealment means any wireless facility or pole that is covered, disguised, or otherwise concealed such that the wireless facility blends into the surrounding environment and is visually unobtrusive.

Decorative pole means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City ordinances and Applicable Codes.

Design District means an area that is zoned, or otherwise designated by City's ordinances and Applicable

Codes, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

Easement means and shall include any public easement or other compatible use created by dedication, or by other means, to the City for public utility purposes or any other purpose whatsoever. "Easement" shall include a private easement used for the provision of utilities.

FAA means the Federal Aviation Administration, or other lawful successor, authorized to oversee aviation travel on an international level.

Federal Communications Commission or FCC means the Federal Administrative Agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.

Highway right-of-way means public right-of-way adjacent to a state or federal highway.

Historic district means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

Law means common law or a federal, state, or local law (municipal or county), statute, code, rule, regulation, order, or ordinance.

Local means within the geographical boundaries of the City.

Location means the City-approved and lawfully permitted location for the Network Node.

Macro Tower means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 of Chapter 284 and that supports or is capable of supporting antennas.

Mayor means the mayor of the City of Pflugerville, Texas, or designee.

Micro network node means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

Municipal park means an area that is zoned or otherwise designated by the City or City ordinance as a public park for the purpose of recreational activity.

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

(a) includes:

- (i) equipment associated with wireless communications;
- (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
- (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(b) does not include:

- (i) an electric generator;
- (ii) a pole; or
- (iii) a macro tower

Network provider means:

- (a) a wireless service provider; or
- (b) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:
  - (i) network nodes; or
  - (ii) node support poles or any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a network node.

Permit means a written authorization for the use of the public right-of-way or collocation on a service pole

required from the City before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as “Network Provider.”

Public right-of-way means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the City has an interest. The term does not include:

- (a) a private easement; or
- (b) the airwaves above a public right-of-way with regard to wireless telecommunications.

Right-of-Way Management Ordinance means the right-of-way ordinance codified in the City of Pflugerville Code of Ordinances as Chapter 96, “Right of Way Management”, as may be amended from time to time in the future, including amendments adopting addition sections.

Service pole means a pole, other than a City Owned Utility Pole, owned or operated by the City and located in a public right-of-way, including:

- (a) a pole that supports traffic control functions;
- (b) a structure for signage;
- (c) a pole that supports lighting, other than a decorative pole; and
- (d) a pole or similar structure owned or operated by the City and supporting only network nodes.

Stealth shall mean a method that hides or conceals an antenna, supporting electrical or mechanical equipment or any other support structure, including network nodes.

Street means only the paved portion of the Public Right-of-Way used for vehicular travel, being the area between the inside of the curb to the inside of the opposite curb, or the area between the two parallel edges of the paved roadway for vehicular travel where there is no curb. A “Street” is generally part of, but smaller in width than the width of the entire Public Right-of-Way, while a Public Right-of-Way may include sidewalks and utility easements. A “Street” does not include the curb, on street parking, or the sidewalk, if any are present at the time of a permit application or if added later.

Traffic Signal means any City owned or operated device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

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

Underground District means any area in the City, as designated by this ordinance, where all utilities are underground.

User means a person or organization which conducts a business over facilities occupying the whole or a part of a public street or Public Right-of-Way, depending on the context.

Utility pole means a pole that provides:

- (a) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (b) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

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

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

Wireless facilities mean “micro network nodes,” “network nodes,” and “node support poles” as defined in

**§ 96.79            APPLICABILITY; USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY**

- (A) Applicability. The terms of this Division shall apply to all network providers and network providers' facilities used, in whole or part, in the provision of wireless services throughout the City, within the public right of way, including without limitation the highway or street right-of-way as defined herein. The terms of the City's Right-of-Way Management Ordinance (defined herein) apply to network providers to the extent that the terms of that ordinance do not conflict with the terms of this Division, the Design Manual, or with Chapter 284. In the event of a conflict, the terms of Chapter 284, this Division, and the Design Manual shall control, in that order.
- (B) Use and occupancy of public right-of-way. Pursuant to this Division and subject to Chapter 284, the Design Manual, applicable City ordinances, and Applicable Codes, a network provider has the nonexclusive right to use and occupy the public rights-of-way in the City only for the purpose of:
1. Conducting activities related to transport facilities for network nodes in the public right of way;
  2. The activities of a network provider collocating network nodes in the public right of way; or
  3. Installing, constructing, operating, modifying, replacing, and maintaining node support poles and facilities in a public right of way

**§ 96.80            ADOPTION OF DESIGN MANUAL; COMPLIANCE WITH DESIGN MANUAL AND APPLICABLE CODES; REQUIRE POLE ATTACHMENT AGREEMENT AND CITY MANAGER AUTHORITY**

- (A) Adoption of Design Manual. A separate Ordinance shall be referenced for adopting the City's Design Manual which may be amended by the City Council.
- (B) Compliance with Design Manual and Applicable Codes. All wireless network providers shall comply with the terms of all applicable Law, including without limitation, this Public Right-of-Way management ordinance, other applicable City ordinances, Applicable Codes, and the terms and conditions of the Design Manual.
- (C) Pole attachment agreement and City Manager authority. A network provider shall execute a Pole Attachment Agreement, including providing the required insurance and performance bond, with the City to access and use City service poles, which includes traffic lights, non-decorative street lights, and traffic signage, to dictate the terms of use. The City Manager is hereby authorized, on behalf of the City, to execute a Pole Attachment Agreement with a network provider dictating the terms of use of City service poles.

**§ 96.81            GENERAL CONSTRUCTION AND MAINTENANCE STANDARDS; SIZE OF NETWORK NODES AND EQUIPMENT CABINETS; UNDERGROUND CONSTRUCTION**

- (A) Standards. A network provider shall construct and maintain network nodes and network support poles described in Chapter 284 in a manner that does not:
1. Obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;
  2. Obstruct the legal use of a public right-of-way by other utility providers;
  3. Impose a safety hazard to the public;
  4. Violate nondiscriminatory Applicable codes;
  5. Violate or conflict with the City's Design Manual; or
  6. Violate the federal Americans with Disabilities Act of 1990 (ADA).
- (B) Size of Network Nodes and Equipment Cabinets. All network providers shall comply with the size limitations of network nodes and equipment cabinets as set forth in the Design Manual and Chapter 284.
- (C) Underground Construction. As required by this Ordinance, and when required by Applicable Codes, general ordinances, regulations or rules of the City or applicable state or federal law, right-of-way users, network provider's, or public infrastructure contractor's new facilities shall be placed underground at right-of-way user's, network provider's, or public infrastructure contractor's expense. Underground facilities are required for network providers in Underground Districts as provided in this Ordinance. Related equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules, including all visibility triangle requirements. In areas not designated as an

Underground District, where existing facilities are aerial, network provider or public infrastructure contractor may install aerial facilities. Following the original adoption of this Ordinance, if a location is subsequently designated by the City to be an underground requirement area, then a right-of-way user's or network provider's permit for the location of the facilities, at such location will be revoked 90 days after the designation, with removal of said facilities at such location within 90 days of such designation, or as otherwise reasonably allowed by the City for the transition of other overhead facilities. Placement of street-related poles and facilities above ground in the right-of-way, including but not limited to stop signs and street lights, does not preclude an area from designation as an area requiring undergrounding and placement of facilities on street-related poles in an area requiring undergrounding is prohibited.

**§ 96.82 PERMIT APPLICATIONS; INFORMATION REQUIRED; EXEMPTION FROM PERMIT; NOTWITHSTANDING EXEMPTION; SUBSTANTIALLY SIMILAR NODE OR POLE; HEIGHT AND DISTANCE LIMITATION EXCEPTION; APPEAL**

(A) Permit applications. Except as otherwise provided in Chapter 284, a network provider shall obtain one or more permits from the City to install a network node, node support pole, or transport facility in a City public right-of-way. A network provider requesting to install or collocate multiple network nodes inside the city limits of the City may file a consolidated permit application with the City for not more than thirty (30) network nodes, and upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those network nodes.

1. Utility company as the Applicant

- a. Application. Any utility company shall obtain a Right-of-Way Permit prior to performing any new construction or replacement, upgrading, excavation, installation, expansion, reconstruction, relocation, alteration, removal, maintenance, repair, traffic interference or replacement of facilities in, on, under or over the public rights-of-way. The application must be completed and signed by an authorized representative or agent of the owner of the facilities.
- b. Application Fees. A Right-of-Way permit application fee is required per the city's Unified Development Code (UDC) Appendix A, as amended. If there are additional direct costs to the City in processing the applications, the city may recover those costs from the applicant prior to the issuance of the construction permit, if otherwise authorized by applicable law or agreement. However, a Right-of-Way permit application fee is not required for City-initiated projects or certificated telecommunications provider under Texas Local Government Code Chapter 283, and holders of a state-issued certificate of franchising authority to provide cable or video services under Texas Utilities Code Chapter 66.
- c. Compensation for Use of Right-of-Way. For use and occupancy of the public rights-of-way, all utility companies using or occupying the public rights-of-way shall compensate the city on the value of the rights-of-way used, in accordance with and to the fullest extent authorized by applicable law or agreement.

(B) Information required: The network provider shall provide the following information in its permit applications:

1. Applicable construction and engineering drawings and information to confirm that the applicant will comply with the Design Manual and Applicable Codes;
2. Any additional information reasonably related to the network provider's use of the public rights-of-way to ensure compliance with the Design Manual, this Division and Chapter 284;
3. A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission;
4. Certification that the proposed network node(s) will be placed into active commercial service by or for the network provider not later than the sixtieth (60th) day after the date of construction and final testing of each network node is completed; and
5. A certificate of insurance that provides that the Network Provider and its contractor has at least \$1,000,000.00 in general liability coverage, in addition to other insurance policy(ies) deemed necessary by the City Engineer as provided by and in accordance with this Ordinance.
6. Written approval from the owner of the utility pole, if not the City, that the network provider is authorized to install facilities at the utility pole.
7. Written certification that there are no other poles, with small cell attachments permitted/under



- application review, within 300 feet of the subject pole(s).
8. Other information as required by the Design Manual.

(C) Exemption from permit: As provided in § 284.157, a network provider is not required to apply, obtain a permit, or pay a rate to the City for:

1. Routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
2. Replacing or upgrading a network node or network pole with a node or pole that is
  - i. substantially similar (as set forth in Subsection "F", "Substantially Similar Node or Pole" below), in size or smaller; and
  - ii. that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;
  - iii. the replacement or upgrade does not include replacement of an existing node support pole; and
  - iv. the replacement or upgrade does not defeat existing concealment elements of a node support pole; or
  - v. the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles in compliance with the National Electrical Safety Code.

(D) Notwithstanding exemption. Notwithstanding Subdivision (C) of this Section:

1. The network provider or its contractors shall notify the City at least twenty-four (24) hours in advance of work described in Subdivision (C); and
2. The network provider may replace or upgrade a pole only with the approval of the pole's owner; and
3. The size limitations may not in any event exceed the parameters prescribed by § 284.003 without the City's approval in accordance with § 284.109, with the City acting on behalf of the State of Texas as fiduciary trustee of public property.

(E) Substantially similar node or pole. A network node or pole is considered to be "substantially similar" if:

1. The new or upgraded network node, including the antenna or other equipment element, will not be more than ten (10) percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by § 284.003; and
2. The new or upgraded pole will not be more than ten (10) percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by § 284.103; and
3. The determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the municipality.

(F) Appeal. A network provider may appeal a decision with regard to the permitting of network nodes and network node support poles, including the denial or revocation of a permit, as set forth in Section 96.20 of this Ordinance.

## **§ 96.83            INSTALLATION IN UNDERGROUND DISTRICTS; INSTALLATION IN DESIGN DISTRICTS**

(A) Installation in Underground Districts

1. Installation. A network provider shall obtain advance written consent via an issued right-of-way permit from the City before installing or collocating new network nodes or installing new node support poles in an area of the City that has been zoned or otherwise designated as an Underground District by this ordinance. The network provider shall be required to comply with the requirements described in the Unified Development Code and Design Manual and as set forth in this chapter, including § 96.42. The City has the authority and discretion to designate new underground districts at any time.

(B) Installation in Historic or Design Districts

1. Installation. A network provider shall obtain advance written consent via an issued right-of-way permit from the City Engineer before collocating new network nodes or installing new node support poles in an area of the City that has been zoned or otherwise designated as a design district

if the district has decorative poles. The network provider shall be required to comply with the General Aesthetic Requirements described in either the Design Manual or Unified Development Code and as set forth in this Section. The City has the authority and discretion to designate new historic districts and design districts any time, including subsequent to the adoption of this Division. Districts are listed in and determined by the UDC and include, at the time of adoption of this ordinance, the following:

- i. Downtown District (Also known as Central Business District) – Design District
  - ii. Falcon Pointe ALUR (PUD) 2
  - iii. Cornerstone at Kelly Lane
  - iv. Stone Hill Town Center
  - v. Highland Park ALUR
  - vi. The Commons at Heatherwilde and Pecan ALUR
  - vii. Pflugerville Town Square ALUR
  - viii. Pecan District
  - ix. North Pointe
2. Concealment. Concealment of network nodes and node support poles shall be required by the City in Design Districts pursuant to § 284.105, this Ordinance and the Design Manual. Network providers shall submit a proposal for installation of a network node or node support pole with its permit application. In a Design District, network nodes installed on decorative poles shall be installed in such a way as to cause no change to the outward appearance of the decorative pole. Network nodes installed on all other poles in a Design District shall be concealed in accordance with this Ordinance and the Design Manual. Node support poles installed in a Design District shall first be approved by the City to ensure consistency with the look of other decorative poles in the Design District.
3. Enclosure. The network node facilities shall be concealed or enclosed in a stealth manner in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible in strict accordance with this Division, and other applicable ordinances, except to the extent not consistent with Chapter 284.
4. Color. Colors in the Design Districts must be approved by the Planning Director and City Engineer and must match the color of existing decorative poles in the district. Unless otherwise provided, all colors shall be shall match the background of any structure the facilities are located upon and all efforts shall be made by network provider for the colors to be inconspicuous. Colors in areas other than in Design Districts shall conform to colors of other installations of telecommunication providers in the immediately adjacent areas that are not in violation of this section, Unified Development Code or the Design Manual.

## **§ 96.84            INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS; SAFETY**

- (A) Installation in municipal parks and residential areas. A network provider shall not install a new Node Support Pole in a public right-of-way without the City Engineer's and Park and Recreation Director's discretionary written consent, which consent shall be nondiscriminatory, if the public right-of way:
1. Is in a municipal park; or
  2. Is adjacent to a street or thoroughfare that is:
    - i. Not more than 50 feet wide; and
    - ii. Adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restriction.
  3. In addition to compliance with the requirements of the preceding section, it is the responsibility of a network provider installing a network node or node support pole in a public right-of-way identified in this section to comply with private deed restriction and other private restriction in the area that apply to those facilities.
  4. Securing City's discretionary consent as provided herein, shall be a condition precedent to the issuance of any related right-of-way permit and any such consent may impose conditions to such placement, including without limitation, compliance with any guidelines established in the City's Design Manual.

- (B) Safety. In order to minimize negative visual impact to the surrounding area, and in accordance with Chapter 284, § 284.102 (1) to enhance the safety requirements of line of sight of pedestrians, particularly small children, the City Engineer may deny a request for a proposed location if the network provider installs network node ground equipment where existing ground equipment within three hundred (300) feet already occupies a footprint of twenty-five (25) square feet or more.

**§ 96.85            DETERMINATION OF APPLICATION COMPLETENESS; APPROVAL OR DENIAL OF APPLICATION; BASIS FOR DENIAL OF APPLICATION; DEEMED APPROVED; RESUBMISSION OF DENIED APPLICATION**

- (A) Determination of Application Completeness: Upon receipt of a permit application, the City shall make a determination regarding whether the permit application is complete and shall notify the applicant of that determination as defined and set out in the Design Manual and right-of-way permit application process.

1. If City determines that an application is not complete, City shall identify the missing information necessary to complete the review of the application.

- (B) Approval or Denial of Application: The City shall approve or deny a completed application as defined in the Design Manual and right-of-way permit application process.

- (C) Basis for Denial of Application: If an application is denied by the City, it shall document the basis for the denial, including the specific applicable City code provisions or other City rules, regulations, or other law on which the denial is based and notify the applicant.

The documentation for the denial is to be sent by electronic mail to the applicant on or before the deadline for denial of the application as defined and set out in the Design Manual.

- (D) Deemed Approved. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied before the applicable date for such approval or denial.
- (E) Resubmission of Denied Application. The applicant may cure the deficiencies identified in the denial notice from City without paying an additional application fee, other than a fee for actual costs incurred by the City, if, as defined and set out in the Design Manual, from the date the City denies the completed application the applicant cures the deficiencies identified in the denial documentation and resubmits the revised completed application.
- (F) Reconsideration of Denied Application. After providing notice of denial in accordance with this Section, the City shall approve or deny the revised completed application, as defined and set out in the Design Manual, after the City receives a revised completed application. The City's review shall be limited to the deficiencies cited in the denial documentation.

**§ 96.86            LOCATION OF INSTALLATION; TIME OF INSTALLATION**

- (A) The network provider shall provide notification to adjacent residential developments/neighborhoods within 300 feet of the installation of the micro network node, network node or network node support pole at Network Provider's sole cost and expense. Notification must be made at least 24 hours prior to the commencement of the work.
- (B) A network provider shall begin installation for which a permit is granted not later than six (6) months after final approval of the application and shall diligently pursue installation to completion. Notwithstanding the foregoing, the City Engineer or designee may in his/her sole discretion grant reasonable extensions of time for completion or grant reasonable extensions as requested by the network provider.

**§ 96.87            APPLICATION FEES AND RENTAL RATES; INKIND SERVICES PROHIBITED**

- (A) Applicable fees and rental rates. As compensation for the network provider's use and occupancy of the City public rights-of-way, the network provider shall pay application fees and annual public right-of-way

rental rates as set forth in the City's Fee Schedule, which shall be in lieu of any lawful tax, license, charge, public right-of-way permit, use, construction, street cut or inspection fee; or other public right-of-way related charge or fee, whether charged to the network provider or its contractor(s) within the City, except the usual general ad valorem taxes, special assessments and sales tax levied in accordance with state law and equally applicable to all general businesses in the City. Fees will be assessed for the following items or any other items as noted in the Fee Schedule:

1. *Network Nodes:*

- i. Application Fee
- ii. Annual Public Right-of-Way Rental Rate
- iii. Public Right-of-Way Rate Adjustment: As provided in § 284.054 of Chapter 284, the City may adjust the amount of the annual public right-of-way rate not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each network provider of the new rate; and the rate shall apply to the first payment due to the City on or after the 60<sup>th</sup> day following the written notice.

2. *Node Support Poles*

- i. An application fee for each network support pole

3. *Transfer Facilities:*

- i. An application fee for each transfer facility
- ii. The annual transfer facility rental rate monthly for each network node site located in a public right-of-way. However, no rate is required if the network provider is already paying the City an amount equal to or greater than the amount of other City public right-of-way fees for access lines under Chapter 283 of Chapter 284 or cable franchise fees under Chapter 66 of the Texas Utility Code.

4. *Micro Network Nodes:*

- i. No application fee is required for a micro network node if the installation is attached on lines between poles or node support poles.

5. *Collocation of Network Nodes on Service Poles:*

- i. Subject to execution of the City's Service Pole Attachment Agreement, the collocation of network nodes on City service poles shall allowed per year per service pole or the maximum amount allowed by law.

6. *City-Owned Utility Poles:*

- i. Annual Rate. A network provider shall pay an annual pole attachment rate for the collocation of a network node supported by or installed on a City-owned utility pole based upon the pole attachment rate consistent with § 54.024 of the Texas Utilities Code, applied on a per-foot basis.

(A) In-Kind Services Prohibited. The City may not seek or accept in-kind services unrelated to the installation or collocation for which a permit is sought, including in-kind contributions such as reserving fiber, conduit, or pole space for the City, in lieu of or as additional payment or consideration from any network provider, as a condition for issuing a permit required under Chapter 284 for use of the public right-of-way.

## **§ 96.88 INDEMNITY**

As provided in § 283.057(a) and (b) and § 284.302, a wireless network provider shall be required to indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the network provider accessing a public right of way under Chapter 284. The City and the network provider, as applicable, shall promptly notify each other in writing of any known claim or demand against the other related to or arising out of the network provider's use of the public right of way under Chapter 284. After such notice, the network provider shall defend the claims. The network provider shall have the right to defend and compromise the claims. The City shall cooperate in the defense of the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the joint negligence of the network provider and the City; provided that in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the network provider. Nothing in this section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties under state law. Further, the indemnification provided by Chapter 284 is solely for the benefit of the City and the network provider and does not create or grant any rights, contractual or otherwise, to any other

person or entity.

**§ 96.89            REMOVAL OR RELOCATION BY NETWORK PROVIDER; REMOVAL OR RELOCATION REQUIRED FOR CITY PROJECT; REMOVAL REQUIRED BY CITY FOR SAFETY AND IMMINENT DANGER REASONS**

**(A) Removal or relocation by network provider.**

1. Notice. In the event of removal or relocation of a micro network node, network node facilities, node support pole or related ground equipment by a network provider at its own discretion, network provider shall notify the City Engineer in writing not less than (ten)10 business days prior to removal or relocation. Network provider shall obtain all Permits required for relocation or removal of its micro network node, network node facilities, node support poles and related ground equipment prior to relocation or removal.
2. No Refunds. No refunds of any amounts paid by network provider for micro network node, network node facilities, node support poles or related ground equipment that have been removed shall be due from City to network provider.

**(B) Removal or relocation required for City project.**

1. In accordance with Chapter 284, § 284.107, except as provided in existing state and federal law, a network provider shall relocate or adjust micro network node, network node, node support pole and related ground equipment in a public right-of-way in a timely manner and without cost to the City of Pflugerville as manager of the public right-of-way.
2. City may require network provider to remove or relocate its micro network node, network node, node support pole and related ground equipment, or any portion thereof from the Public Right-of-Way for City construction projects as allowed by law, including the common-law without compensation.
3. Network provider shall, at the City Engineer's direction, remove or relocate the same at network provider's sole cost and expense, except as otherwise provided in existing state and federal law, whenever the City Engineer reasonably determines that the relocation or removal is needed for any of the following purposes: Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project of a street or public rights-of-way to enhance the use of the public for travel and transportation.
4. If network provider fails to remove or relocate the micro network node, network node, node support pole or related ground equipment, or portion thereof as requested by the City Engineer within ninety (90) days of network provider's receipt of the request, then the City shall be entitled to remove the micro network node, network node, node support pole or related ground equipment, or portion thereof at network provider's sole cost and expense, without further notice to network provider.
5. Network provider shall, within thirty (30) days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the micro network node, network node, node support pole or related ground equipment, or portion thereof.

**(C) Removal required by City for Safety and Imminent Danger Reasons**

1. Network provider shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment within the time frame and in the manner required by the City Engineer if the City Engineer reasonably determines that the disconnection, removal, or relocation of any part of a micro network node, network node, node support pole and related ground equipment:
  - (a) is necessary to protect the public health, safety, welfare, or City property;
  - (b) the micro network node, network node, node support pole and related ground equipment, or portion thereof, is adversely affecting proper operation of streetlights or City property;
  - or
  - (c) network provider fails to obtain all applicable licenses, permits, and certifications required by law for its micro network node, network node, node support pole and related ground equipment, or use of any location under applicable law.

If the City Engineer reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable micro network node, network node, node support pole and related ground equipment at the network provider's sole cost and expense.

2. The City Engineer shall provide ninety (90) days written notice to the network provider before removing a micro network node, network node, node support pole and related ground equipment under this Section, unless there is imminent danger to the public health, safety, and welfare.
3. Network provider shall reimburse City for the City's actual cost of removal of micro network node, network node, node support pole and related ground equipment within thirty (30) days of receiving the invoice from the City.

## **§ 96.90            INSTALLATION; INSPECTION; INTERFERENCE**

- (A) Installation. Network provider shall, at its own cost and expense, install the micro network node, network node facilities, node support poles and related ground equipment in a good and workmanlike manner and in accordance with the requirements promulgated by the City via the City Engineer, as such may be amended from time to time. Network provider's work shall be subject to the regulation, control and direction of the City Engineer. All work done in connection with the installation, operation, maintenance, repair, modification, and/or replacement of the micro network node, network node facilities, node support poles and related ground equipment shall be in compliance with all applicable laws as defined herein.
- (B) Inspection. The City Engineer, or designee, may perform visual inspections of any micro network node, network node, node support pole or related ground equipment located in the Public Right-of-Way as the City Engineer deems appropriate without notice to network provider. If the inspection requires physical contact with the micro network node, network node, node support poles or related ground equipment, the City Engineer shall provide written notice to the network provider within five (5) business days of the planned inspection. Network provider may have a representative present during such inspection.
- (C) Interference. The network provider shall provide detailed analysis, in accordance with the Design Manual, that the installation and operation of a proposed network node, node support pole or transfer facility shall not cause any interference with the City public safety radio system, traffic signal light system, other communications components or the operations of the Airport near the City of Pflugerville. It shall be the responsibility of the network provider to evaluate, prior to making the application for the permit, the compatibility between the existing City infrastructure and the network provider's proposed infrastructure. A network node, node support pole or transfer facility shall not be installed in a location that causes any interference. Network nodes, node support poles or transfer facilities shall not be allowed on the City's public safety radio infrastructure or within Airport.

## **§ 96.91            REQUIREMENTS UPON ABANDONMENT OF OBSOLETE MICRO NETWORK NODE, NETWORK NODE, NODE SUPPORT POLE AND RELATED GROUND EQUIPMENT**

Network provider shall remove micro network node, network node, node support pole and related ground equipment when such facilities are abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of ninety (90) days of the micro network node, network node, node support pole and related ground equipment being abandoned or within ninety (90) days of receipt of written notice from the City. When network provider removes, or abandons permanent structures in the Public Right-of-Way, the network provider shall notify the City Engineer in writing of such removal or abandonment and shall file with the City Engineer the location and description of each micro network node, network node, node support pole and related ground equipment removed or abandoned. The City Engineer may require the network provider to complete additional remedial measures necessary for public safety and the integrity of the Public Right-of-Way.

## **§ 96.92            AS-BUILT MAPS AND RECORDS; COURTESY AND PROPER PERFORMANCE; OWNERSHIP**

- (A) As-Built maps and records. Network provider shall maintain accurate maps and other appropriate records

of its network node facilities, node support poles and related ground equipment as they are actually constructed in the Rights-of-Way, including, upon request, the use of Auto CAD/GIS digital format. Network provider shall provide additional maps to the City upon request.

- (B) Courtesy and proper performance. Network provider shall make citizen satisfaction a priority in using the Public Right-of-Way. Network provider shall train its employees to be customer service-oriented and to positively and politely interact with citizens when dealing with issues pertaining to its micro network node, network node, node support pole and related ground equipment in the Public Right-of-Way. Network provider's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of interaction with the public. If, in the opinion of the City Engineer or designee, network provider is not interacting in a positive and polite manner with citizens, he or she shall request network provider to take all remedial steps to conform to these standards.
- (C) Ownership. No part of a micro network node, network node, node support pole and related ground equipment erected or placed on the Public Right-of-Way by network provider will become, or be considered by the City as being affixed to or a part of, the Public Right-of-Way. All portions of the micro network node, network node, node support pole and related ground equipment constructed, modified, erected, or placed by network provider on the Public Right-of-Way shall be and remain the property of network provider and may be removed by network provider at any time, provided the network provider shall notify the City Engineer prior to any work in the Public Right-of-Way.

## **DIVISION V. ROW LICENSES**

### **§ 96.93 LICENSE REQUIRED FOR PRIVATE OPERATION; APPLICATION; GRANT BY CITY COUNCIL; TERMS AND CONDITIONS**

#### **(A) Applicability and purpose of article.**

The purpose of this article is to provide a method to license or permit the privilege of making use of public streets, alleys, sidewalks or other public ways which would otherwise be unlawful, and nothing in this article shall be deemed to conflict with [sections 10.01 to 10.07](#) of the Charter of the city requiring franchises in order to use the public streets, alleys, sidewalks or other public ways by public utilities in order to furnish a public service which the public has a right to demand.

This article shall not apply where other provisions of this Code or other ordinances of the city govern the use of streets, alleys, sidewalks and other public ways by specific occupations.

#### **(B) Required.**

No person shall place any encroachment within any public street, alley, sidewalk or other public way or appropriate any portion thereof to a private use without first obtaining a street, alley, sidewalk or public way use license from the city.

#### **(C) Application.**

All applications for a license to make a specific use of the public streets, alleys, sidewalks or other public ways shall be made to the director of planning and development services. Such application shall be made on a form provided by the director for that purpose. The applicant shall state the complete purpose for making the application and all facts the director deems pertinent to the granting of such license. All information furnished by the applicant shall be correctly stated; otherwise, any license issued thereunder may be declared void by the city manager or city council.

#### **(D) Approval.**

1. All street, alley, sidewalk or public way license agreements prepared by the director of planning and development services shall be submitted to the city manager if the duration of the license is for thirty (30) days or less, and to the city council for approval if the duration of the license is for greater than thirty (30) days.
2. In the event the city manager denies a license application, the applicant may appeal the decision to city council by filing a written appeal with the city secretary within ten (10) business days after the denial of the license application is mailed to the applicant or personally delivered, whichever occurs first. If no appeal is filed within ten (10) business days, the decision of the city manager becomes final and unappealable. The

written appeal should contain all information on which the city council can make a decision. The city council shall hear the appeal within thirty (30) days after the appeal is filed with the city secretary.

**(E) Contents; terms and conditions.**

All street, alley, sidewalk or public way use license agreements shall state the specific nature of the use granted and the term thereof; shall provide that the city will be held harmless and indemnified against bodily injury or property damage claims or suits arising out of or connected with the issuance of such license; shall provide for revocation of such license upon thirty (30) days' notice, or sooner in case of a violation of the agreement; and shall contain such other terms as may be appropriate.

**(F) Application fee.**

The fees and charges for services furnished by the city, shall be determined from time to time and placed on file in the office of the city secretary.

**(G) Pipeline payment.**

If the application is made for the purpose of constructing, installing, laying, maintaining, operating and/or repairing a pipeline for the transportation of natural gas, oil and/or other hydrocarbons across and under a public street or streets, this section shall apply. A per-rod license payment for the use of the streets, alleys, sidewalks or other public ways, shall be required, as negotiated in good faith by the city and the applicant.

**DIVISION VI. PENALTY; FEE**

**§ 96.94 PENALTY PROVISION**

Any person, firm, corporation or business entity violating this Chapter 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 chapter shall constitute a separate offense. The penal provisions imposed under this Chapter 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.

**§ 96.95 FEE**

(A) Applicable Fees and Rental Rates to the City. Please refer to the latest version of the City of Pflugerville fee schedule.