

**Ordinance amending Chapter 49 of the Code of Ordinances titled "Streets and Sidewalks" in order to provide requirements and prohibitions related to street cuts.**

**SECTION 1.** Article III, "Cuts and Excavations," under Chapter 49 of the Corpus Christi Code of Ordinances, is amended by deleting Sections 49-50 through 49-59 and adding the following new sections, beginning with a new Section 49-39-1 and ending with the new Section 49-59:

**Article III. Cuts and Excavations.**

**Sec. 49-39-1. Applicability; Conflicts**

**Sec. 49-39-2. Definitions**

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**Sec. 49-51. Access to fire hydrants; crossings; traffic control devices.**

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**Sec. 49-53. Completion of excavation; warranty.**

**Sec. 49-54. Warranty of excavation; correction of defects.**

**Sec. 49-55. Work requirements.**

**Sec. 49-56. Inspections of excavations.**

**Sec. 49-57. Damage to facility.**

**Sec. 49-58. As-built drawings and specifications.**

**Sec. 49-59. Reserved.**

**Sec. 49-39-1. Applicability of fees; Conflicts**

Nothing in this Article authorizes the City to charge any fee in conflict with state law, franchise agreements authorized by the City Council, Article VII of Chapter 49 of this Code, or Ordinance No. 026217, as amended.

**Sec. 49-39-2. Definitions**

As used in this Article, the following terms shall have the meanings ascribed in this Article, unless the context of their usage clearly indicates another meaning:

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

*Administrative 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 right-of-way restoration; revoking right-of-way permits and other costs the City may incur in implementing the provisions of this Article.

*Applicant* means any person who seeks a permit for an excavation.

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

*Backfill* means excavation fill material meeting City specified quality requirements or the placement thereof.

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

*City* means the City of Corpus Christi.

*Construction standards* means the City of Corpus Christi Standard Specifications and Details as they may be amended from time to time by the Department of Engineering Services and approved by the City Engineer.

*Contractor* means any public or private person or organization, other than the City.

*Department* means the Department of Development Services.

*Director* means the Director of the Development Services Department, or his or her designee.

*Emergency* means an unforeseeable event or occurrence that endangers health, life, or property, or a situation in which public need for uninterrupted utility service requires immediate corrective action to restore services.

*Emergency operations* are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address a service interruption and requires written notice to Council when the contractual repair value exceeds \$50,000 or otherwise written notice to the Director within 24 hours to ensure compliance with this Article of the Code. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

*Excavation* means an activity that cuts, penetrates, or bores under any portion of the public way that has been improved with a paved surface for street, sidewalk, surface drainage, or related public transportation infrastructure purposes. The term includes but is not limited to cutting, tunneling, jacking and boring, backfilling, restoring, repairing, and installing and maintaining a temporary surface in, the public way. The term does not include a transportation improvement; however, it does include excavations that are undertaken for the improvement or maintenance of publicly owned utility systems, such as water and wastewater lines and facilities. The term also does not include utility maintenance or other activities that are performed within already existing structures, vaults, conduits, or cable ways that are located underneath street improvements, provided that any access required for the work is obtained through manholes, or other previously constructed entrances that may be utilized without cutting or penetrating any pavement or other street improvement.

*Facility* means any structure, device, or other thing whatsoever that may be installed or maintained in, on, within, under, over, or above a public way by an excavation.

*FCC* means Federal Communications Commission.

*Governing body* means the mayor and the City Council of the City of Corpus Christi, Texas.

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

any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.

*Inspection* means the inspection of an excavation by any person approved by the Director to determine compliance with this Article.

*New street* means the paved portion of the right-of-way that has been constructed, reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-depth reclamation, reconstruction or other structural street maintenance treatment. "New street" includes all concrete paved streets, streets constructed or structurally resurfaced during the preceding seven years, for a collector or arterial street or during the preceding five (5) years for a residential street or alley or any street with a pavement condition index greater than eighty-five (85) as defined herein.

*Owner* means a person, including the City, who is the owner or will, following the completion of the installation, become the owner of any facility that is installed or is proposed to be installed or maintained in the public way.

*Pavement condition index (PCI)* means a measure of the condition of the right-of-way on a scale of 1-100. The PCI for a specific street segment can be requested through the Department.

*Pavement cost recovery fee* means the cost incurred by the City and the public associated with a decrease in the useful life of a street caused by excavations.

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

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

*Person* means any person, company, partnership, agency or other public or private entity, including City Departments

*Public way* means any public street right-of-way located in the City, including the entire area between the boundary lines of every way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares), whether acquired by purchase, grant, or dedication and acceptance by the City or by the public, that has been opened to the use of the public for purposes of vehicular travel.

*Public way construction entity* means the City of Corpus Christi, the Regional Transit Authority, the Texas Department of Transportation, Nueces County, or any other public entity performing or causing to be performed transportation improvement construction or construction-related activities in public ways.

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

*Repair area* means that area around an 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 pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.

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

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

*Right-of-way (ROW) user* means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers.

*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.

*Standard Specifications and Details (Specifications)* shall mean the City of Corpus Christi Standard Specifications and Details as published by the Engineering Services Department, latest edition.

*Street* means the pavement, curb and gutter and sub-grade of a city local, collector or arterial roadway.

*Supplementary application* means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend a permit that has already been issued.

*TMUTCD* shall mean Texas Manual on Uniform Traffic Control Devices, latest edition.

*Traffic-control device* means a traffic sign, signal, or marking that is placed and maintained in accordance with state law and this Code.

*Transportation improvement* means the portion of work within the finished paved surface of a public way undertaken by or pursuant to contract for the state or a political subdivision of the state for the purpose of improving or maintaining public way transportation and related storm drainage and street lighting infrastructure, but does not include any activity, such as connection to other facilities, that cuts, penetrates, or bores under a public way other than the one being improved or maintained pursuant to the contract or that cuts, penetrates or bores under the public way after installation of new paving.

*UDC* shall mean Unified Development Code.

*Utility* shall mean any privately or publicly owned entity which uses public rights-of-way to furnish to the public any general public service, including, without limitation, wastewater, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way.

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

### **Sec. 49-39-3. Application.**

- (a) A permit for any excavation shall be obtained by the owner of the facility. If the owner of a facility will not be making the excavation with its own personnel, then the contractor retained to perform the work shall join with the owner as an applicant in obtaining the permit. Where two or more related excavations are being performed as part of the same project, the application and permit may cover the related work, consistent with the Regulations issued under Section 49-40(g) of this Code.
- (b) Applications for permits shall be in the form prescribed by the Director, who may provide for the filing and processing of applications by electronic means. Each application shall be submitted to the Director, shall be signed and sworn to before an officer authorized to administer oaths by each applicant and shall include the following:
  - (1) The name, assumed name, or business name, business type (corporation, partnership, individual/sole proprietor or other) of each applicant;

- (2) Each applicant's mailing address (and street address if different), telephone number, facsimile number, and e-mail address;
- (3) The location (including key map number), depth, length, and width of each excavation to be made in each block and/or intersection, which may alternatively be set forth on the provided drawings and specifications;
- (4) The purpose of the excavation, including a description of the facilities to be installed, maintained, and/or repaired;
- (5) The method of excavation;
- (6) The proposed excavation start date and duration;
- (7) A statement that each person executing the application is fully authorized to act on behalf of and bind his principal in executing and filing the application;
- (8) A statement that each applicant accepts and obligates itself to the following release and indemnification provisions:

#### 'RELEASE

PERMITTEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

#### INDEMNIFICATION

PERMITTEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION

WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) PERMITTEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMITTEES' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)—(iii), "PERMITTEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (ii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT; AND
- (iii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT.

PERMITTEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING.'

- (9) The name of the owner of the facility;
- (10) The 24-hour telephone number at which each applicant's representative who will respond to emergencies may be contacted;
- (11) The name, mailing address, telephone number, facsimile number, and e-mail address of a person who is authorized to receive all notices authorized to be given by the City under this Article to each



applicant;

- (12) Confirmation that all materials necessary for construction will be on hand and ready for use so as not to delay the excavation;
- (13) A transmittal number issued by the Texas One Call Notification Center (811) evidencing that the applicant has complied with the Texas Underground Facility Damage Prevention and Safety Act or an assurance that the transmittal number will be provided to the Director before the excavation commences;
- (14) Evidence of insurance as required in Section 49-49 of this Code;
- (15) Drawings and specifications, as provided in Section 49-39-3 of this Code;
- (16) The work warranty as required by Section 49-45 of this Code; and
- (17) The nonrefundable application fee established pursuant to this Article.

If the Director provides for the filing of applications by electronic means, each application for a permit or permit extension not submitted by electronic means shall also be accompanied by an additional application fee established pursuant to this Article for the cost of data entry.

- (c) An application for a permit for an excavation performed pursuant to Section 49-44 of this Code shall, in addition to the items required above, also include a written statement:
  - (1) Explaining the basis for the emergency actions;
  - (2) Describing the excavation being performed;
  - (3) Describing any work remaining to be performed in the public way; and
  - (4) Stating the time and date when the emergency occurred.

**Sec. 49-39-4. Drawings to accompany application; exceptions.**

- (a) Unless otherwise provided in the Rules and Regulations promulgated under Section 49-40(g) of this Code, each application shall be accompanied by drawings and specifications, which shall show:
  - (1) The location of the excavation;

- (2) The method and manner in which the excavation will be performed; and
  - (3) The methods by which vehicular and pedestrian traffic will be controlled during the prosecution of the excavation, including any proposed signage, use of flaggers, or use of peace officers to direct traffic. The drawings and specifications shall be prepared in compliance with all applicable laws, rules, regulations, and construction standards. The Director may approve standard details for frequently encountered types of excavations, and the approved details may be incorporated into drawings and specifications, where applicable.
- (b) Consistent with applicable laws, sound engineering practices, and the nature and extent of the excavation, the Director may require the drawings and specifications to be sealed by a professional engineer who is licensed in Texas.
  - (c) An emergency excavation may be commenced under Section 49-44 of this Code without submission of drawings and specifications. Consistent with the nature of the emergency and the excavation required, the Director shall allow the applicant a reasonable period of time to produce any required drawings and specifications.

#### **Sec. 49-40. In General**

##### **(a) Prohibited activities.**

- (1) It shall be unlawful for any person to excavate or cause an excavation within the City unless the person is a Permittee to whom a permit has been issued for the excavation pursuant to this Article.
- (2) It shall be unlawful for a Permittee to excavate or cause an excavation within the City in violation of any term of a permit issued pursuant to this Article.
- (3) It shall be unlawful for any Permittee to fail to exhibit a permit upon request as required by Section 49-41(e) of this Code. In any prosecution under this Article, it shall be presumed that there is no permit if the permit is not properly exhibited.
- (4) It shall be unlawful for any Permittee to fail to restore the public way following excavation as required by this Article.
- (5) It is an affirmative defense to prosecution under subsections (b)(1) and (b)(3) above that the excavation was begun in response to an emergency and that a permit was timely applied for in compliance with Section 49-44 of this Code.

##### **(b) Provisions cumulative.**

(1) The provisions of this Article are cumulative of all other requirements of this Code and other laws, including, without limitation, the UDC, and utility franchises, as well as all applicable state and federal laws and regulations. Compliance with this Article does not excuse compliance with any other law, and Permittees are additionally required to obtain any other permits, licenses, and authorizations required by law, including but not limited to utility franchises, permits, licenses, and authorizations that are required to be obtained from the City, the Texas Department of Licensing and Regulation, the Texas Public Utility Commission, Texas Underground Facility Notification Corporation (One-Call Board of Texas), and the Railroad Commission of Texas or any other appropriate governmental agency. However, to the extent that any provision set forth in this Article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this Article shall be construed and applied in a manner that conforms to the applicable state or federal law. In addition, this Article shall not be construed to require an owner to pay any fee that is prohibited by applicable state or federal law or valid city utility franchise.

(2) To the extent that any other city permit or authorization is required for work that is also governed by this Article, the Director shall, to the extent practicable, devise consolidated application forms and issue the required permits or authorizations on a combined basis.

**(c) Penalty.**

Violation of this Article is unlawful. Any person who violates any provision of this Article shall be guilty of an offense and, upon conviction thereof, shall be punished as provided in Section 1-6 of this Code. Each and every day that any violation continues shall constitute a separate offense and shall be punishable as such.

**(d) No private rights in public way.**

Nothing in this Article shall be construed to give any person or Permittee any property right in or to the use of the public way. All permits issued and held under this Article shall be subject to the superior right of the public to control the use of the public way and ensure the safe and orderly movement of traffic, and a separate permit shall be required under this Code where applicable to any work that causes an obstruction.

**(e) Appeals; hearing.**

Any person whose permit is denied or who is otherwise aggrieved by a notice, action, or decision of the Director hereunder shall, upon written request, be entitled to a hearing to be conducted in accordance with the UDC. The decision of the hearing officer shall be final. Where time is of the essence, the aggrieved person may so advise and state the

reason therefor in the request and, to the extent reasonably warranted and allowed by the circumstances, an expedited hearing of the issue shall be afforded.

**(f) Public entities not exempt.**

In addition to their application to other persons, the provisions of this Article are applicable to excavations made by the City and its contractors, as well as to excavations made by or on behalf of other governmental entities and subdivisions, to the extent of the City's police power jurisdiction. In connection with excavations made by the City, the Director may waive compliance with insurance and other requirements that have no practical application as applied to the City.

**(g) Rules and Regulations.**

(1) The Director in association with the City Engineer is authorized to promulgate Rules and Regulations regarding any aspect of the operation of this Article, including without limitation requirements for drawings and specifications, methods by which excavations will be performed, traffic control procedures, application processing and hearing procedures, debarment procedures, construction management procedures, and inspection procedures. The Rules and Regulations must be consistent with applicable federal and state laws, city ordinances, and sound engineering practices. The Director shall make copies of the Rules and Regulations available for inspection in the Director's office, and copies may be purchased at the fees prescribed by law.

(2) Notifications to the One-Call Notification Center (811) must be made prior to commencing an excavation and must be consistent with Title 16, Texas Administrative Code, Chapter 18 Underground Pipeline Damage Prevention. The one-call notification should be requested no earlier than five (5) working days prior to the start of the excavation, but no later than two (2) working days before the excavation is to begin.

**Sec. 49-41. – Permit required; issuance of permit; denial of permit.**

**(a) Permit required.**

(1) Before issuing a permit, the Director shall have been provided a written application, on a form furnished by the Director, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in

accordance with City's Standards, Specifications, and Details as well as any other documentation required by the Department as part of their review process.

- a. The Director shall work with the Public Works and Utility Departments to develop a streamlined form for their use under this Article.
  - b. *Joint applications.* 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 (1) point of contact.
  - c. *Supplementary applications.* 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 greater than that which is specified in the permit must be excavated must:
    - i. Make application for a permit extension and pay any additional fees required thereby; and
    - ii. Receive a new right-of-way permit or permit extension.
- (2) Permits will be issued or denied within ten (10) days of application. Unless granted for a longer period, an excavation permit shall be valid for thirty (30) days and for the dates specified in the permit. The applicant may request 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 or, except as provided herein, 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.
  - (3) An expedited permit may be requested, and shall be issued within two (2) days of application upon a showing of good cause.
  - (4) At the time the permit is issued, the applicant shall pay a nonrefundable application fee in an amount as provided for in this Article.
  - (5) All sums paid to the City pursuant to this Article, shall be deposited in a separate fund or funds and expended only for the administrative oversight of the permitting process, the construction inspection of the actual work, repair resurfacing, rehabilitation, reconstruction, or other improvement of city streets where excavation has occurred after the effective date of the ordinance from which this Article derives.
  - (6) The proposed location, depth and other characteristics of any facilities for

which the permit is issued shall be subject to approval of the Director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this Article and the City's Standard Specifications and Details.

- (7) No fee or requirement authorized or imposed pursuant to this Article shall be construed to affect or alter in any way any obligation of public and 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.
- (8) Combinations of permits shall be permitted at the discretion of the Director. Fees shall be assessed based on the excavations permitted.
- (9) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this Article.

**(b) Issuance of permit.**

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

- (1) Upon receiving a written application for an excavation permit and a plan prepared in accordance with the City's Standard Specifications and Details, the Director's designee shall set forth all requirements, approve or disapprove the application, sign and return it to the applicant. Excepting only emergency excavations, at least one (1) working day prior to the start of work, the applicant shall telephone the City's Department of Development Services and request a permit number, informing the City of the date the work will commence. A permit number shall then be assigned to the job and a permit shall be sent to the applicant.
- (2) A permit is not transferable. A permit is void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (3) Each permit shall state a time period for completion of all the work to be done thereunder. The Director may grant extensions of time.
- (4) No person in violation of any requirement of this Article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected or a plan for

correction is approved by the Director. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.

- (5) No work shall be done under any permit issued under this Article except as stated in the permit. If the permit is allowed to expire, the ROW user shall procure a new permit, paying the applicable fee therefor as before, before proceeding with any such work.
- (6) The appeal of a denied permit shall follow the appeal procedures outlined in the UDC.

**(c) Denial of permit.**

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

- (1) Failure to provide proof of liability insurance acceptable to the City.
- (2) Failure to secure a contractor's license or other required license.
- (3) Failure to perform in accordance with the requirements of these provisions and/or referenced documents.
- (4) The excavation would be in a new street and not otherwise permitted by this Article.
- (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the Director.
- (6) The proposed activity would violate a city ordinance or State or Federal statute.
- (7) The permit application contains false or misleading information.
- (8) The activity would cause a public health or safety hazard.
- (9) The ROW user is in violation of this Article relative to work in progress and/or has outstanding violations on other permits of this type issued by the City.

A permit shall no longer be valid if there are material changes to the excavation, including but not limited to a change in the scope of the work or the method of performing the work of such consequence that the drawings and specifications no longer accurately depict the work, extending the excavation into any geographical area not included in the permit or an excavation that is not authorized by the original permit.

**(d) Permit not transferable; void if excavation not timely commenced.**

- (1) A permit issued under this division is personal to the Permittee and may not be transferred to another person or used by any other person to perform the excavation authorized in the permit.
- (2) A permit is valid only for the location(s) described on the application, depicted on the drawings and specifications, and authorized in the permit, and no excavation shall be authorized at any other location without another permit.

(3) Unless sooner extended by the Director upon written request and for reasonable cause, a permit shall become void if the excavation is not commenced within 60 days from the date of its issuance.

**(e) Record at excavation-site; public notice.**

(1) A Permittee shall, at all times while an excavation is in progress, keep, at the location of the excavation, the original permit (or a copy thereof) and shall, immediately on demand, exhibit the permit upon request to the Director or any other person.

(2) Each Permittee shall post and maintain notices in the vicinity of the excavation in the time, place, and manner prescribed in the Rules and Regulations promulgated under Section 49-40(g). Failure to post and maintain the required notice shall be unlawful.

(3) Such notice required in paragraph (b) above shall include, but not be limited to, the name of the Permittee, the Permittee's telephone number, and the City permit number.

**Sec. 49-42. Fees.**

The permit application and inspection fees will be assessed in accordance with the Development Services fee schedule.

**Pavement cost recovery (PCR) fee:** This reimbursement to the City is due prior to permit issuance and is collected to account for the decrease in the useful life of a street caused by excavations and is based on the Mid-American Regional Council Degradation Cost Recovery Method.

**Pavement cost recovery fee calculation.** Is calculated by multiplying unit cost (per sq. yd.) for Street Construction/Reconstruction, Overlays and Seal Coats by depreciation rate for each maintenance type and the area of influence of the cut. The area of influence adjacent to the trench is equal to the area of the cut plus three (3) feet on each side (in Sq. Yds.). All damage(s) caused directly or indirectly to the street surface or subsurface outside the pavement excavated area shall be regarded as a part of the excavation repair area. This includes any holes drilled into the pavement and not properly plugged, as well as damages caused by work equipment. These areas, as established by the Director, will be included in the total area to be repaired.

The PCR Fee is calculated by multiplying:

each street maintenance unit cost (\$/SY) X

area of influence (SY – actual cut dimensions plus three feet on each side) X

depreciation factor (account for the age of the maintenance).



**Example Calculation:** Collector Street constructed 10 years ago (unit cost \$90.12/SY); sealed 3 years ago (unit cost \$6.06/SY); actual size of cut – 5' x 5' square; area of influence – 11' x 11' (13.44 SY). Depreciation value of 10 yr old street construction = 0.79. Depreciation value of 3 year old seal = 0.4

Cost Recovery Fee for **Construction** =  $\$90.12 \times 13.44 \times 0.79 = \$956.86$

Cost Recovery Fee for **Seal** =  $\$6.06 \times 13.44 \times 0.4 = \$32.58$

**Total Cost Recovery Fee** =  $\$956.86 + \$32.58 = \$989.44$

Unit costs for each street maintenance type (Construction/Reconstruction, Overlay, and Seal) shall be updated annually by the Engineering Services Department with assistance from the Street Department and shall be based on the current market costs of Construction/Reconstruction, Overlay, and Seal work.

#### **Sec. 49-43. Removal or relocation of facilities.**

All Permittees who place facilities thereby obligate and bind themselves to move or change the location of facilities whenever required or instructed to do so by the City in order to accommodate the construction, repair, or relocation of city infrastructure facilities, and failure to do so shall be unlawful. Furthermore, the Permittees must relocate their facilities in a timely manner and communicate their expected relocation timeline to the City Engineer.

#### **Sec. 49-44. Applicability of article to emergencies.**

Nothing contained in this Article shall be construed to prevent any person from making an excavation that is necessitated by an emergency, provided that the owner shall: (1) before the excavation is initiated, notify the Texas One Call Center (811) and/or Director by telephone at the 24-hour City's Response Telephone Number provided in the procedures established under Section 49-40(g) and also notify any other city, state, or federal authority required under law to be notified; and (2) apply for a permit for the excavation within 24 hours after the initiation of the excavation or, if the City's offices are then closed, within 24 hours after the offices of the City are first opened subsequent to the initiation of the excavation.

#### **Sec. 49-45. Work warranty.**

Each applicant shall execute and provide a work warranty in a form approved by the City Attorney, which shall be incorporated into the application form. The purpose of the work warranty is to undertake and ensure that the Permittee will:

- (1) Timely perform the excavation in accordance with the permit, the drawings and specifications, all applicable laws, rules, and regulations, and the

construction standards adopted in or pursuant to this Article, subject to remediation as provided in Section 49-53; and

(2) Warrant the excavation following its completion for two years, subject to remediation as provided in Section 49-54 of this Code.

**Sec. 49-46. Owner business plans; coordination of excavations.**

(a) On or before June 1 of each year, owners shall submit a plan of excavations anticipated to be done in the public way during the five-year period commencing on July 1 of that year. Additionally, the Director shall annually solicit a five-year transportation improvement plan from the various public way construction entities. As soon as practicable following receipt and compilation of the plans, the Director shall make available for inspection a composite list of all projects and transportation improvements designated in the various plans. Applicants are responsible for keeping themselves apprised of the current status of the list. An owner or public way construction entity may change, add, or delete any project in its five-year business plan, and if any modification is made, the owner and/or public way construction entity shall notify the City Engineer.

(b) Prior to issuance of a permit, the Director shall check the application against the composite list. The Director may require owners to (i) coordinate their excavations; (ii) coordinate excavations with transportation improvements that are ongoing or are scheduled by public way construction entities; and (iii) complete excavations before transportation improvements commence. The Director may grant a waiver of coordination requirements for good cause. The Director shall consider the following before granting a waiver:

(1) Effect of each proposed excavation(s) on the surrounding vicinity and on traffic mobility;

(2) The applicant's need for the facility;

(3) The need to facilitate the deployment of new technology as directed pursuant to official city policy; and

(4) Public health, safety, welfare, and convenience.

**Sec. 49-47. Newly constructed or reconstructed streets.**

(a) Except as provided in subsection (b) below, no permit shall be issued for an excavation in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five years, as measured from the date of acceptance by the public works construction entity. Owners shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that are subject to this section.

(b) The Director, for good cause, shall grant a variance to an applicant for repair of existing utilities, to respond to emergencies, or to afford an owner the means to provide service to buildings that the owner has no other reasonable means of serving in the determination of the City Engineer. Variances shall be granted subject to special conditions that the Director determines to be appropriate to the circumstances, such as special coordination with other excavations, special paving requirements, additional soil compaction test reports, or any other

requirements needed to restore the integrity of the public way to "as new" condition. In addition to the information provided on the application, applicant shall provide the following with respect to that part of the public way subject to this provision:

- (1) Reason why the excavation was not performed before or when public way was paved;
- (2) Reason why the excavation cannot be delayed until after the five-year period expires; and
- (3) Reason why the excavation cannot be performed at another location or the owner's need cannot be accomplished by a method that does not require excavation.

**Sec. 49-48. Defaults; unauthorized excavations.**

(a) The Director shall not issue a permit to any person who is in default or breach of any obligation to the City under this Article on a prior permit or on a warranty obligation under Sections 49-53 and 49-54 of this Code.

(b) The Director is authorized to debar from obtaining a permit any person who has performed an unpermitted excavation or any owner who has knowingly allowed that practice. Any such debarment shall be for a reasonable period of time that is consistent with the nature and circumstances of the alleged transgressions. Regulations shall be issued for debarment under Section 49-40(g) of this Code.

(c) Before invoking the provisions of this section, the Director shall provide a written notice to the affected persons and afford them a right to a hearing under Section 49-40(f) of this Code.

(d) 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 Director, 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 Director may grant a waiver to take the circumstances into account.

(e) Failure to comply with requirements set forth in the Article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same Permittee until the violations have been corrected or the Director has approved alternative requirements.

(f) Each violation of this Article shall be punishable by a fine not to exceed five hundred dollars (\$500.00). Each day during which a violation continues shall be deemed a separate violation of this Article.

**Sec. 49-49. Liability of right-of-way user; insurance**

(a) *Liability of right-of-way user.* To the extent allowed by law, the right-of-way user shall be liable to the City for any damage or loss occasioned by any act or

omission occurring in connection with his excavation, and subject to state law, the ROW user shall fully indemnify, hold harmless and defend City, its officers and employees 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 officers or employees may be subjected for injury of any type, death or property damage arising from or connected with any such act or omission. City shall promptly notify a Permittee, or ROW user, at the address set forth in the permit, or last known address, of any claim or suit served upon the City and alleging negligent or wrongful conduct by the Permittee or ROW user in connection with an excavation.

*(b) Insurance.*

(1) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of comprehensive general liability insurance covering the excavation, with an endorsement for any liability assumed under this Article and policy limits as currently required by the City. Each policy shall include a provision obligating the insurer to furnish to the Director at least ten days prior written notice of any cancellation.

(2) The failure of the Permittee to continuously maintain any required coverage shall cause any permit covered thereby to become invalid. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the Director's office. Following notice and an opportunity for a hearing under Section 49-40(e) of this Code, the Director shall revoke any permit for which any required proof of insurance is not being maintained.

(3) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or Permittee.

**Sec. 49-50. Extensions.**

For good cause not relating to any fault of the Permittee in diligently prosecuting the excavation, the Director may extend the number of days allowed in the permit for completion of the excavation. To obtain an extension, the Permittee shall submit an application therefor, including the nonrefundable application fee established pursuant to this Article and indicating the number of additional days needed for final completion. Extensions of time granted under this subsection shall be noted on the records regarding the permit.

**Sec. 49-51. Access to fire hydrants; crossings; traffic control devices.**

*(a) Access to fire hydrants.* Each excavation shall be performed so it does not obstruct emergency access to any fire hydrant or public water supply valve.

*(b) Crossings; traffic control devices.* It shall be the duty of each Permittee to make provisions for the safe crossing of pedestrians and the orderly movement of vehicular traffic. Provisions therefor shall be included in the drawings and

specifications for the excavation. Any required traffic control devices shall conform to applicable laws and to the Texas Manual on Uniform Traffic Control Devices.

**Sec. 49-52. Steel plate temporary surfaces.**

It shall be unlawful to place a steel plate at an excavation without a permit. The Director may authorize as a condition of a permit the use of a steel plate as a temporary surface for an excavation. Any such permit shall specify the length of time the steel plate is allowed to remain in the public way. It shall be unlawful for any Permittee or former Permittee to maintain or cause to be maintained a steel plate in the public way after the time specified in the permit for the excavation at which the steel plate is located. Each steel plate shall be clearly marked with the name of the owner of the steel plate, and a Permittee's failure to use a steel plate so marked shall be a violation of this Article.

**Sec. 49-53. Completion of excavation; warranty.**

(a) In accordance with the Rules and Regulations promulgated under Section 49-40(g), a Permittee shall notify the Director before commencing and obtain permission to commence the excavation before it enters into the public way. In connection with the notification and permission, the authorized date of entry on the public way, for purposes of Section 49-41 shall be established. In connection with the notification, the Permittee shall also furnish the transmittal number required under Section 49-39-2(b)(13) of this Code, if it has not previously been provided. The Permittee shall diligently prosecute the excavation to its final completion within the time authorized under the permit. It shall be unlawful for a Permittee to fail, refuse or neglect to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable Rules and Regulations and the construction standards adopted in or pursuant to this Article.

(b) If a Permittee commences an excavation and then fails, refuses, or neglects to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the City's Design Standards, the City's Standards, Specifications and Details, the Director may, following written notice to the Permittee, perform the excavation or cause a contractor of the City to perform the excavation. The Director shall afford the Permittee five days' written notice and opportunity to cure before taking over the excavation, unless the Director determines that hazards to public safety and convenience that are posed by the condition of the excavation require a shorter notice period. The Director may charge the cost of having the excavation performed, including related administrative expenses, to the Permittee. The Director shall so notify the Permittee, and the Permittee shall be obliged to pay the cost within 30 days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under Section 49-40(e) and applicable rules or regulations promulgated under 49-40(h) of this Code.

**Sec. 49-54. Warranty of excavation; correction of defects.**

Each Permittee shall warrant its excavations against all defects in workmanship and materials for a period of two years after final completion. Whenever within the two year period any portion of the pavement or surface of any public way excavated under such a warranty is, in the engineering determination of the Director, in need of repairs, by reason of any defect in workmanship or materials, the Director shall serve upon the Permittee a written notice stating the repairs necessary, and requiring the repairs to be made within five days after service of the notice. If the repairs are not timely made, the Director shall at once make or cause to the repairs to be made at the expense of the Permittee. The expenses, including any related administrative expenses, shall be charged to the Permittee, and the Permittee is hereby required to pay the cost within 30 days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under Section 49-40(e) and applicable rules or regulations promulgated under 49-40(h) of this Code.

**Sec. 49-55. – Work Requirements.**

- (a) The installation of a utility that crosses the right of way at a perpendicular or near perpendicular angle and has an outside diameter of 6 inches or less will not be permitted to be installed by cutting of the road section. Any exceptions to this will have to be approved by the Director.
- (b) Any street excavation/cut shall repair not only the impacted trench but also a full lane overlay for parallel cuts and 12 feet for perpendicular cuts on asphalt streets and shall replace full panels on concrete streets.
- (c) All work shall be completed in accordance with the City's Standards Specifications and Details.
- (d) The Permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements
- (e) 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.
- (f) The Department may require testing of materials used in construction in or near the right-of-way to determine conformance to required specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the department.
- (g) All work completed by the Permittee shall be guaranteed and warranted for a term of no less than 24 months from the date the work was completed. This does not prohibit the City from pursuing repairs after this date if it believes there were latent defects in the work completed under this permit.
- (h) At any time, the Director may order the immediate cessation of any work which poses a threat to the health, safety or well-being of the public. The Director may revoke the permit of any Permittee in any instance where there is a threat to the health, safety or well-being of the public.

**Sec. 49-56. Inspections of excavations.**

(a) All excavations shall be inspected by the City. Based upon the complexity and nature of the excavation and as specified in the permit, inspections may be required during the performance of the excavation, immediately upon completion of the excavation, or both.

(b) Consistent with applicable laws, sound engineering practices, and the nature of the excavation, upon approval of the City Engineer, the Director may, in addition to or in lieu of the inspections called for under subsection (a), require that a Permittee, at the Permittee's expense, retain a professional engineer licensed in Texas to observe the excavation and, based upon the observations, to provide written certification upon completion of the excavation stating that the public way has been restored in accordance with the drawings and specifications and all other applicable technical requirements.

**Sec. 49-57. Damage to facility.**

A Permittee who, in connection with an excavation, damages another owner's facility shall immediately notify the Director and, to the extent that the owner's identity is reasonably determinable, the owner of the damaged facility.

**Sec. 49-58. As-built drawings and specifications.**

Upon final completion of an excavation, the Permittee shall provide to the Director a set of as-built drawings and specifications for the excavation, which shall be in a form provided by the Rules and Regulations promulgated under Section 49-40(g) of this Code. In the event that the work was performed exactly in accordance with the drawings and specifications provided with the permit application, then the Permittee may so advise the Director in writing, and the previously supplied drawings and specifications will be regarded as the as-built drawings and specifications.

**Sec. 49-59. Reserved.**

\* \* \* \* \*

**SECTION 2.** This Ordinance takes effect ninety days after its passage.

**SECTION 3.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

**SECTION 4.** Publication shall be made one time in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

**SECTION 5.** Penalties are as provided in Section 1-6 of the Code of Ordinances.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

\_\_\_\_\_  
Nelda Martinez  
Mayor



That the foregoing ordinance was read for the first time and passed to its second reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

Nelda Martinez	_____	Chad Magill	_____
Kelley Allen	_____	Colleen McIntyre	_____
Rudy Garza	_____	Lillian Riojas	_____
Priscilla Leal	_____	Mark Scott	_____
David Loeb	_____		

That the foregoing ordinance was read for the second time and passed finally on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

Nelda Martinez	_____	Chad Magill	_____
Kelley Allen	_____	Colleen McIntyre	_____
Rudy Garza	_____	Lillian Riojas	_____
Priscilla Leal	_____	Mark Scott	_____
David Loeb	_____		

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Rebecca Huerta  
City Secretary

\_\_\_\_\_  
Nelda Martinez  
Mayor